

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

**OFFICER-INVOLVED SHOOTING – 022-20**

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

Central	5/30/20		
---------	---------	--	--

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

Officer A	4 years, 8 months
-----------	-------------------

**Reason for Police Contact**

Officers were positioned on two separate skirmish lines on the west and east crosswalks of an intersection. The Subject intentionally drove his vehicle through the west skirmish line and toward the east skirmish line, causing officers to move out of the way to avoid being struck. One officer fired one round from a 40mm Less-Lethal Launcher (LLL), and a second officer fired three rounds from his service pistol. The Subject was not struck by the gunfire and was not injured. He was subsequently taken into custody without further incident.

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

Subject: Male, 49 years of age.

**Board of Police Commissioners' Review**

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

The following incident was adjudicated by the BOPC on April 27, 2021.

## **Incident Summary**

On the date of this incident, due to civil unrest, the Los Angeles Police Department (LAPD) declared a city-wide tactical alert and mobilized officers throughout the City forming Mobile Field Force (MFF) units. Squads of officers were sent from various Department entities and dispatched to the Command Post (CP). Once the squads of officers checked in at the CP, they were formed into MFF units or individual squads and dispatched to various locations throughout the City of Los Angeles to monitor peaceful protests, effect arrests when rioting and looting activities occurred, and restore order.

The subject of this investigation was one of the individuals who looted stores and attempted to agitate and threaten MFF police officers as the officers attempted to restore order on the city streets.

Hours before the OIS, the Subject videotaped himself looting jewelry stores, attempting to agitate officers on the skirmish lines, and making comments regarding his desire to harm police officers. The Subject posted these videos onto his Facebook Live account just hours before he intentionally drove his vehicle through two police skirmish lines, which resulted in an OIS. The Subject's Facebook Live account documented his activities as follows:

- The first video depicts the Subject walking in Downtown Los Angeles, approaching LAPD officers on skirmish lines and telling them, "What you all [expletive] doing. You all ready to die?" The Subject recorded himself saying, "Let me get a gun. I'm going to show them about the [expletive]." The Subject approached unidentified citizens and asked them, "Do you have anything heavy I can swing? I'm trying to slap me a police officer. Y'all ain't got no wrench or big ass pipe?" The Subject was depicted standing on an unidentified street in the direct path of police vehicles in trail. The Subject was recorded striking the passenger or driver's side of one of the passing police vehicles with his hand.

The Subject was captured entering a jewelry store being looted by protesters. The Subject shattered a glass jewelry window and removed jewelry. After stealing from the first jewelry store, the Subject entered a second jewelry store, which was being looted, and stole miscellaneous items.

The Subject was recorded saying the police are lucky he didn't have a gun, or he would be shooting at them.

The Subject was captured talking to unidentified individuals about obtaining a gun and taking care of business.

The Subject made a statement that he should be in Minnesota but he's in Los Angeles and he's going to get a gun and that he would have already shot a police officer.

The Subject was captured entering a third jewelry store being looted. The first video ended while the Subject was inside the store.

- In the second video, the Subject was depicted walking around Downtown Los Angeles. The Subject lifted his shirt and recorded a bruise on his abdomen, which he stated was caused by a police less-lethal device.

The video captured the Subject saying, "I'm gonna get me a gun so I can shoot some of these police."

The video captured the Subject stating he was going to get a gun tomorrow and shoot those "[expletive]."

The video captured the Subject entering another jewelry store that was being looted. The Subject broke a glass jewelry case and removed several items of jewelry.

- The third video begins with the Subject driving around in the City of Los Angeles. The Subject was speaking to his Facebook Live audience and stated Black Lives Matter and people must stand for something. The Subject entered a liquor store and purchased a beer and a shot of whiskey. The Subject was captured complaining of feeling pain. The Subject exited the store and talked to an unidentified male about rioting all night and the upcoming protests for the weekend. The Subject told the person he burglarized jewelry stores and he was going to count the items he had stolen. The Subject bragged that he was close to an officer and wanted to slap the officer, but the officer shot him/her first with a less-lethal device.

The video captured the Subject driving his vehicle, in the opposite lane of traffic, facing in the direction of a LAPD skirmish line. As the skirmish line approached, the Subject reversed his vehicle and remained in the area.

The video captured the Subject telling unidentified LAPD officers on the skirmish line that they are going to get their ass kicked. The Subject stated, "We going to kill most of you [expletive]. Most of y'all ain't going to live. Especially you white [expletive], you're going to die."

The video captured the Subject approaching another skirmish line, while seated in his vehicle. The Subject yelled at the officers, "Y'all better be lucky I don't have my truck. I would run y'all [expletive] over."

The video captured the Subject stating, "I'm not satisfied with the outcome. I need to find me a gun." The Subject stopped on an unidentified street and told an unidentified female pedestrian he had been shot with a rubber bullet.

The video captured the Subject referring to a truck and running officers over.

The video captured the Subject drinking a beer. The Subject stated if he were at home in Minnesota, he would have some guns and he would be shooting them [expletive].

The video captured the Subject displaying jewelry he stole from the jewelry stores during the looting. The Subject attempted to determine which items of jewelry were real or fake.

The pilot and tactical flight officer (TFO) in an LAPD Air Unit were coordinating the response of MFF officers to a downtown intersection as the civil unrest and looting was taking place. The OIS occurred in this intersection.

Lieutenant A's MFF was comprised of four squads of officers from 4 different divisions.

Lieutenant A's MFF along with other various MFFs/squads also responded to the intersection to clear the unruly crowd of protestors and looters from the area. The MFF squads subsequently formed skirmish lines along the west and east cross walks of the intersection

Uniformed Police Officer A was part of Lieutenant A's MFF assigned to the east curb skirmish line.

Uniformed Police Officer B was assigned to a MFF squad and was on the west curb skirmish line.

Officers A and B were designated as linebackers for their respective squads and equipped with the 40mm Less-Lethal Launchers. Officer B and his/her skirmish line officers were standing on the west skirmish line with the officers facing west along the west crosswalk. Officer A and his/her skirmish line officers were standing facing east along the east crosswalk.

According to Officer B, near the end of his/her patrol shift he/she was directed to become part of a MFF squad and to respond to the Central area CP. Sergeant A was the assigned MFF squad leader. While driving through the downtown area toward the CP, Officer B stated protestors were running in the streets and violently throwing rocks, signs, and fireworks at them. This caused them to swerve their police vehicle to prevent from being struck. Officer B's squad arrived at the CP, checked in, and were directed to respond on foot to various locations throughout the downtown area and restore order.

Prior to leaving the CP area, their squad leader Sergeant A advised his/her officers to leave their Body Worn Video cameras (BWV) in their vehicles because it was rumored that protestors had been taking the cameras off the officers' chests.

According to Officer B, once his/her squad arrived downtown, they were tasked with forming a skirmish line on the west side of the intersection. They were facing west, and were stopping pedestrian and vehicular traffic from proceeding east. As the officers

stood on the skirmish line, Officer B stated that he/she heard screeching car tires and observed a car approximately 20 feet west of their skirmish line traveling east toward them at a high rate of speed. The vehicle was being driven by the Subject.

Officer B attempted to alert the officers on his/her skirmish line that a vehicle was coming in their direction.

The investigation determined that Officer B was standing on the skirmish line near the middle of the roadway, facing west, as the Subject's vehicle approached. According to Officer B, the Subject was swerving his vehicle left to right, making it difficult for him/her to decide which way to move to prevent from being struck. As the vehicle neared, Officer B moved to the south and fired one round from his/her 40mm LLL in a northwest direction at the Subject as the vehicle passed by. The 40mm projectile impacted the triangular shaped portion of the front passenger window and penetrated the glass. The projectile was later recovered from the driver's side floorboard.

After firing the LLL, Officer B turned around and looked west to ensure no additional threats or vehicles were coming toward them. Moments later he/she turned and looked east and observed that the Subject had continued traveling through the east skirmish line.

Officer C was part of the MFF squad on the west skirmish line. He/she was standing near the eastbound number two lane, facing west. Officer C stated that he/she observed a vehicle approaching their skirmish line, so he/she used his/her flashlight to get the driver's (the Subject's) attention and to make the vehicle turn around. The driver of the vehicle stopped approximately 15 to 20 feet in front of them. The driver then accelerated in the officers' direction at an approximate speed of 15 to 20 miles per hour (MPH). Officer C stated that he/she quickly moved north and out of the way to avoid being hit. The vehicle continued east towards the east skirmish line at which time he/she yelled to alert the officers of the on-coming danger. Officer C stated that he/she heard what sounded like gun shots or fireworks, but was not aware a shooting had occurred until after the fact.

According to Officer A, he/she was standing on the skirmish line, when he/she heard a commotion behind him/her. Officer A turned his/her upper body toward the west skirmish line in the direction of the noise and observed the Subject's vehicle traveling east. Officer A recalled that the front bumper of the vehicle was at or near the skirmish line of officers. The vehicle continued east through the west skirmish line and was accelerating toward him/her.

According to Officer A, he/she estimated that the Subject's vehicle was approximately 15 to 20 feet away and traveling directly toward him/her at approximately 25 MPH, when he/she decided to use deadly force to stop the threat. He/she unholstered his/her pistol with his/her right hand, quickly aimed at the driver using a single-handed front sight picture and fired two rounds in a southwesterly direction from an approximate distance of 36 feet. The Subject's vehicle continued in the direction of Officer A. Officer A then

stepped to his/her right, took a two-handed grip on his/her pistol, and fired a third and final round at the Subject. All three rounds impacted and penetrated the front windshield of the Subject's vehicle. As the vehicle continued traveling east the officers on the skirmish line quickly moved out of the way to avoid being struck by the vehicle. The Subject continued driving east and eventually stopped because police vehicles were parked blocking the roadway.

According to Officer A, he/she did not have time to warn his/her squad because of the speed of the vehicle. He/she only had time to deploy deadly force because the threat was imminent and necessary to protect him/herself and the officers on his/her skirmish line.

Based on surveillance video obtained from a business located near the intersection, it was estimated that the Subject's vehicle crossed both skirmish lines in approximately 2 to 3 seconds.

According to Sergeant B, his/her MFF squad was dispatched to the intersection to assist Metropolitan Division officers. When his/her squad arrived, the intersection was being controlled by officers from other squads. Sergeant B stated that he/she was standing by with his/her squad waiting for an assignment when he/she heard the officers on the west skirmish line yelling, "Look out. Look out." He/she observed the officers on the west skirmish line jumping out of the path of a vehicle as it traveled east through the intersection at an approximate speed of 35 MPH. Sergeant B then heard two to three pops, which he/she initially was unsure whether it was gunfire because of all the loud noise and echoes in the area. The vehicle then continued east through the east skirmish line. Sergeant B walked to the intersection and asked if any officers had fired their weapons. Officer A raised his/her hand and said he/she had discharged his/her weapon. Sergeant B separated Officer A from the other officers and obtained a Public Safety Statement from him/her and then continued to monitor him/her until properly relieved.

Sergeant B's body worn camera battery died prior to the OIS; accordingly, there is no video of the OIS. The officers had been on duty for 24 hours or more at the time of the OIS, which caused several officers' camera batteries to die.

Detective A was the MFF squad leader for the other skirmish line. Detective A stated that he/she was standing behind the line along with Officer A when he/she heard yelling coming from the west skirmish line. He/she turned and observed the Subject's vehicle travel through the west skirmish line, causing officers to jump out of its path. Detective A estimated the vehicle was traveling at approximately 30 to 35 MPH as it reached the center of the intersection. According to Detective A, he/she turned to warn his/her squad, but before he/she could complete his/her warning to his/her skirmish line, he/she heard two to three gunshots behind him/her. Once he/she completed turning back around, he/she observed Officer A holstering his/her weapon.

According to Detective B, he/she was standing in the center of the skirmish line with Officer A behind him/her. The two of them were talking since the intersection had been cleared of protestors. He/she heard officers on the west skirmish yell, "Watch out!" He/she turned partially to his/her right and observed the Subject's vehicle travel through the skirmish line at a high rate of speed. The officers on the line had to jump out of its path. The Subject continued driving east in the direction of their skirmish line. Detective B turned to his/her left in a northern direction as Officer A fired his/her first round. As Detective B completed his/her turn he/she was now standing shoulder to shoulder with Officer A. Detective B then observed Officer A fire two additional rounds.

According to Detective C, he/she was standing next to Officer A on his/her right and Officer D was to his/her left. Detective C stated that he/she heard shouting behind him/her. He/she turned around and observed a vehicle in the intersection accelerating at approximately 30 to 40 MPH and traveling in their direction.

The Subject came to a stop approximately mid-block after driving through the east skirmish line. Officers E and F were assigned to the Department sound truck, giving an unlawful assembly warning to the protestors.

According to Officer E, he/she heard a car engine roaring behind him/her, he/she looked in his/her rearview mirror, and observed the Subject's vehicle approaching from behind at a high rate of speed. Officer E exited the sound truck and observed the Subject stop directly behind him/her. Officer E approached the Subject and immediately smelled the odor of an alcoholic beverage emitting from his breath. Officer E formed the opinion that the Subject was intoxicated and asked the Subject to step out of the car. The Subject refused to the exit, at which time Officer E reached through the driver's side window and opened the car door. The Subject was unable to exit the car on his own, so Officer E grabbed ahold of the Subject's left arm and helped lift him from the vehicle. According to Officer E, the Subject felt like dead weight, and the Subject had difficulty standing under his own power, so he/she leaned the Subject against his vehicle to place handcuffs on him.

Officers E and F were unaware at that moment that an OIS had occurred.

Officer G assisted Officer E with handcuffing the Subject. According to Officer G, driving under the influence procedures were not administered on the Subject due to the civil unrest that was occurring.

The Subject was transported by Officers H, I, and J to Central station for booking. The Subject was subsequently booked on an open charge of attempt murder on a police officer.

A review of Officers H and I's BWV showed the Subject being detained and leaned onto the hood of Officers H and I's police vehicle. The Subject appeared angry, uncooperative, and made several statements that he/she wanted officers to kill him. The BWV depicted Officer I applying a hobble restraint device to the Subject's legs,

below the knees. The officers were then shown carrying the Subject to the rear seat of their police vehicle and placed in a seated position for transport to Central station.

Lieutenant B was present at the intersection and became aware an Officer-Involved Shooting (OIS) had occurred. He/she ensured OIS protocols and procedures were being followed and that the scene was secure. Captain A was also present at the intersection and took over as Incident commander (IC).

Force Investigation Division Detectives reviewed all documents and circumstances surrounding the separation, monitoring, and admonition not to discuss the incident to officers prior to being interviewed by FID investigators. All protocols were appropriately documented.

### **BWV and DICVS Policy Compliance**

<b>NAME</b>	<b>TIMELY BWV ACTIVATION</b>	<b>FULL 2-MINUTE BUFFER</b>	<b>BWV RECORDING OF ENTIRE INCIDENT</b>	<b>TIMELY DICVS ACTIVATION</b>	<b>DICVS RECORDING OF ENTIRE INCIDENT</b>
Officer A	N/A	N/A	N/A	N/A	N/A
Officer B	N/A	N/A	N/A	N/A	N/A

### **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 Tactical Debrief. The BOPC found Officer B'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 In Policy.

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

The BOPC found Officer A's lethal use of force to be Out of Policy.



## **Basis for Findings**

In making its decision in this matter, the Commission is mindful that every “use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. 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 Subject and enable an

officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.

**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/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** – Officers A and B were close to the end their normal work shift hours prior to being mobilized from their respective divisions to form MFF squads and respond to the CP located in downtown Los Angeles. The MFF squads were dispatched to various locations to monitor peaceful protests, effect arrests when rioting and looting activities occurred, and to restore order. The configuration of the MFFs were planned, and Officers A and B were designated as linebackers for their respective squads and equipped with the 40mm LLL. Officers A and B responded to the intersection in question at the request of the Air Unit, which had requested MFF units to address the civil unrest and looting that was taking place. The Air Unit requested skirmish lines on all corners of the intersection to clear the unruly crowd of protesters and looters that were in the area. After the protesters were moved east, the skirmish lines on the east and west side remained in place, while stopping pedestrian and vehicular traffic from proceeding east or west.

The BOPC noted that Officers A and B were positioned appropriately on their respective skirmish lines and understood their planned responsibilities of being a linebacker. The situation was fluid, yet the officers were prepared by their supervision to perform crowd management as well as crowd control tasks assigned to them. The BOPC noted that Officer A had been on duty since 0600 hours of the previous day and had been awake for over 21 hours when he/she encountered the Subject during this incident. Officer B had been on duty since 1015 hours of the previous day. The UOFRB also noted the suddenness of the Subject's actions and the chaotic environment in which this incident unfolded. Officers A and B's ability to plan for this specific situation was limited in that they had just a few seconds to react to the Subject's actions.

**Assessment** – Officers A and B assessed that the Subject's vehicle was an imminent danger to themselves and to the officers on the skirmish lines, especially

the officers that were on east facing skirmish line that had their backs to the Subject's oncoming vehicle. Due to the rapidly escalating nature of the incident, the officers at the scene were limited in their opportunity to assess but moved out of the vehicle's path.

**Time** – The time for the Subject's vehicle to cross the intersection was approximately two to three seconds. This compressed time frame caused by the Subject's actions limited Officers A and B's of their ability to utilize time as a de-escalation technique.

The BOPC noted that the entire incident developed suddenly and rapidly. Officers A and B were presented with a perceived threat of death or serious bodily injury with only seconds to react. The Subject's actions and the chaotic environment in which this incident unfolded led to a lack of time to utilize de-escalation techniques by the officers.

**Redeployment and/or Containment** – Officer B observed the Subject driving his vehicle in Officer B's direction at a high rate of speed. According to Officer B, the Subject was swerving his vehicle left to right, making it difficult for Officer B to decide which way to move to prevent from being struck. Officer B stated he/she moved out of the way to prevent him/herself from getting hit by the Subject's vehicle.

Officer A stated he/she assessed that his/her first two discharged rounds were not effective and noted the Subject's vehicle was still advancing towards him/her and the other officers. Officer A took a step back with his/her right foot, obtained a two-handed grip on his/her service pistol, and discharged a third round at the Subject.

The BOPC noted that Officer B moved out of the way of the Subject's vehicle, while Officer A took a step back, after observing the Subject's vehicle was still advancing toward him/her. The BOPC would have preferred Officer A to have focused his/her efforts in moving out of the way of the moving vehicle.

**Other Resources** – The FID investigation determined that the Subject's vehicle crossed both skirmish lines in approximately 2 to 3 seconds. In this case, time did not allow for officers or supervisors the opportunity to request or apply additional resources. The BOPC noted that there were already numerous personnel and less-lethal devices at scene; however, the sudden and rapid escalation of the incident by the Subject did not allow the use of the available resources prior to the OIS incident.

**Lines of Communication** – Officer B and officers on his/her skirmish line observed the Subject's vehicle approaching their direction and yelled to notify other officers on scene of the actions of the Subject's vehicle. Based on the FID investigation, officers on the east skirmish line were able to hear a commotion and turn around in time to be able to move out of the way of the Subject's oncoming vehicle.

The BOPC was critical of Officer A not making verbalizing a warning to other officers of the oncoming vehicle, but was also aware of the limited time available for him/her to make that communication with the other officers on his/her skirmish line.

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

### **1. Equipment – TASER**

Officer A was not carrying a TASER on his/her person when he/she deployed in the field in an on-duty uniformed capacity. Officer A was normally assigned as a detective at the time he/she was mobilized to the MFF incident.

The FID investigation revealed that Officer A was not equipped with his/her Department issued TASER at the time of the OIS. However, FID investigators confirmed that this was due to Officer A's assigned TASER not being available to him/her. Officer A was assigned to an investigative position and when mobilized to the MFF, he/she had not been assigned a replacement TASER. According to the FID investigator, administrative and investigative positions, such as a detective position, are not assigned a TASER due to a limited supply of TASERs. The limited number of TASERs are intended to be issued to uniformed patrol officers and other uniformed field personnel, who do not have a TASER assigned to them. The UOFRB noted that Officer A did not have access to his/her assigned TASER and was not assigned a second TASER due to working an investigative position.

Based on the totality of the circumstances, the BOPC determined that Officer A not deploying a TASER was not a deviation from approved Department tactical training.

### **2. Tactical 40 mm LLL Deployment (Substantial Deviation, without Justification – Officer B)**

Officer B fired one 40mm LLL round at the Subject, as the Subject drove his vehicle towards Officer B and the skirmish line of officers.

The BOPC found Officer B substantially deviated, without justification, from Department approved tactics by firing a 40mm LLL at a moving vehicle, after moving out of the vehicle's path of danger. Officer B initially adhered to the Department's preferred tactics by successfully moving out of the path of the oncoming subject vehicle. However, after moving out of the vehicle's path of danger, Officer B elected to discharge the 40mm LLL, through the front passenger side window of the subject vehicle. Officer B's intended target was the Subject, who was seated in the driver's seat of the vehicle. It was understood that the 40mm LLL is considered a less-lethal force option; however, can still cause a lethal outcome. The BOPC noted that it is for this reason that

the Department has enacted explicit guidelines in the Use of Force policy preventing Department personnel from shooting at moving vehicles. The BOPC noted that numerous officers were staged at the intersection and were observed on surveillance footage dispersing to safety. In the event that Officer B missed his/her intended target, it is likely that Officer B's discharging of the 40mm LLL could have resulted in potential injury to other officers at scene. Officer B's attempt to de-escalate the incident by discharging the 40mm LLL at the driver of a moving vehicle potentially complicated the circumstances. The Subject was seated in the driver's seat and passing by Officer B, thus presenting Officer B with a small, fleeting target. Officer B's intent was to shoot through the vehicle passenger side window at the Subject. The BOPC considered the possible outcome if the Subject was struck in the head by the 40mm LLL round and was suddenly incapacitated. The loss of control over the Subject's vehicle would have increased the risk to officers on scene of being struck by the vehicle. The BOPC determined that Officer B's actions were a substantial deviation, without justification, from approved Department training.

### **3. Tactical Communication**

Officer A observed the Subject's vehicle approaching him/her and the other officers on his/her skirmish line but did not communicate his/her observations to those officers.

In this case, Officer A stated that he/she did not have time to warn the officers of his/her skirmish line because of the speed of the Subject's approaching vehicle. Officer A stated he/she only had time to deploy deadly force because the threat was imminent and necessary to protect him/herself and the officers on his/her skirmish line. According to the FID investigation, based on surveillance video obtained from a business, it was estimated that the Subject's vehicle crossed both skirmish lines in approximately 2 to 3 seconds.

The BOPC reviewed the circumstances of the incident and would have preferred for Officer A to have communicated his/her observations of the Subject's approaching vehicle to the other officers on his/her skirmish line. A warning could have allowed the officers on the skirmish line the ability to react and move out of the way of the Subject's vehicle. The BOPC did take into consideration the rapid escalation of the incident and how the lack of time hindered Officer A's ability to communicate his/her observations as he/she assessed and reacted to the dynamic situation.

Based on the totality of the circumstances, the UOFRB determined, and the BOPC concurred, that Officer A not communicating the Subject's vehicle approaching was a substantial deviation, with 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 are intended to be flexible and incident specific, which requires that each incident be looked at objectively and that the tactics be evaluated based on the totality of the circumstances.

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

In conducting an objective assessment of this case, the BOPC determined that Officers A's tactics deviated, with justification, from approved Department policy and training.

In addition, the BOPC determined that Officer B's tactics were a substantial deviation, without justification, from Department policy and training, therefore warranting a finding of Administrative Disapproval.

Thus, Officer A's tactics were found to warrant a Tactical Debrief, and Officer B's tactics were found to warrant a finding of Administrative Disapproval.

## **B. Drawing and Exhibiting**

- **Officer A** – According to Officer A, he/she was standing behind the east skirmish line, facing east. He/she heard a “commotion” behind him/her, turned his/her upper body toward the west skirmish line, and glanced back. He/she observed the Subject's vehicle traveling east and recalled that the front “bumper” of the vehicle was at or near the officers on the skirmish line. At the same time, Officer A observed that the vehicle passed through the west skirmish line, making those officers move out of the way. As the vehicle passed through, the Subject “swerved towards” Officer A's direction and was “still accelerating.” Once the vehicle entered near the center of the intersection, approximately a second to a second and a half after Officer A observed the Subject's vehicle, Officer A felt that he/she was not going to have time to move out of its path and neither were the officers on his/her skirmish line. The officers on his/her skirmish line were facing east and had their backs to the Subject's vehicle. Officer A believed he/she was the only one who had observed the Subject's vehicle and felt the 15 to 20 officers on the skirmish line were at a disadvantage and had no means of escape. Officer A stated he/she used his/her best judgment, taking Department policy into consideration, which preferred that officers move out of the way of a moving vehicle. In this case, Officer A stated he/she felt that he/she and the officers on the skirmish line did not have any means of escape. Officer A believed that if he/she tried to de-escalate or redeploy, he/she would have left the officers on the skirmish line “open for serious bodily injury and/or death” because they were “unaware of the incoming attack” from the Subject's vehicle. Officer A estimated the Subject's vehicle was approximately 15 to 20 feet away and traveling directly towards him/her at approximately 25 mph. Officer A

decided to use deadly force to stop the threat. Out of fear for his/her life and the lives of the officers on the skirmish line, Officer A drew his/her service pistol with his/her right hand.

The BOPC conducted an evaluation of the reasonableness of Officer A's drawing and exhibiting of his/her service pistol. Officer A was presented with a rapidly developing tactical situation during which the Subject drove his/her vehicle through a skirmish line of officers. Officer A believed that if he/she tried to de-escalate or redeploy, he/she would have left the officers on the skirmish line "open for serious bodily injury and/or death" because they were "unaware of the incoming attack" from the Subject's vehicle. Officer A estimated the Subject's vehicle was approximately 15 to 20 feet away and traveling directly towards him/her at approximately 25 mph. Out of fear for his/her life and the lives of the officers on the skirmish line, Officer A drew his/her service pistol. Officer A stated he/she felt that he/she and the officers on the skirmish line did not have any means of escape. The BOPC noted the potential of the Subject's vehicle continuing to travel in Officer A's direction. Furthermore, due to Officer A's position in the intersection, the Subject would have been able to track him/her with his/her vehicle. Thus, the Subject's driving actions presented a danger that could possibly escalate the situation to one involving the use of deadly force.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, while faced with similar circumstances, would reasonably believe that 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 In Policy.

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

- **Officer A** – (pistol, three rounds)

**Volley One** – two rounds in a southwesterly direction from an approximate distance of 36 feet.

According to Officer A, he/she was standing behind the east skirmish line, facing east. He/she heard a "commotion" behind him/her, turned his/her upper body toward the west skirmish line, and glanced back. He/she observed the Subject's vehicle traveling east and recalled that the front "bumper" of the vehicle was at or near the officers on the skirmish line. At the same time, Officer A observed that the vehicle passed through the west skirmish line, making those officers move out of the way. As the vehicle passed through, the Subject "swerved towards" Officer A's direction and was "still accelerating." Once the vehicle entered near the center of the intersection, approximately a second to a second and a half after Officer A observed the Subject's vehicle, Officer A felt that he/she was not going to have time



to move out of its path and neither were the officers on his/her skirmish line.

The officers on Officer A's skirmish line were facing east and had their backs to the Subject's vehicle. Officer A believed he/she was the only one who had observed the Subject's vehicle and felt the 15 to 20 officers on the skirmish line were at a disadvantage and had no means of escape. Officer A stated that he/she used his/her best judgment, taking Department policy into consideration, which preferred that officers move out of the way of a moving vehicle. In this case, Officer A stated he/she felt that he/she and the officers on the skirmish line did not have any means of escape. Officer A believed that if he/she tried to de-escalate or redeploy, he/she would have left the officers on the skirmish line "open for serious bodily injury and/or death" because they were "unaware of the incoming attack" from the Subject's vehicle. Officer A estimated the Subject's vehicle was approximately 15 to 20 feet away and traveling directly towards him/her at approximately 25 mph. Officer A decided to use deadly force to stop the threat. Out of fear for his/her life and the lives of the officers on the skirmish line, Officer A drew his/her service pistol with his/her right hand, quickly aimed at the driver, and using a single-handed shooting stance, discharged two rounds at the Subject.

**Volley Two** – one round in a southwesterly direction from an approximate distance of 27 feet.

According to Officer A, as the Subject's vehicle continued to move forward, Officer A assessed that his/her first two "rounds were not effective." Officer A noted the Subject's vehicle was still advancing toward him/her and the other officers. Officer A took a step back with his/her right foot, obtained a two-handed grip on his/her service pistol, and discharged a third round at the Subject from approximately 10 to 15 feet, while the vehicle traveled approximately 25 miles per hour. Officer A stated that he/she utilized deadly force, "Out of fear for my life and my safety and the fear for more importantly the officers on the skirmish line, who were unaware of this vehicle that's coming at them."

- **Background** – The north/south roadway had two lanes of traffic in each direction and parking on both sides of the street at designated locations. The east/west roadway was a one-way street, with four lanes of traffic and parking along both sides of the street at designated locations. Both streets were lined by commercial buildings. According to the Officer A, he/she was aware there were officers west of him/her on the west skirmish line and did not recall any other vehicles or pedestrians because most of the protesters had been moved out. When Officer A made the decision to use deadly force and discharge his/her service pistol in a southwesterly direction, he/she knew that because of the close proximity of him/herself and the Subject's vehicle, and due to his/her training and experience that he/she could have proper shot placement and sight picture. Officer A stated that although the incident was almost instantaneous, he/she felt that he/she could place accurate shots into the Subject's vehicle without striking officers in the background.

The BOPC considered the background when Officer A discharged his/her service pistol during his/her two volleys. The BOPC had a significant concern that there were numerous officers in Officer A's background.

In this case, the BOPC conducted a thorough review and analysis of the reasonableness of Officer A's use of deadly force. The BOPC noted that Officer A was placed in a dynamic and rapidly escalating circumstance where he/she made a split-second decision. Officer A observed the Subject's vehicle pass through the west skirmish line. He/she observed the Subject's vehicle swerve towards his/her direction and Officer A perceived that the vehicle was accelerating. Once the Subject's vehicle travelled near to the center of the intersection approximately one second to a second and a half after Officer A first observed the Subject's vehicle, Officer A felt that he/she was not going to have time to move out of its path and neither were the officers on his/her skirmish line.

The BOPC noted the FID investigation estimated the average speed of the Subject's vehicle was approximately 26 MPH. The BOPC also took into consideration that the actual speed of the Subject's vehicle at the time of the OIS was undetermined. The BOPC noted the distance of the intersection and opined Officer A had a limited amount of time to assess and decide a course of action. Officer A stated that he/she used his/her best judgment, taking Department policy into consideration, which states, "An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants," but in this case Officer A stated he/she felt that he/she and the officers on the skirmish line did not have any means of escape. Officer A felt that if he/she tried to de-escalate or redeploy, he/she would have left the officers on the skirmish line open to serious bodily injury and/or death. Out of fear for his/her life and the lives of the officers on the skirmish line, Officer A drew his/her service pistol and discharged two rounds at the Subject. The BOPC noted that Officer A observed the Subject's vehicle continue to move forward. Officer A assessed that his/her first two rounds were not effective. Officer A noted the Subject's vehicle was still advancing towards him/her and the other officers. Officer A took a step back and discharged a third round at the Subject.

The BOPC was concerned about Officer A's background, which were the numerous officers from the west skirmish line. Officer A stated that he/she made the decision to use deadly force and discharge his/her service pistol in a southwesterly direction. Officer A believed that because of the close proximity of him/herself and the Subject's vehicle and his/her training and experience, he/she could have proper shot placement and sight picture. Officer A stated the incident was almost instantaneous and felt he/she could put shots into the Subject's vehicle without endangering the other officers in his/her background.

The BOPC noted that law enforcement entities have seen an increase in the use of vehicles as weapons and noted that Officer A believed the Subject's vehicle was an imminent danger to him/herself and the officers on his/her skirmish lines, specifically because they were facing away from the Subject's oncoming vehicle. However, the

BOPC was critical of Officer A's decision to utilize deadly force and noted that it was not consistent with the Department's Use of Force Policy, as it relates to Shooting at or From Moving Vehicles. While Officer A stated that he/she discharged his/her service pistol to protect him/herself or others from what is reasonably believed to be an imminent threat of death or serious bodily injury, the Department's Use of Force Policy indicates, "The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force."

Neither Officer A nor anyone else articulated that the Subject posed a threat beyond the manner in which he drove his vehicle. The FID investigator presented that Officer A did not move out of the path of the moving vehicle until after he/she had already discharged his/her service pistol. In addition, the BOPC noted that the rounds fired at the vehicle were unlikely to stop or disable the Subject's vehicle. It is more likely that the Subject could become disabled, causing the vehicle to lose control and crash, causing injury to officers and/or others. The BOPC would have preferred Officer A to have moved out of the path of the Subject's vehicle instead of discharging his/her service pistol at it or at the Subject. The BOPC noted that Officer D, who had been standing next to Officer A, had to grab Officer A by the back of his/her utility belt and pull him/her back, to avoid the Subject's vehicle, which was approaching them. In addition, the BOPC noted that there were numerous officers present at scene that also observed the Subject's oncoming vehicle, chose to not utilize deadly force, and were able to move out of the path of the Subject's vehicle.

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 the Subject's actions presented an imminent threat of death or serious bodily injury and that the use of deadly force was not necessary and objectively reasonable.

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