



## **Incident Summary**

On Friday, June 14, 2019, at approximately 1900 hours, off-duty Police Officer A was at a warehouse store, with his/her spouse, Witness A, and their infant son. Officer A and his/her family went to the store to obtain a membership and shop for groceries.

According to Officer A, he/she was shopping with Witness A when their son began to get fussy. Officer A believed his/her son was hungry and decided to get him a sausage sample. Officer A walked to a sausage vendor booth, where sausage samples were being offered. Witness A stated that as her spouse and son walked toward the food vendor, she separated from them to shop for other items.

According to Officer A, as he/she stood in front of the sausage vendor booth, he/she held his/her son in his/her left arm. While speaking with the food vendor (Witness B), Officer A heard people screaming to his/her right and noticed Witness B's facial expression change. According to Officer A, she had a face of absolute fear and terror. She said 'Oh, my God' as she was looking over Officer A's right shoulder.

Witnesses C and D indicated they heard screaming. Witness E stated he heard raised voices that he characterized as a "commotion". Witness F stated he heard male and female voices and then someone say, "Oh my God." Witness F believed the person who made the statement was a woman with a baby. A store employee, Witness G advised he heard someone raise their voice as if they were arguing. Witness A described hearing a woman yell "No, no, no!"

For the purpose of this investigation, the direction in which Officer A stood while facing the sausage vendor's booth was deemed to be north. At the time of the incident, Witness B was standing inside her booth facing south.

According to Witness B, as she was giving food samples to Officer A, she observed an older couple (Subjects 2 and 3) with a younger male (Subject 1) near her booth. Subjects 2 and 3 were the father and mother of Subject 1. Witness B said she had just given samples to these individuals, who she indicated were standing to the right of Officer A.

According to the brother of Subject 1, Subject 1 was mentally disabled. In describing Subject 1's mental capacity, he stated Subject 1 could understand what was said to him, but he could not verbally communicate. Subject 3 explained that her son had "neurological problems," was "medically handicapped" and could not control his actions.

Witness B indicated that after receiving their food samples, Subjects 2 and 3 began to move west, away from her booth. However, Subject 1 quickly stepped

toward Officer A and forcefully punched him/her on the right side of his/her head. Witness B believed the blow caused Officer A to fall to the floor while holding his/her child.

When Witness B was initially contacted by Officer C (an officer from the local police agency that responded to this incident), minutes after the incident had occurred, she had described Subject 1's action as a slap. Subject 3 characterized it in a similar fashion, indicating she believed Subject 1 slapped Officer A on the cheek. Witness D, who did not visually witness the assault, indicated she heard a loud noise that she believed was a slap.

Witness H indicated he was at the sausage vendor's booth at the time of the incident, approximately two to three feet north of Subject 1 and east of Officer A. Witness H noticed Subject 1 staring at Officer A for four to five seconds, while slowly walking toward him/her. Witness H described Subject 1 looking at Officer A as if he knew him/her from somewhere and was trying to recognize him/her. Subject 1 then suddenly lunged at Officer A and struck him/her with a closed fist on the right side of his/her head. Witness H stated Officer A was looking forward (north) at the time and believed he/she never saw Subject 1 approach.

There was no evidence identified during the investigation that revealed any contact or interaction between Officer A and Subjects 1, 2, or 3 prior to the altercation. Officer A and Witness A stated that they had no prior contact with Subjects 1, 2, or 3 in the store or anywhere else.

According to Officer A, Witness B's facial expression as she looked over his/her right shoulder, combined with her statement of "Oh my God," caused him/her to turn his/her head to the right. As he/she did so, Officer A observed Subject 1 with his right arm extended, pointing a small black compact pistol, similar to an Ruger LCP .380, approximately an inch from his/her head. According to Officer A, he/she then believed he/she had been shot in the head and that he/she momentarily lost consciousness.

While subsequently providing a Public Safety Statement (PSS) to investigators at the hospital, Officer A was asked if Subject 1 had a gun. Officer A said he did; however, he/she was unable to describe it.

There were no witnesses identified who observed Subject 1 with a handgun, nor was any gun or other small black objects recovered near Subject 1 that could be construed as a gun. Officer A's pistol was the only firearm recovered during the investigation. It should also be noted that Officer A did not sustain a gunshot wound during this incident, nor did he/she sustain any verifiable injury of any type.

There were no witnesses who reported seeing Officer A in an unconscious state. Witness accounts differed, however, in their description of how Officer A went to the ground.

After being struck by Subject 1, Witness H observed Officer A lean down to his/her left and quickly place his/her child on the floor. As Subject 1 took a couple of steps backward, Officer A rolled forward onto his/her left side and then to his/her back. According to Witness H, Officer A looked at Subject 1 for about a second and appeared stunned. Witness H stated, it took Officer A a while to realize what happened, because he/she had a stunned reaction. Witness H observed Subject 1 clenching his fists while standing approximately four to five feet away from Officer A. Witness B advised that after Officer A was struck, she momentarily turned away but recalled hearing Officer A state, "Oh, my God, he shot me."

Witness B stated that Officer A dropped straight down and that his/her "knees just dropped." Witness I said that Officer A fell straight to the ground and struck his/her head on the concrete. She then observed Officer A quickly stand up, like he/she was fine and remove a gun from his/her pocket.

According to Witness J, Officer A fell head-first on purpose and then stood back up.

Witness D indicated she heard what sounded like a slap and then screaming. When she turned around, she observed Officer A "jump on the floor" with his/her child by his/her side. She believed Officer A removed his/her gun before going to the ground. In characterizing this same movement, Witness D also stated Officer A went down onto his/her butt and then he/she like put his/her head down in a defensive position.

Witness E saw Officer A firing his/her pistol one-handed as he/she was in the process of dropping down to one knee.

Officer A said that when he/she regained consciousness and opened his/her eyes, he/she was on the floor, lying on his/her back, with his/her feet pointing southeast and his head northwest.

Officer A indicated that his/her son was near his/her right shoulder screaming and pounding on his/her chest. Officer A did not know how he/she fell to the floor and said he/she felt intense pain on the right side of his/her head, which he/she described as "absolute heat." Officer A also indicated that his/her body was "numb and absolutely paralyzed" and that he/she believed he/she had been shot. Officer A estimated that he/she was unconscious for approximately one second.

During Officer A's second FID interview, he/she was asked how he/she was able to feel his/her son pounding on his/her chest if his/her body was "numb" and

“paralyzed.” Officer A’s initial response was that he/she did not know. Officer A stated, “I felt petrified and overcome with fear. The fear of what it is that I saw, the feelings that I felt of what I believe I had been shot, and the fact that my son was still on me, just further added to the intensity of the fear and the numbness of my body...Looking back at it, I believe the combination of being struck in the head and being overcome with fear is what made me feel paralyzed.”

Officer A was also asked how he/she was able to estimate the length of time he/she was unconscious. Officer A clarified by stating he/she did not know, but his/her perception was that he/she was only momentarily unconscious.

Officer A’s initial statement to the local police agency that responded to this incident was obtained by Officer B on Body Worn Video (BWV), minutes after the OIS had occurred. During that conversation, Officer A said he/she believed he/she had been shot in the back of the head, but did not mention that he/she had lost consciousness or that he/she was paralyzed. There was no record of Officer A expressing to anyone at scene or to a medical professional that he/she experienced paralysis during the incident.

According to Officer A, he/she observed Subject 1 walking away in a southwest direction in a nearby refrigerated north/south food aisle. Officer A believed Subject 1 was still holding a gun in his right hand with his right arm extended down to his side. According to Officer A, Subject 1 continued to look at him/her as he/she and his/her son laid on the floor. According to Officer A, Subject 1 stopped, turned to his right and faced him/her. Subject 1 then began to raise his right arm in Officer A’s direction, while still holding the gun.

Officer A recalled that there were two shoppers in the aisle with Subject 1, one being an older male (Subject 2) to Subject 1’s right and an older female (Subject 3) to Subject 1’s left. Officer A believed he/she heard Subject 2 state, “He’s crazy. He’s sick.” Officer A agreed with the statement and thought to himself/herself, “Who would ever shoot their - - who would ever shoot someone while they’re holding their little boy [...]? And I believe that people said that because they had just witnessed being - - me being shot in the head at point-blank.”

During Officer A’s second FID interview, Officer A stated he/she believed Subject 2 and 3 were at the north end of the aisle where it intersected with the east/west aisle (the aisle where the vendor’s booth was located).

According to Officer A, upon seeing Subject 1 still armed with a gun, Officer A believed Subject 1 was a deadly threat to both him/her and his/her son and unholstered his/her pistol. Officer A indicated that while lying on his/her back, he/she used his/her left hand to lift his/her shirt and his/her right hand to remove his/her pistol, which was holstered inside of his/her right front waistband. Officer A said he/she did not have time to identify him/herself as a police officer.

Witness D believed Officer A pulled his/her gun out of his/her right pocket prior to going to the floor.

Witness E stated that Officer A had his/her gun in his/her hand as he/she was going to the floor.

According to Officer A, as Subject 1 was in the process of raising his right arm in his/her direction, he simultaneously lowered his chin to his chest while looking directly at him/her (Officer A) and his/her son. Officer A described Subject 1's demeanor as having a "face of intensity, focus and ...absolutely no fear in his eyes." As Subject 1 continued to raise his right arm to an approximate 45-degree angle, Officer A believed his/her life was in danger. While lying on his/her back, Officer A raised his/her head, and while using a one-handed grip, extended his/her right arm and fired two rounds at Subject 1's center body mass from a distance of approximately 15 feet.

During Officer A's subsequent walk-through with FID investigators, he/she demonstrated Subject 1 holding the gun in a bladed two-hand low-ready stance. When Officer A was questioned regarding this discrepancy during his/her first FID interview, he/she did not recall making that characterization.

A portion of this incident was captured on the in-store surveillance video. This video does not support Officer A's assertion that Subject 1 walked down the aisle by himself, turned around and raised a gun with his right hand.

The initial assault by Subject 1 on Officer A was obscured from the security camera's view. The footage also did not capture Officer A falling to the floor or any of his/her subsequent actions. What can be determined from this video is that at approximately 1945:30 hours, Subject 2 was in the process of pushing Subject 1 away from the vendor's booth, south into the refrigerated aisle. Subject 3 can then be seen moving (west) away from the Vendor's booth, while bending forward at the waist.

Subject 3 appeared to extend her arms outward while looking down toward the area where Officer A indicated he/she was lying. At 1945:34 hours, Subject 3 can be seen falling to the floor. Moments later, the video shows Subject 2 collapse to the ground, immediately followed by Subject 1.

Officer A added that although he/she believed Subject 1 was holding a gun at the time he/she (Officer A) fired, he/she experienced tunnel vision as Subject 1 began to raise his right arm. Officer A said his/her focus then moved to the front sight of his/her pistol, as he/she aimed at Subject 1's chest.

In providing a justification for his/her use of deadly force, Officer A stated, that he/she believed that his/her life and his/her son's life were in danger, and the

lives of other shoppers were in danger. He/she shot to stop the threat. Officer A said he/she had a clear view of Subject 1 at the time he/she fired and that there was no one in his/her background or foreground.

According to Subject 3, when Officer A drew his/her pistol, she stepped in front of Subjects 1 and 2 to prevent them from being shot. Subject 3 believed she was the first one struck by gunfire and that Officer A continued shooting after she was hit.

Witness A described hearing a woman yell "No, no, no!" Witness A believed she saw an older woman with gray hair appearing to struggle with someone who she could not see.

Witness C stated she observed Officer A lying face down on the floor. When she walked over to see what was occurring, she observed Subject 3 bending over Officer A and believed she was assisting him/her with a medical emergency. Witness C turned away for approximately five seconds to see if anyone else was coming to help. Before she turned back around, she heard six to seven consecutive gunshots. Witness C immediately went to the ground and then fled the store.

Witness I stated that just prior to the shooting, she observed a woman next to Officer A saying, "No, no. Don't do it."

Several witnesses observed Officer A shooting his/her pistol. Witnesses D, H, and K, all observed Officer A shooting from the floor. Witness D described seeing Officer A jump on the floor with his/her kid right by his/her side, she stated that Officer A went onto his/her butt and put his/her head down and started shooting. Witness H and K described Officer A as laying on his/her side.

Witnesses I and J observed Officer A fall to the floor for an unknown reason and stand up. Witness I observed Officer A stand up quickly and fire his/her pistol using a two-hand grip with both hands extended away from his/her body.

Witness E, who was approximately 30 feet from Officer A, observed him/her firing his/her pistol one-handed as he/she was in the process of dropping down to one knee. He also believed Officer A attempted to shield someone with his/her other hand as that occurred. Witness E believed there was no one immediately in front of Officer A at the time he/she fired.

Officer A stated that after he/she fired his/her first two rounds, Subject 1 fell to the floor on his left side. According to Officer A, Subject 1 was still facing Officer A, with his legs bent more than 90 degrees toward his torso. Officer A observed Subject 1's right arm was extended out in his/her direction and that his left arm was parallel to the floor and slightly bent at the elbow. Officer A said that Subject 1 looked at him/her and his/her son with a concentrated, intense look in his eyes.

Subject 1 then raised his closed right hand, holding what Officer A believed was a gun pointed in his/her direction. Officer A believed Subject 1's actions were consistent with him taking a shooting platform and that Subject 1 posed a continuing deadly threat to him/her (Officer A), his/her son, and to other shoppers.

Officer A stated that, while still on his/her back, Officer A again utilized a one-handed shooting grip and fired two additional rounds at Subject 1's chest area. According to Officer A, all four of his/her rounds were fired in a southern direction with no one other than Subject 1 in his/her background or foreground. Officer A also indicated that due to the immediate need to take action, he/she was unable to give Subject 1 commands prior to firing his/her rounds. After firing his/her last shot, Officer A stated Subject 1 rolled onto his back and then into a fetal position on his/her left side. Subject 1's back was toward Officer A and his hands were tucked under his body.

The in-store surveillance video does not support Officer A's assertion that Subject 1 was facing Officer A, with his right arm extended out in Officer A's direction. The surveillance video depicted Subject 1 initially falling on his left side with his back toward Officer A. Subject 1 fell face-down, and not on his back as described by Officer A.

The investigation determined that Officer A fired a total of 10 rounds. Officer A was not able to account for the additional six rounds he/she fired. Officer A stated it was possible he/she shot more than twice during each of his/her two volleys and surmised that having been knocked unconscious may have distorted his/her perception of the total number of rounds he/she fired. Officer A initially stated he/she conducted an assessment after firing each round. In his/her second FID interview; however, he/she believed he/she assessed only between volleys. Officer A said that he/she fired all his/her rounds within two seconds and estimated there was less than one second between his/her first and second volleys.

Although Officer A believed Subject 1 was in possession of a firearm throughout the entirety of this incident, he/she indicated the last time he/she saw Subject 1 holding a gun was just prior to firing his/her (Officer A's) first volley. As previously mentioned, Officer A said he/she experienced tunnel vision at that point and focused through his/her sights on Subject 1's chest area. Officer A described tunnel vision as concentrating on a particular object, while everything else around it remained a blur. Officer A gave a similar explanation regarding his/her second volley and was not able to say definitively that he/she saw Subject 1 holding and/or pointing a gun at him/her when he/she fired his/her additional rounds.

During Officer A's second FID interview, he/she described feeling disoriented and that his/her vision was "off." He/she clarified that he/she experienced blurred

vision rather than tunnel vision, but he/she was still able to see Subject 1 holding a gun.

Despite Officer A's assertion he/she fired his/her rounds at Subject 1's chest area, the investigation determined Subject 1 was struck twice in the lower back, once to his left buttock, and once to his left triceps area.

Subject 2 sustained a gunshot wound to his right flank

Subject 3 sustained a through and through gunshot wound to her lower left abdominal area.

Officer A said that after firing his/her last round, he/she yelled, that Subject 1 had just shot him/her and that he still had the gun.

Officer A believed he/she then heard a male's voice from within the aisle state, that Subject 1 did not have a gun. Officer A continued to point his/her pistol at Subject 1, because he/she believed Subject 1 might still have the gun tucked underneath him.

Moments later, Officer A broke his/her tunnel vision and observed Subjects 2 and 3 lying to the right and left of Subject 1, respectively. Both individuals appeared to have been injured and were holding their sides. Officer A said that he/she did not know how they were injured and was adamant he/she did not see either of them in his/her foreground or background at the time of the OIS. Officer A did recall however, that after he/she fired his/her last round, Subject 2 moved from the east side of the aisle, toward the center of the aisle in front of Subject 1, and then back to the east side of the aisle. Officer A also recalled seeing Subject 3 move in a northwest direction while screaming, in what appeared to be an attempt to exit the aisle.

At approximately 1949:15 hours, Officer B was the first member of the local police agency to arrive at scene after the OIS. Shortly after the arrival of officers to the incident, Officer A was recorded on BWV stating that he believed Subjects 2 and 3 "probably got in the way."

According to Officer A, as Officer B approached, Officer A continued to hold his/her pistol pointed at Subject 1, because he/she still considered Subject 1 a threat.

According to Officer A, when Officer B asked what had occurred, Officer A told Officer B, "That guy just shot me...He still has a gun." Officer A said he/she was then approached by a second officer, who told him/her to hand over his/her pistol. Officer A said that officer then removed his/her pistol from his/her (Officer A's) right hand.

Based on a review of Officer B's BWV, Officer A did not make the above-quoted statement. Video shows Officer B approaching Officer A and asking him/her if he/she was injured. Officer A replied, "I guess not" and added that he/she thought he/she had been shot in the back of his/her head. When asked by Officer B where the shooter was, Officer A pointed to Subject 1 and said, "that guy." Officer A did not immediately identify himself/herself to Officer B as the shooter or as an off-duty police officer.

It was also noted that Officer A was not holding his/her pistol when first approached by Officer B. According to Officer D, upon his/her arrival at scene, he/she observed the stock of a pistol protruding from Officer A's right front pants pocket. Officer D removed Officer A's pistol and secured it in his/her own pants pocket.

According to Witness A, she heard a female yelling and a "popping" noise, Witness A went back toward the sausage vendor's booth looking for her son and Officer A. Witness A said that she approached Officer A and her son.

Witness A observed Officer A lying on his/her back, holding their son in his/her right arm and his/her pistol in his/her left hand. Witness A said she asked Officer A what occurred, and he/she stated that he/she had pain to his/her head, and it felt like he/she had been shot.

Witness A observed Subject 2 on the floor near Subject 1 and heard Subject 2 state, "He's mentally ill." Witness A also observed Subject 3 lying on her back crying. According to Witness A, she then picked up her son and ran screaming for help. The in-store surveillance video shows that Witness A bent down and was in the immediate vicinity of Officer A for approximately 19 seconds before she left.

Officer A stated he did not know who picked up his/her son from him/her. There was no indication his/her son was injured during this incident. Neither Officer A nor Witness A requested their son be examined by medical personnel who were on the scene.

In Witness A's second interview, she said that Officer A told her he/she felt like he was bleeding, but she did not check him/her for injuries. In her statement to FID however, she was asked if she observed any injuries to her spouse. Witness A replied that she observed Officer A look at his/her hand after touching his/her head and saw "driplets" of blood.

Upon review of the multiple BWVs depicting Officer A interact with responding on-duty officers, no injury could be seen to Officer A's head and no blood was observed on his/her hands or head. Officer A did not indicate that he/she was bleeding after the incident.

There were multiple individuals who did not observe the shooting but heard gunshots and who responded to the location of the OIS. Below is a synopsis of the actions they took, their observations of Officer A and any statements he/she may have made to them. The order in which the witnesses are listed is not an indication of the order they arrived. Based on their statements, it appeared they all arrived in close proximity to one another. The in-store surveillance video shows the witnesses that responded to the scene arrived at approximately 1946:35 hours, approximately one minute after the OIS.

Witness L responded to the location with Witness N. Witness L observed Officer A lying on the floor propping himself/herself up on his/her right elbow. Officer A was holding a gun in his/her right hand while pointing it at Subjects 1 and 2, who were lying in between the refrigerated food aisles. Subject 1 was laying on his stomach with blood visible beneath him. Witness L observed Subject 2 holding his side and believed he had been shot. When Witness L approached Officer A and asked where the shooter was, he/she stated, that Subject 2 still had a gun in his hand. Witness L also heard Subject 2 screaming that his son was sick.

Due to Subject 1's position on the floor, Witness L could not see Subject 1's arms. In an effort to determine whether Subject 1 was in possession of a gun, Witnesses L and Witness M rolled Subject 1 onto his back. After determining Subject 1 was unarmed, Witness L attempted to render aid by elevating his feet. Witness L then checked Subject 1 for a pulse but could not find one.

Witness L believed Witness A was concerned Officer A was going to jail for shooting Subject 1 and heard her screaming, "Oh, my god. Oh, my god!"...[Officer A] shot somebody [he/she] wasn't supposed to shoot." Witness E also heard Witness A state, "Oh my God. My [spouse] ...[He's/she's] going to jail."

Witness N, observed Officer A lying on his/her back, holding a handgun in his/her right hand that he/she was pointing south down the aisle. Officer A identified himself/herself as an off-duty police officer and appeared disoriented, distraught and visibly upset. When asked what had occurred, Officer A rubbed the right side of his/her head and said he/she had been shot. Officer A also indicated that he/she believed he/she had lost consciousness. Witness N looked at Officer A but did not see any blood. Witness N then left Officer A to render aid to Subject 2, who was lying on his back in the aisle. While tending to Subject 2, Witness N heard him (Subject 2) say that his son had problems and that he was not on his medication.

Witness M indicated that when he arrived, he observed Officer A positioned on his/her back, holding a pistol. Officer A was pointing his/her pistol at Subject 1, who was lying in the aisle on his stomach. Officer A made eye contact with Witness M, he/she identified himself/herself as an off-duty officer and stated that Subject 2 had drawn a weapon on him/her.

Witness M observed that Subject 1 and two other people appeared to have been shot and asked Officer A to put his/her pistol away so he could safely render aid to those individuals. Officer A complied and placed his/her pistol inside his/her waistband.

After assisting Witness L with turning Subject 1 onto his back, Witness M believed Subject 1 was deceased. Witness M then directed his attention to Subject 2 and attempted to render him aid. During that interaction, Subject 2 indicated he had been shot in the abdomen and stated several times that Officer A had shot him, his spouse and his son.

As Witness O, an off-duty paramedic, made his way toward the OIS. He observed a female holding an infant running out of the store and believed it was Officer A's spouse. He overheard this person crying and say, "Why did [he/she] have to do that?" Based on this person's reaction, Witness O believed she was somehow involved in the incident or had observed it.

Witness O observed Officer A on his/her right side pointing a pistol at Subject 1, who was on his back in a pool of blood. Witness O also observed Subjects 2 and 3 and believed they had both been injured. Subject 2 was sitting on the floor holding his right side, Subject 3 was lying on her back and appeared to be bleeding from her abdomen. Witness O approached Officer A from behind, knelt down next to him/her and asked if there was another gunman. Without turning his/her head or the position of his/her firearm, Officer A replied, "No. He's down."

Witness O said he walked past Officer A at that point and approached Subject 1, who was not breathing and had no pulse. Witness O concluded Subject 1 was deceased and began rendering aid to Subject 2. At some point thereafter, Witness O turned back to look at Officer A and observed he/she was still lying on the floor. Witness O was confused as to why Officer A had remained in that position and walked over to him/her and asked, if he/she was hit. Officer A replied, that he/she was, on the right side of his/her head. Witness O then checked Officer A's head and body for a wound but did not find one. In apparent disbelief, Officer A touched his/her head several times and then looked at his/her hands for blood, while stating that he/she knew that he/she was hit in the head.

In describing Officer A's demeanor, Witness O said he/she looked shocked and scared and actually thought he/she had been shot. In his experience as a paramedic, Witness O believed Officer A was presenting as if he/she received a blow to the head. Witness O also described Officer A as "purposeful...where [he/she] can think and continue doing what [he's/she's] doing." He eventually assisted Officer A to his/her feet and walked with him/her out of the store through an emergency exit.

Officer B's BWV, captured Witness O talking with Officer B outside the store. In describing his observations at the OIS Scene, Witness O stated that Officer A was alert, oriented and conscious. At this time Officer B's BWV also captured a conversation between Officer A and Witness A. During that conversation, Witness A asked Officer A what occurred and appeared to question him/her for shooting someone who was unarmed. Due to multiple conversations occurring in the background, the interaction between Witness A and Officer A was difficult to hear. The following dialogue is believed to have transpired:

Witness A: "What happened?"

Officer A: "I thought I got shot."

Witness A: "Why would you do it that way?"

(Unable to hear response due to Officer B speaking with Witness O in background.)

Witness A: "But what did he do to you? Nothing?"

Officer A: "He shot me."

Witness A: "Yeah, I'm listening to you. Uh-huh, and you shot him? He didn't have anything on him?"

Witness P observed Officer A lying on his/her back, while moaning in pain and holding the right side of his/her head. He also saw a black pistol on the floor near Officer A's right thigh. When Witness P asked why Officer A had a gun, Officer A stated that he/she was an off-duty police officer and that his/her gun was "cleared." Witness P interpreted that statement to mean that Officer A's gun was empty and that he/she was going to wait for responding officers to take it

Officer A told Witness P that he/she had been hit and complained of pain while rubbing his/her ear. Officer A described seeing a flash and hearing a bang. Witness P interpreted his/her statement to mean that someone had shot him/her. Witness P did not see an injury to Officer A and went to render aid to Subject 2.

Witness G was in the nearby liquor department when the shooting occurred. When he arrived, there were already people in the refrigerated aisle attempting to render aid to Subject 1. Witness G observed Officer A lying on his/her side and asked him/her if he/she was bleeding or hurt. Officer A replied, "No." Witness G then went to assist those helping Subject 1. Witness G indicated Witness A was hysterical after the incident and that he overheard her say, "I knew something like this was going to happen."

Two other witnesses overheard Witness A making comments relative to the OIS. Witness Q said he overheard Witness A talking to Officer A. She appeared exasperated and repeatedly asked Officer A, "Why did you have to shoot them all? Why did you have to kill the whole family?" According to Witness R, Witness A screamed, "My [spouse]! What's gonna happen to my [spouse]? He was only trying to defend himself."

According to the incident report completed by Officer B, he/she checked Subject 1 for a pulse but could not find one. After observing no signs of life, Officer B pronounced Subject 1 deceased at approximately 1952 hours.

Prior to escorting Officer A out of the store, Officer B questioned him/her further regarding what had occurred. During that interaction, which was captured on BWV, Officer A stated that while holding his/her son and waiting to receive a food sample, he/she saw a blast and felt his/her "head getting knocked out." Officer A said he/she thought he/she had been shot and dropped his/her son as he/she fell to the floor. When he/she looked up, he/she observed Subject 1 hunkered down in the aisle. Officer A stated he/she believed Subject 1 was still armed and shot him. When asked specifically by Officer B if he/she observed a weapon, Officer A did not answer and asked to speak with a lawyer. Officer B continued to question Officer A and asked him/her how many rounds he/she fired and if there were any outstanding suspects. Officer A said that he/she did not know the answer to either question.

According to Fire Department Captain A, they were staged outside the store waiting for clearance from the police as the incident was being treated as an active shooter situation. Once they were given clearance, they entered with police officers.

In Officer A's first FID interview, he/she stated he/she observed Subject 1 walking with a gun, turn toward him/her and then point the gun at him/her. In his/her second FID interview, he/she was asked to explain that statement in light of what he/she originally told Officer B, namely that he/she observed Subject 1 hunkering down and believed Subject 1 was armed, as opposed to actually seeing him with a gun.

Officer A acknowledged that "hunker down" was a term he/she uses but did not recall saying it when speaking with Officer B. In regard to the specific verbiage he/she used when first describing to Officer B what had occurred, he/she stated, that what he/she saw that day was a gun and he/she didn't believe that he/she had enough time to go into a thorough explanation to the officer of what had occurred.

Officer A added that his/her recollection of the incident could be off due to the injury he/she sustained to his/her head. Officer A stated that after he/she was struck, he/she sustained severe hearing loss to his/her right ear, blurred vision, pain to the right side of his/her head, paralysis and loss of consciousness.

Officer A was transported to hospital by ambulance, staffed by Paramedics A and B. Officer B also rode with Officer A to the hospital and remained with him/her until local detectives and representatives from LAPD arrived.

Based on his observations, Paramedic A did not believe Officer A's balance or

gross motor skills were compromised in any way. Once inside the ambulance, Paramedic A observed Officer A place his hand on the right side of his/her head and complain of pain to his/her head. When asked by Paramedic A if he/she felt dizzy, nauseous or had blurred vision, Officer A replied, "dizzy." According to Paramedic A, Officer A did not have symptoms indicative of being concussed. Paramedic A did however, notice what appeared to be a small, quarter-sized hematoma to the right side of Officer A's head.

Once at hospital Officer A received medical treatment and underwent a series of exams including a computed tomography (CT) scan of his/her head and spine. There was no documentation in Officer A's medical record that identified any trauma to his/her head or spine or any other evidence of a verifiable injury to Officer A associated with this incident.

Subject 2, and Subject 3 were also transported by separate rescue ambulances to local hospitals where they were treated for their injuries. Subjects 2 and 3 through their lawyer subsequently declined to give statements to FID.

At approximately 2130 hours, Detective B contacted the Los Angeles Police Department on Officer A's behalf and advised Sergeant A and Lieutenant A of the OIS. Both responded to the hospital and monitored Officer A until relieved by FID investigators.

### **Los Angeles Board of Police Commissioners' Findings**

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

#### **A. Tactics**

The BOPC found Officer A's tactics to warrant Administrative Disapproval.

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

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

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

The BOPC found Officers 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 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 subject'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**

### Tactical De-Escalation Techniques

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- **Lines of Communication**

(Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

- **Planning** – Officer A was off-duty in civilian clothing, armed with his/her pistol concealed in a holster, and shopping in a store with his/her family. While obtaining a food sample and holding his/her son, Officer A was struck on the right side of his/her head in an unprovoked attack, and subsequently became involved in an OIS. The unanticipated attack limited Officer A's ability to plan for this incident; however, with regard to planning ahead for a possible off-

duty incident, Officer A stated he/she had discussed actions to take with his/her spouse (Witness A) should such an incident occur. Additionally, Officer A stated he/she practiced shooting his/her off-duty pistol approximately once every six months. Officer A kept his/her pistol loaded with Department-approved ammunition and secured it inside of a holster that met the Department's off-duty holster requirements.

- **Assessment** – Officer A stated that he/she thought he/she had been shot in the back of the head, was paralyzed, and lost consciousness. Officer A did not mention that he/she had lost consciousness or that he/she was paralyzed in his/her initial contact with Officer B. There was no record of Officer A expressing to anyone at scene or to a medical professional that he/she experienced paralysis. According to the FID investigation, Officer A did not sustain any verifiable injury during this incident.

Officer A described seeing, out of his/her peripheral vision, Subject 1 point a black compact firearm approximately one inch from the right side of Officer A's head; however, none of the identified witnesses observed Subject 1 with a firearm or a firearm pointed at Officer A's head. Additionally, investigating personnel did not locate any evidence of an additional firearm or any object that could be construed as a firearm in their canvassing of the immediate area.

In his/her assessment, Officer A stated he/she believed Subject 1 was still holding a firearm in his/her right hand, with his/her right arm extended down to his/her side while in the aisle. Furthermore, he/she described Subject 1 as having stopped, turning to his right, and facing Officer A. Officer A stated Subject 1 began to raise his right arm in Officer A's direction, while still holding the firearm. According to the FID investigation, the in-store surveillance video did not depict Subject 1 walking in the aisle by himself, turning around, and raising his right arm.

Officer A stated that after he/she fired his/her first two rounds, Subject 1 fell in a manner that Officer A assessed was a threat because Subject 1 was facing Officer A with his arm still extended outward. Officer A stated that Subject 1 had closed fists and was holding what Officer A believed was a firearm. Officer A described Subject 1 taking a shooting platform while raising his right arm. According to the FID investigation, the surveillance video depicted Subject 1 initially falling on his left side, with his back towards Officer A.

Although Officer A stated Subject 1 was in possession of a firearm throughout the entirety of this incident, Officer A stated the last time he/she observed Subject 1 holding a firearm was prior to Officer A firing his/her first volley.

The investigation determined that Officer A fired a total of 10 rounds. In his/her first FID interview, Officer A stated he/she conducted an assessment

after firing each round. In his/her second FID interview; however, Officer A believed he/she assessed only between volleys. Officer A stated he/she fired all of his/her rounds within two seconds and estimated there was less than a second between his/her first and second volleys.

As previously mentioned in his/her first FID interview, Officer A stated he/she experienced tunnel vision and focused through his/her sights on Subject 1's chest area. In his/her second FID interview, Officer A clarified that he/she had experienced blurred vision rather than tunnel vision, but he/she was still able to assess that Subject 1 was holding a firearm. Officer A incorrectly assessed that Subject 1 was armed with a firearm, which resulted in an OIS. Officer A stated that he/she assessed Subject 1 to be in possession of a firearm throughout the entirety of this incident. The investigation did not identify any corroborating evidence or witnesses who observed that Subject 1 was in possession of a firearm or object which resembled a firearm.

- **Time** – Due to this incident being an unprovoked attack, the time afforded to Officer A to plan for such was limited and did not provide him/her the opportunity to move to a position of cover or gain additional distance from Subject 1 prior to the assault. However, after the assault, Officer A did not take the time to assess his/her physical condition or his/her level of injury prior to unholstering his/her pistol. Officer A stated that he/she believed that he/she had been shot in the back of the head but had no verifiable injury. Assessing that he/she had not, in fact, been shot would have allowed Officer A more time and options rather than drawing his/her firearm and ultimately resorting to the use of lethal force. Officer A made no attempts to communicate with Subject 1 in an effort to de-escalate the incident. Additionally, Subject 1 was being pushed away from Officer A and was not armed. Officer A did not take the time to correctly assess the incident and to analyze the threat.
- **Redeployment and/or Containment** – It would have been preferable for Officer A to take a position of cover or concealment to allow him/her additional time to assess the incident properly and safely secure himself/herself and his/her son from further harm. A position of cover would also provide Officer A with time to consider additional options and mitigate the risk of resorting to the use of lethal force.
- **Other Resources** – Since Officer A was off-duty, his/her available resources were limited. Had Officer A awaited the arrival of the jurisdictional law enforcement agency, he/she would have benefited from the valuable resource of additional responding personnel who would have assumed investigative responsibility and taken appropriate action, thereby reducing the risk to Officer A and other persons in the immediate area.
- **Lines of Communication** – Following the unprovoked physical assault by

Subject 1, Officer A did not verbalize to Subject 1 to stop his actions, nor did he/she advise nearby shoppers that an armed person was presenting an immediate safety hazard. Following the OIS, Officer A focused on his/her perceived injury and did not exercise control to warn bystanders to avoid the area and keep them away from Subject 1.

As the incident progressed requiring a police response, Officer A was noticeably lacking and hesitant in his/her response to initial responding law enforcement personnel and failed to communicate essential, pertinent, and relevant public safety information, thereby reducing the ability of officers to respond efficiently in a critical incident. The choice to provide incomplete information also delayed the administering of medical aid to injured victims by Fire Department personnel who were staged outside of the store until the location was deemed safe enough to enter. Additionally, Officer A did not immediately identify himself/herself as an armed, off-duty police officer, in accordance with the Department's guidelines. Officer A's decision to not identify himself/herself as a police officer after being involved in a significant off-duty incident and OIS increased his/her risk for being misidentified as a suspect from the local responding law enforcement agency.

The BOPC determined, that Officer A did not appropriately utilize the elements of de-escalation and substantially deviated, without justification, from approved Department tactical training. Officer A would have benefited from properly assessing his/her environment and surroundings which would have afforded him/her additional options rather than resorting to the use of lethal force.

- In evaluating this incident, the BOPC noted the following tactical considerations:

**Debriefing Point No. 1 Situational Awareness** (Substantial Deviation without Justification – Officer A)

In this case, Officer A did not take the time to assess his/her physical condition or his/her level of injury prior to unholstering his/her pistol. Officer A stated that he/she believed that he/she had been shot in the back of the head but had no verifiable injury. Assessing that he/she had not been shot would have allowed Officer A more time and options rather than drawing his/her firearm and ultimately resorting to the use of lethal force.

In this incident, Officer A incorrectly assessed that Subject 1 was armed with a firearm, which resulted in an OIS. Officer A stated that he/she assessed Subject 1 to be in possession of a firearm throughout the entirety of this incident. The investigation did not identify any corroborating evidence or witnesses who observed that Subject 1 was in possession of a firearm or an object which resembled a firearm.

The BOPC acknowledged Officer A was the victim of an unprovoked attack; however, Officer A's lack of assessment and the resultant deficient situational awareness caused the BOPC great concern. The BOPC noted Officer A had an obligation to take the time to assess the situation prior to making the decision to draw and exhibit a firearm inside of a crowded store. While Officer A stated that he/she believed he/she had sustained a gunshot wound to the back of his/her head, Officer A did not have any verifiable injury. This mistaken belief was cited by Officer A as a factor in his/her decision to draw and exhibit his/her firearm. Although Officer A had been struck by Subject 1's hand in some manner, he/she was obligated to conduct an assessment in order to react appropriately.

The BOPC noted that Officer A did not correctly assess the incident and believed that Subject 1 was armed with a firearm. Officer A did not conduct a proper assessment of his/her background where the incident occurred, which was in a crowded store on a Friday evening. The BOPC reviewed all of the evidence that was available, including transcripts from witnesses. The only firearm recovered at the incident was that possessed by Officer A. There were no witnesses who observed Subject 1 armed with any firearm or in possession of any object that resembled a firearm.

The BOPC also noted that Officer A had sufficient time to assess and consider his/her tactical options rather than escalate the situation by drawing and discharging his/her pistol. The BOPC was concerned that Officer A did not take more time to analyze the threat. Based on the preponderance of the evidence and Officer A's inconsistent accounts, the BOPC determined that Officer A did not assess the situation accurately. At the time of the OIS, Subject 2 was with Subject 1 who was in the process of moving away from Officer A.

Based on the totality of the circumstances, the BOPC determined that Officer A did not properly assess the situation. The BOPC determined that Officer A's actions unjustifiably and substantially deviated from approved Department tactical training.

**Debriefing Point No. 2 Tactical Communication** (Substantial Deviation without Justification – Officer A)

Officer A did not effectively communicate essential and relevant safety information to responding law enforcement personnel. Officer A did not employ the elements of de-escalation to reduce the intensity of the encounter with Subject 1, nor did he/she warn bystanders to keep a safe distance from Subject 1.

Operational success is based on the ability of officers to effectively

communicate during critical incidents. Officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work collectively to ensure a successful resolution.

As the incident progressed, requiring a police response, Officer A was noticeably lacking and hesitant in his/her response to initial responding law enforcement personnel and failed to communicate pertinent and important public safety information, thereby reducing the ability of officers to respond efficiently and coordinate their actions in a critical incident. This lack of cooperation also hindered other first responders, such as paramedics and fire department personnel.

Officer A's lack of communication to responding personnel also resulted in the deployment of officers into the store and a tactical search of the location for possible additional suspects. The tactical search of the store unnecessarily utilized police resources and also placed them at unnecessary and increased risk of a mishap or accident.

Additionally, Officer A's choice to provide incomplete information also delayed the response to injured victims by Fire Department personnel who were staged outside of the store until the location was deemed safe enough to enter. Due to police personnel believing this incident was an active shooter event, Fire Department personnel were kept outside of the store until the tactical situation had stabilized sufficiently to allow Fire Department personnel into the location. This created a delay of medical treatment being more expeditiously rendered to critically injured persons inside of the store.

Officer A did not immediately identify himself/herself as an armed, off-duty police officer, in accordance with the Department's guidelines, thereby increasing his/her risk for being misidentified as a suspect from the local responding law enforcement agency.

Following the unprovoked physical assault by Subject 1, Officer A did not verbalize to Subject 1 to stop his actions, nor did he/she advise nearby shoppers that an armed person was presenting an immediate safety hazard. Subsequent to the OIS, Officer A focused on his/her perceived injury and did not exercise control to warn bystanders to avoid the area and keep them away from Subject 1 for their own safety.

Based on the totality of the circumstances, the BOPC determined that Officer A did not appropriately utilize the elements of de-escalation. Moreover, Officer A's lack of communication during this incident placed the responding officers at a tactical disadvantage, increased the intensity of the encounter, and endangered the public.

Officer A is reminded that effective communication of possible tactical

concerns to other law enforcement personnel is vital in their ability to react and respond to threats that may arise during a tactical encounter. 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.

The BOPC determined that Officer A's actions unjustifiably and substantially deviated from approved Department tactical training.

### **Additional Tactical Debrief Topics**

- **Off-Duty Actions** - Officer A had just been involved in an off-duty OIS. Officer A did not notify his/her command directly that he/she was involved in a significant off-duty incident in which he/she discharged his/her pistol. Officer A is reminded that officers who are involved in a reportable use of force incident shall notify their supervisor or watch commander without unnecessary delay.

### **Tactical Debrief**

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

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

**Note:** Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### **B. Drawing/Exhibiting**

- According to Officer A, he/she observed Subject 1 walking in a southwest direction in a nearby food aisle. Officer A stated there were two shoppers in

the aisle with Subject 1, a male, Subject 2 and a female, Subject 3. Officer A believed he/she heard Subject 2 state, "He's crazy. He's sick." Officer A believed it was stated because "they had just witnessed ... me being shot in the head at point-blank." Officer A stated that Subject 1 was still holding a firearm in his right hand with his right arm extended down to the side and walked with an "absolute mission." Officer A stated Subject 1 continued to look at him/her and his/her son as they were laying on the floor. Upon perceiving Subject 1 was still armed with a firearm, Officer A used his/her left hand to lift his/her shirt and then used his/her right hand to remove his/her pistol, which was holstered inside of his/her right front waistband. Officer A drew his/her pistol because he/she believed Subject 1 was a deadly threat to both him/her and his/her son. Officer A stated he/she did not identify himself/herself as a police officer because he/she did not have time to do so.

In this case, the BOPC conducted a thorough review in evaluating the reasonableness of Officer A's Drawing/Exhibiting.

The BOPC noted that although the attack on Officer A by Subject 1 was unprovoked, the inconsistencies in Officer A's statements and the lack of supporting evidence led them to determine that this incident did not support the drawing and exhibiting of a firearm by Officer A. An officer's statements and explanation of actions merit significant review; however, in this particular case, Officer A's statements were conflicting, contradictory, and confusing. This caused the BOPC great concern. This required the BOPC to rely on timelines, witness statements, BWV evidence captured immediately following the incident, and in-store surveillance video to discern what Officer A did or did not believe at the point he/she chose to draw and exhibit his/her pistol.

The BOPC also noted that Officer A indicated he/she was struck hard enough to be rendered unconscious, yet after receiving medical treatment, there was a lack of any substantiated injuries from Subject 1's strike and what Officer A stated was a subsequent fall to the ground. Officer A provided a detailed description of his/her observations of Subject 1's movements after being struck, which were inconsistent with being unconscious. Based on Officer A's assertion that he/she was unconscious, had blurred vision, was dizzy, and somehow partially incapacitated, drawing and exhibiting a firearm in that situation would have created a greater vulnerability to both himself/herself and his/her son. Officer A indicated he/she had suffered a concussion and had received a gunshot wound to the back of his/her head, which the BOPC noted should cause a person to consider their own ability to properly control and retain a firearm in that situation. The BOPC was critical of Officer A's claim to have clarity in thought and conversely describe being unclear and possibly unconscious. In addition, the BOPC discussed that Officer A initially described observing a gun pointed at his/her head, describing Subject 1's actions in detail, and then after drawing his/her own pistol, aiming for Subject 1's center body mass. Officer A later clouded his/her own statement with

doubt when he/she stated that he/she experienced blurred vision and disorientation.

Furthermore, the BOPC considered Officer A's statement of having heard a blast; however, there was no evidence to support that anyone else at that time also heard a blast. The in-store surveillance video did not depict other customers in the area reacting in a manner which would suggest that they heard a loud noise prior to Officer A opening fire. There was no indication of a change of movement or reaction of customers until Subject 2 and 3 fell down to the ground after Officer A discharged his/her pistol. The BOPC found Officer A's lack of forthcoming and unwillingness to divulge essential information, coupled with his/her general lack of cooperation to the responding personnel to be troubling. The BOPC found Officer A's Drawing/Exhibiting to be Out of Policy.

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

- **Officer A** – (pistol, 10 rounds)

#### First Volley (two rounds, according to Officer A)

The FID investigation determined that Officer A fired a total of 10 rounds. Investigators from FID were unable to determine the exact sequence of fire.

According to Officer A, while Subject 1 was in the aisle and in the process of raising his right arm in Officer A's direction, Subject 1 simultaneously lowered his chin while looking at Officer A and his/her son. Officer A described Subject 1's demeanor as having a face of intensity, focus, and absolutely no fear in his eyes. As Subject 1 continued to raise his right arm to an approximate 45-degree angle, Officer A believed that his/her life was in danger, his/her son's life was in danger, and the other shoppers were in danger. Officer A stated he/she had a clear view of Subject 1 in the middle of the aisle, from head-to-toe at the time Officer A fired. While lying on his/her back, Officer A raised his/her head, and while using a one-handed grip, extended his/her right arm and fired two shots towards the bakery in a southern direction at Subject 1's center body mass from a distance of approximately 15 feet. According to Officer A, he/she believed Subject 1 was holding a gun at the time Officer A fired. Officer A experienced tunnel vision as Subject 1 began to raise his right arm. Officer A stated his/her focus then moved to the front sight of his/her pistol as he aimed at Subject 1's chest. Officer A stated he/she shot to stop the threat.

#### Second Volley (two rounds, according to Officer A)

The FID investigation determined that Officer A fired a total of 10 rounds. Investigators from FID were unable to determine the exact sequence of fire.

According to Officer A, he/she stated that after he/she fired his/her first two rounds, Subject 1 fell in a manner that was still a threat because Subject 1 was still facing Officer A with his arm still extended outward and his legs bent towards Subject 1's torso. Officer A stated that Subject 1 still looked at him/her and his/her son with a concentrated, intense look in his eye. Subject 1 had a closed fist and was holding what Officer A believed was a gun. Subject 1 raised his arm which Officer A described as consistent with him taking a shooting platform. While still on his/her back, Officer A again utilized a one-handed shooting grip and fired two additional rounds at Subject 1's chest area from a distance of approximately 15 feet. According to Officer A, all four rounds of both volleys were fired in a southern direction towards the bakery within two seconds and there was a clear view Subject 1 in the aisle. Officer A also stated that due to the immediate need to take action, he/she was unable to give Subject 1 commands prior to firing his/her rounds. After firing his/her last shot, Officer A stated Subject 1 rolled onto his back and then into a "fetal position" on his left side. Subject 1's back was toward Officer A and his arms were tucked underneath his body.

The FID investigation revealed that Subject 1 had no personal property on him at the time of the incident. There were no witnesses who observed Subject 1 armed with a firearm or in possession of any object that resembled a firearm. The only firearm recovered at the incident was possessed by Officer A. Officer A had no verifiable injuries.

In evaluating Officer A's use of lethal force, the BOPC thoroughly examined the evidence and witness statements related to this incident. The BOPC determined that Officer A's account of the incident had various inconsistencies. Evidence and witness statements did not support Officer A perception of the incident with regard to the application of lethal force.

The BOPC acknowledged that based on a preponderance of the evidence, Officer A was struck by Subject 1 without provocation. The BOPC noted that Officer A stated he/she believed he/she had sustained a gunshot wound to his/her head. This belief started the series of events which culminated in Officer A discharging his/her pistol. Officer A stated that he/she fell down to the ground and momentarily lost consciousness and was paralyzed from the injury. These perceptions of Officer A contributed to Officer A's belief that the incident was escalating. After the OIS, Officer A received medical treatment and underwent a series of exams. Officer A did not have any verifiable injuries. The BOPC noted that there was no evidence to support Officer A's belief that he/she had sustained a significant injury. Of additional concern to the BOPC was that Officer A was discovered lying on the ground directly in front (south) of the sausage booth by Officer B. Officer A remained lying on the ground in that location for a period of time. The FID investigation determined that at least two of Officer A's rounds were fired from a position near the west side of the sausage booth, consistent with where Officer A placed himself/herself during the walk-through. Officer A

stated that he/she did not move or change position after falling to the floor and firing his/her pistol. The discrepancy between the two locations was not resolved during the FID investigation.

The BOPC noted that Officer A believed Subject 1 was armed with a firearm. No other witnesses stated they observed Subject 1 in possession of a firearm. No objects from Subject 1 were recovered during the investigation which resembled a firearm. There were no factors that the BOPC could identify that supported a basis for what Officer A stated was a belief that Subject 1 was armed with a firearm and had shot Officer A. FID investigators established that at the time of the OIS, Subject 1 was moving down an aisle with Subject 2, away from Officer A.

The BOPC determined that an officer with similar training and experience as Officer A would not reasonably believe that Subject 1's actions presented an imminent threat of death or serious bodily injury and that the use of lethal force would not be objectively reasonable. Therefore, the BOPC found Officer A's use of lethal force to be Out of Policy.