

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

**OFFICER-INVOLVED SHOOTING – 047-14**

<b>Division</b>	<b>Date</b>	<b>Duty-On (X) Off ( )</b>	<b>Uniform-Yes (X) No ( )</b>
Newton	8/11/14		

<b>Officers(s) Involved in Use of Force</b>	<b>Length of Service</b>
Police Officer A	12 years, 6 months
Police Officer B	8 years

**Reason for Police Contact**  
Officers conducted a pedestrian contact with the Subject.

<b>Subject(s)</b>	<b>Deceased (X)</b>	<b>Wounded ( )</b>	<b>Non-Hit ( )</b>
Subject: Male, 25 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 (FID) 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 Inspector General. The Los Angeles Police Department Command Staff presented the matter to the Chief and made itself available for any inquiries by the BOPC.

Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on June 9, 2015.

## Incident Summary

On Monday, August 11, 2014, at approximately 8:10 p.m., Newton Area Gang Enforcement Detail (GED) Police Officers A and B were driving a marked hybrid police vehicle along a residential street.

**Note:** The area where this incident occurred was known to the officers for gang violence and active narcotics sales by members of a criminal street gang. The officers were in the area due to a gang shooting that occurred a week prior, several blocks from the location of this incident.

Officers A and B had been assigned to work together for approximately five months and discussed tactics regularly. The officers primarily discussed the concept of being flexible when they approached individuals. According to Officer A, if he was closest to the individual they wanted to talk with, he would be contact and Officer B would assume the role of cover officer.

Officers A and B were driving west when they observed a group of approximately four to five gang members, some standing on the south curb, others sitting on a couch on the sidewalk. The officers were familiar with this location due to the gang activity in the neighborhood, particularly at this location. As the officers slowly patrolled the area and drove past the group, Officer A made eye contact with some of the members of the group. Officer A looked back using his rear view mirror to see if there was any criminal activity occurring within the group.

**Note:** In his first interview, Officer A stated that he saw, “four to five what appear to be [...] gang members. Some of them are individuals I recognize.” In his deposition, Officer A was asked why he looked at the group. He replied, “To make sure there was no obvious signs of criminal activity.” He was then asked, “And you saw none, I take?” to which he replied, “Did not appear anything, at that time.”

As the officers continued westbound, they observed a male subject walking westbound, away from the same direction where that group was.

**Note:** In his first interview, Officer A was asked if he “actually [saw the Subject] walk away from the group.” Officer A replied, “I didn’t see him with the group. He was, I don’t know, 20 feet or so – 30 feet west of them.”

According to Officer A, from an approximate distance of 20-30 feet, the Subject looked back over his right shoulder in the officers’ direction, then immediately placed his hands in his front pockets. As Officer A drove slowly, he attempted to get a closer look at the Subject. The Subject immediately looked back in their direction, then looked forward, looked back again, walking a little as he looked in their direction.

**Note:** In his first interview, Officer A described that, “Once I gained vision of the Subject, he quickly became aware of our presence. We were rolling very slow in my police cruiser at that time trying to get a better look at him.”

**Note:** When first interviewed, Officer A indicated that the Subject *started* walking when he (Officer A) first saw him, but in his subsequent deposition Officer A stated that when he first saw him, the Subject *was* walking.

Officer B indicated that the Subject was walking when he (Officer B) first observed him.

As described by Officer A, in his first interview, the Subject looked back at the officers from an estimated distance of 20 – 30 feet “and starts walking away. We get a little closer. He keeps looking back at us, then looking forward.”

In his deposition, regarding when he first saw the Subject, Officer A was asked, “And he was walking?” Officer A replied, “Yes.”

As described by Officer B in his first interview, “We [...] observed [...] an individual walking westbound [...] We observed the individual [...] look in our direction.”

In his deposition, Officer B was asked, “And what was he [the Subject] doing when you first saw [him]?” Officer B replied, “He was walking westbound on the sidewalk.”

**Note:** Officer A said that although he had a previous contact with the Subject, it was dusk and he could not make out who he was at this time.

In Officer A’s second interview he indicated that the Subject placed his hands in his waistband area.

The Subject created distance from them, at which point, Officer A told his partner, “*Let’s at least talk to him and have a consensual encounter.*” Officer A diagonally parked the police car.

**Note:** In his deposition, Officer B was asked, “Now, while you were coming to a stop, did Officer A say anything to you about a consensual encounter or maybe ‘Let’s talk to this guy’ or something like that?” Officer B replied, “Slightly before, I recall my partner saying, ‘Let’s talk to this guy.’”

As he exited the vehicle, Officer B made a “Code-6” broadcast, indicating his unit’s call-sign and location.

Officer A got out of the vehicle, walked in a southwest direction toward the sidewalk, and called out to the Subject, *“Hey, let me talk with you,”* at which point the Subject looked back at the officers for approximately one to two seconds. According to Officer A, he made eye contact with the Subject, then the Subject turned and walked away. At this point Officer A was on the sidewalk behind the Subject, who was still facing west, walking away with his hands concealed at his front waistband area. It appeared to Officer A that the Subject was aware of their presence and was trying to get away from them. Officer A formulated the opinion that the officers had reasonable suspicion to detain the Subject based on Officer A’s knowledge of the local gang, the high narcotics activity on that street (particularly the alley just west of them), the current crime trends in the area and the Subject’s unusual nervous demeanor. Officer A further believed that the Subject may be in possession of contraband.

**Note:** The alley referred to by Officer A runs north-south, and is located toward the end of the block upon which this incident occurred. A person walking westbound on the block would necessarily be walking toward the alley.

**Note:** In his second interview, Officer A stated that the Subject “was placing his hands in his waistband area.” Officer B, in his second interview, stated that he saw the Subject’s “right hand go into his pocket at least twice prior to us talking to him and after he looked in our direction.”

**Note:** In his first interview, Officer B was asked, “So then your partner makes contact with him [the Subject]. Do you remember what he said to him?” Officer B replied, “I don’t, ma’am. I really don’t remember what – exactly what he said.”

**Note:** According to Officer B, when the Subject turned to look at them, Officer B observed his hips turn completely to the right to look back at them. Officer B said that he observed the Subject place his right hand into his pocket at least twice.

Witness A lived in the area. Witness A was at home when he heard, “Get down, get down, or something.”

Witness A looked out the window and saw two police officers get out of a marked police car but couldn’t provide descriptions of the officers because the lighting conditions were poor.

Officer A approached the Subject and was concerned where the Subject’s hands were. Officer A believed that the Subject potentially could be secreting a dangerous weapon.

**Note:** According to Officer A, he formed the belief that the Subject was in possession of narcotics. Officer A’s statement regarding the Subject potentially being armed was made in reply to a question by an interviewing detective. Officer A was asked, “With his hands in his pockets was there

any thought that it could potentially have been a weapon as opposed to narcotic?” Officer A replied, “Of course. I mean, there’s always that possibility [....]”

Officer A asked the Subject, “Hey, do me a favor, get your hands out of your pockets.” The Subject ignored Officer A and kept his hands along the waistband area, while creating more distance from the officers. As the Subject walked at an increasingly rapid pace, he looked back at the officers, and it appeared as if he was assessing where they were. In Officer A’s opinion, he determined that the Subject was trying to gauge the officers’ positions in order to possibly run.

**Note:** Officer B said that he heard Officer A state, “Take your hands out of your pockets.”

**Note:** In his first interview, Officer B stated that Officer A “did tell the suspect take his hands out of his pockets and – and which he did, but then he went right back to his pockets.”

In his deposition testimony, Officer B stated that the Subject took his hands out of his pockets after Officer A asked him to do so, but did not take them out “immediately.” According to Officer B, the Subject then put his hand back in his pocket, then removed it again. Officer A did not recall whether the Subject had then put his hand back in his pocket once again.

**Note:** Officer A gave varying accounts of the Subject’s actions with his hands during his encounter with him. In his first interview, Officer A stated that as the officers drove slowly behind him, when they were 20 to 30 feet from the Subject, the Subject looked back at them and “immediately put his hands into his pockets and starts walking away. We get a little closer [...] He’s taking a few steps, looking back at us, looking forward. His hands still in his pockets [....] I get out of the vehicle. I go, ‘Hey, let me talk to you,’ and he turns around for a second to stare at us. He looks at my partner give or take a few seconds [...] and turns away and takes a few more steps still with his hands in his pocket [....] He [...] attempts to I guess walk between the vehicle and the bush, but his – his hands the whole time never left his pockets [....]”

In his second interview, Officer A stated that the Subject placed his hands in his “waistband area.” When asked if he could tell whether the Subject’s hands went into his waistband or pocket, A stated, “Based on the position of his arms [...] it appeared that his hands were toward the center of his [...] abdomen reaching for his waistband area. Although, just keep in mind his back was to me.”

In his deposition, Officer A stated that when he told the Subject, “Let me talk to you,” the Subject had his hands in his pocket. The Subject then “took his hands out of his pockets. Then he turned away from me, with his

back to me. Walked approximately two steps. Stopped again. Then he took his hands out of pockets and put them back in [...] At that point, I said, 'Do me a favor and get your hands out of your pocket.' Officer A further stated that, after the Subject took his hands out of his pocket for the second time, he (the Subject) "then abruptly put his hands back in. At that point, it looked like they were going in his pocket; however, his back had turned to me – turned away from me, so all I could see was his back."

After Officer B exited his police car, he unholstered his service pistol and held it at a two-handed, low-ready position with his finger along the frame.

**Note:** Regarding his initial decision to draw his pistol, in his first interview Officer B stated, "I saw him [the Subject] looking around a couple of times and go [...] to his pockets and – waistband area [...] [B]ecause it's a gang area [...] I believe he possibly had a weapon [...] Believing he might possibly be armed with a firearm, [...] I unholstered my weapon." Later in the same interview, Officer B was asked, "And you unholstered because of what at that time?" Officer B replied, "Initially I believed he possibly was armed because again, well-known gang area. Once I originally thought he was not, I – I holstered. I reholstered my weapon."

In his deposition testimony, Officer B stated that he drew his weapon "[a]bout two to three seconds" after exiting the police vehicle. According to Officer B, he drew "based on the totality of the circumstances [...the Subject], his actions, his mannerisms, the location, time of day, [...] location there that the subject came from. Gang area. This is – it's a variety of reasons."

The Subject approached a nearby residential driveway, and walked between a parked car that was in the driveway and some bushes that were located to the west of the driveway. Officer A followed the Subject but still could not see his hands. As Officer A got closer, he observed the Subject bent forward at the waist, almost at a 45 degree angle, with his body faced west toward the bushes and away from the officers. Officer A formed the opinion that the Subject was attempting to discard narcotics and planned to handcuff him.

**Note:** In his deposition, Officer A was asked whether the fact that the Subject walked away from him changed the contact from a consensual encounter "to something else." Officer A replied that "alone" it did not. In explaining what changed the contact from a consensual encounter, Officer A stated, "[M]y knowledge of the area, it's a known gang-narcotics location. He was observed walking away from the group of known gang members, walking towards an alley, where individuals, typically, go to ingest narcotics. His nervous demeanor, upon seeing my partner and I, as we exited the vehicle. He – he did stop and, um, immediately placed his hands what appeared to be in his pockets or waistband area. I asked him kindly, said, 'Do me a favor. Would you please take your hands out of

your pocket,' at which time he kept his hand in his pocket and didn't just walk. It was – he walked away as fast as a person could possibly walk, without running, ducked between a vehicle and the bushes. All those circumstances put together I formed the reasonable suspicion this individual was attempting to go discard narcotics." Officer A was further asked, "So is it at the point that he goes near the bushes that you came to the opinion, in your mind, that it was no longer a consensual encounter?" Officer A replied, "Yes, as he – as he abruptly walked as fast as he could, towards the vehicle and the bushes."

**Note:** As noted previously, Officer A had not seen the Subject with the group of gang members. Nor had Officer A observed the group of gang members engaging in any criminal activity.

Officer B approached the Subject from the north and further assessed the Subject's clothing. Officer B didn't detect any large bulges or items that could potentially be a weapon, and holstered his pistol. As he continued to assess the Subject's posture and demeanor, Officer B believed that the Subject might be concealing his hands because he was trying to discard narcotics. Officer B "*triangulated himself*" at the apron of the driveway, to Officer A's right, just in case the Subject ran west.

**Note:** No narcotics, nor any other type of contraband, were found on the Subject's person or at the scene of the incident during the subsequent investigation.

While the Subject was bent forward at the waist area, Officer A leaned in and extended his left hand toward the Subject's upper left shoulder area and with his right hand he pulled back on the Subject's right shoulder in order to handcuff him. The Subject immediately spun to his right toward Officer A, with his head down. The Subject wrapped his arms around Officer A's waist while he thrust his head into Officer A's stomach. As the Subject attempted to tackle Officer A, Officer A side-stepped to his left and lowered his knees to control the fall. Officer A wrapped his arms around the Subject's stomach and spun the Subject around in mid-air. As they landed on the ground at the end of the driveway, Officer A was on top of the Subject, with his head facing north. However, once on the ground, the Subject immediately rolled over on top of Officer A, who was now lying on his back. The Subject positioned himself on top of Officer A with his head tucked into Officer A's chest. Officer A's head was now facing north and the Subject's head was facing west with his legs extended and perpendicular to Officer A.

**Note:** Regarding the Subject's actions when he (Officer A) initiated physical contact with him, in his first interview, Officer A stated, "He had hunched over. He wasn't, like, crouched low. He was just, like, I guess bent his body not quite 45 degrees. 45 degrees would be, like, this far. He – he had went over and went like this so it was kind of like [...] I don't know how many degrees [...] He was bent over enough where I definitely

could not see his hands. I couldn't see what he was doing. I couldn't even see his face.”

In his deposition, Officer A was asked if he saw the Subject raise his hands as he (Officer A) approached him. He replied that he had not, stating, “I could not see his hands because [...] his back was to me the entire time.”

**Note:** Officer B's account of the Subject's actions with his hands at the time Officer A made physical contact with the Subject was different from that of Officer A. According to Officer B, in his first interview, “Once [Officer A made contact with the Subject...] I want to say his – his hands were above his head but at – at that time when he makes contact, [...] I can't be sure.” In his deposition testimony, Officer B confirmed that he had told interviewing detectives that the Subject “raised his hands over his head,” and stated that this occurred “slightly a fraction of a second” before Officer A made contact with the Subject. Officer B continued, “But the subject was not standing erect – straight up [...] Subject was in between the bush – the bushes and the vehicle. More so toward the rear bumper. Bent over. And his mannerism, from the angle I got or that I was at, I observed his right hand. Again, he's bent over. His mannerism was right hand, as if discarding something. Like this (indicating). So this is what I meant by his hand is over his head.”

**Note:** Several witnesses were interviewed by private investigators in connection with this incident.<sup>1</sup> Three of those witnesses made statements regarding the Subject's actions at the time he was contacted by the officers.

Witness B was asked if he saw the Subject with his hands up. He replied, “Always up. Always up. Every time. Just give him a second. All you had to do is wait. Let him get it there. Just wait a second.” He was then asked, “So, he had put his hands up, and then the senior tackled him?” Sparks replied, “The senior, the driver.”

Witness C stated, “And I am seeing him [the Subject] walking down the street. And they merged in and they said something. His hands went up and they jumped out of the car and rushed him.”

Witness D stated that the Subject “would walk around the neighborhood just like this, all day long. With his pants low.” Witness D was asked, “Now, how was his hands in his pants when you say, the day of the

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<sup>1</sup> The conditions under which these interviews were carried out by private investigators are unknown. The manner of questioning used by the private investigators (e.g., leading questions, failure to ask clarifying follow-up questions) does not meet the standard that would be expected of an interview by a Los Angeles Police Department FID detective.



incident?” Witness D replied, “The cops pulled up like this. His pants were just how I was and he threw his hands up just like this.”

Officer A’s tactical plan as they landed on the ground, was to get control of the Subject’s head, by utilizing a headlock to flip the Subject off and away from him. The Subject had now managed a side-control position, where he used his body weight to control Officer A’s lower body movements.

**Note:** According to Witness A, he observed one officer on top of the Subject and the other officer on the Subject’s side. Witness A couldn’t recall the description of either officer and which one was on what side. Witness A saw that both officers at one point had a knee on the Subject’s back. Witness A said that as soon as the officers hit the ground, he heard a struggle then the first gunshot went off.

Officer B heard voices coming from the north side of the street and turned in that direction. As A moved forward toward the Subject, Officer B turned his attention back toward Officer A, and he observed him on the ground with the Subject on top of him.

Officer B moved to Officer A’s right side and broadcast a request for back-up.

**Note:** The encounter on the sidewalk between Officer A and the Subject occurred during a brief period of time, and over a short distance.

Based on its review of the recording of broadcasts made during this incident, it was determined that approximately 13 seconds transpired between the initiation of Officer B’s Code-6 broadcast and his subsequent request for back-up.

The distance covered by the Subject from where he was a) initially spoken to by Officer A on the sidewalk to b) the location where the Subject went between the vehicle and the bushes on the driveway, was estimated by Officer A to be 10 to 12 feet.

**Note:** During Officer B’s first interview, he stated that he observed the Subject pick up Officer A and drop him on the sidewalk.

Witness A said that at one point both officers were on the ground wrestling with the Subject. Witness A couldn’t make out who the Subject and Officers A and B were because it was dark and all parties were wearing dark clothing.

While Officer A was attempting to get control of the Subject, he felt a tug on his holster, which was located on the right side of his body.

He also felt slack between his snap and the retention to be loose. Officer A immediately gripped the butt of his pistol by pushing it down with his right hand. Officer A believed

that the Subject was attempting to get possession of his pistol and used his right hand to press down harder, in an effort to retain control of his pistol. At this point, Officer A realized that both snaps from his double retention holster were unsecured, which he later believed may have been caused by the impact of the fall. Officer B moved in to assist his partner and observed that the Subject had his upper torso perpendicular to Officer A. Officer A's head was facing north while the Subject had managed to maintain a top *side-control* position, his head was facing northwest and he was lying across Officer A. The Subject continued to move his entire body toward Officer A's right side. While Officer A was still on the ground with his head facing north, Officer B was on Officer A's right side, facing east.

The Subject's right side was exposed to Officer B who placed his left arm on the Subject's upper back and his right knee on the Subject's lower back area. According to Officer B, he used his left hand to pivot over the Subject's right shoulder, then grabbed the Subject's right wrist and pulled it back in order to handcuff him.

According to Officer A, the Subject's fingers (unknown from which hand) were wrapped around Officer A's right fingers, while the Subject's hand partially touched the top of Officer A's pistol. Officer A held onto his pistol as hard as he could, by forcing it down with his right hand. The Subject aggressively yanked upward and out in an effort to gain control of Officer A's pistol. The Subject's fingers were now wrapped around Officer A's hand and, as Officer A stated, *"I could feel an extremely strong grip wrapped around my hands and then at times was going underneath the palm of my right hand that was capping the weapon in an attempt to, I guess, circumvent my grip and gain control of my weapon."* Officer A believed that if the Subject got a hold of his pistol, the Subject would use it to kill him and his partner.

According to Officer A, the Subject shifted his entire body weight over to Officer A's right side and used his body weight to control Officer A's movements, while the Subject continued to tug at Officer A's pistol. Officer A yelled out, *"He's going for my gun. He's going for my gun."* Having heard his partner, Officer B released the Subject's right hand, stood up and assessed where the Subject's hands were in conjunction to where Officer A carried his pistol. Officer B saw the Subject's upper torso on top of Officer A's upper torso and although he couldn't see the Subject's left hand, he observed it to be tucked under Officer A's holster area.

Officer B believed that based on the Subject's actions, and the likelihood that if the Subject got a hold of Officer A's pistol, he could use it against both officers, Officer B stood up and unholstered his pistol. Officer B held his pistol with a two-handed grip at the low-ready, with his finger along the frame and assessed his ability to use deadly force.

As Officer A yelled out to his partner, the Subject continued to pull at his pistol. At this point, Officer A felt his pistol coming out of the threshold of the holster exposing the chamber and yelled, *"Partner, he's getting my gun! Partner he's getting my gun!"*

Officer A feared that the Subject was going to kill him with his own gun and twisted his hips inward and to his right while lowering his hips towards the pavement to retain his weapon and away from the Subject in order to get away from him. This movement allowed Officer A to momentarily create a gap between his upper torso and the Subject.

**Note:** According to Officer B, he heard his partner say, "His hand is on my gun. His hand is on my gun!"

Officer B heard the inflection in Officer A's plea and recognized the fear in his voice. Officer B stated that, "I've been working with [Officer] A four or five months and he's usually cool, calm, collect. I heard his voice that he was, you know, I mean, I'm just going to say. He was afraid because his gun. The suspect was trying to take my partner's gun. You know, something was definitely different. At which point, I stood up. I was looking down at both of them. I verified the way they were positioned it made suspect's left hand. Again, I was trying to control his right hand, but the suspect's left hand was under him in the area where my partner was and I didn't see my partner's holster or handgun, but again, my partner said, "He's he's, he's going for my gun." So I stood up. I unholstered again, verify what I had. I knew at which point I had to use deadly force, you know. Pepper spray in my opinion wouldn't wouldn't have been effect or been effective and I didn't want second-hand contamination. Because he was going for my partner's weapon, I was in fear for his life and in return my life."

Officer B assessed his ability to fire at the top of the Subject's right torso (flank area). While Officer B remained behind the Subject and to Officer A's right side, he observed the Subject's left arm down on the concrete, tucked underneath Officer A's right side. The Subject's right upper torso area of his body was flailing and fully exposed to Officer B. Officer A was lying vertically to his right, which allowed a foot of space for his partner to shoot without a bullet inadvertently hitting him.

Officer B bent down at the waist and grabbed the Subject's right upper shoulder area with his left hand, while maintaining his pistol in a right hand close contact position. Officer B placed his pistol on the Subject's upper arm, and lifted his left hand away from the Subject's shoulder. Officer B slightly pulled his weapon back away from the Subject's arm to avoid a pistol malfunction and discharged one round in a downward direction, from east to west. Officer B was aware of where Officer A was and felt comfortable that he would not injure Officer A.

Officer B stood up halfway after the first gunshot and reassessed. Officer B noticed that the gunshot appeared to have no effect on the Subject. According to Officer A, the Subject had been shot in the right arm and was still fighting with him. The Subject's aggression appeared to have increased and he continued to pull at Officer A's pistol.

Officer A felt his pistol coming half way out of his holster. Officer A felt that the Subject had a tighter grip on his pistol than before and yelled out to his partner, "*Shoot him! Shoot him again! You have to stop him!*" Within seconds of his first gunshot, Officer B heard Officer A's plea to shoot the Subject again. Officer B lowered himself down by bending his knees and placed his left hand on the Subject's right shoulder. Officer B

held his pistol in a one-hand grip and placed it on the Subject's right side then fired a second time. He fired from east to west, at a downward angle, with the presence of mind again not to injure Officer A, who was still struggling with the Subject on the ground.

Simultaneously, Officer A feared that the first gunshot had very little effect on the Subject. Officer A carried his revolver in a black holster velcroed into his ballistic vest. The weapon was velcroed to the left side of his ballistic vest, he unzipped his uniform shirt and reached for his back-up weapon with his left hand.

With the Subject still struggling violently for possession of his gun, Officer A's belief was that the Subject had already sustained two gunshots that had very little to no effect on him. Officer A assessed his ability to use his back-up weapon.

Officer A was still on the ground, with the Subject on top, as Officer A continued to grip his primary duty pistol with his right hand and push it down as hard as he could. Officer A removed his back-up revolver from his vest with his left hand. Fearing that the Subject was going to kill him with his primary pistol, Officer A reached with his left hand over the Subject's back and pointed his revolver at the Subject's back abdomen. Officer A discharged one round, at close contact, in a downward direction.

**Note:** The investigation determined that Officer A's round struck the Subject in his upper right back area.

According to Witness A, he heard the first gunshot and it sounded muffled, like it came from underneath, then seconds later another one, then he heard someone say, "Shoot him again!" He heard a third and final gunshot shortly thereafter.

After firing his round, Officer A felt the Subject go limp. Officer A was able to maneuver his body to his left and was able to extract himself from under the Subject. Officer A pushed the Subject away from him, planted his left knee on the ground in order to handcuff the Subject.

Officer B broadcast, "*Officer Needs Help. Shots fired!*"

As Officer A knelt, he observed a group of approximately 10-12 people run quickly toward them from the east. As he looked on, Officer A saw another group of people quickly approaching from the west. Officer A feared that the hostile crowd was about to attack them and another deadly force situation was about to occur. Officer A held his revolver out and pointed it downward at a low-ready position with his finger along the frame. As he held his revolver out, Officer A observed a male running toward them in an aggressive manner.

Officer A believed that this unidentified male was angry and was about to attack them, which could cause serious bodily injury or death to him and his partner. Officer A raised his revolver and aimed at the unidentified male's chest area while he told him to, "get

the [expletive] back,” causing the male to run east toward the group of people. Officer A handcuffed the Subject, laid him on the ground, as they waited for medical personnel.

Officer B broadcast a request for an ambulance.

As back-up units arrived, Officer A assessed the increasing hostile crowd and instructed units to protect the crime scene. With his right hand, Officer A reached around to check the condition of his primary pistol. It was at this point, that Officer A realized that his primary duty pistol was missing the magazine from the magazine well. Officer A looked around and observed the ejected magazine on the ground, in the area where the altercation occurred.

A supervisor subsequently responded. The officers provided Public Safety Statements and were separated and transported from the scene.

### **Trace Evidence**

A Scientific Investigation Division (SID) analyst completed an examination of Officer A's uniform and gun belt, including all attached accessories, for trace evidence.

The analyst determined that the handcuff case had visible areas of wear, two possible paint smears (one white and one gray), and an abraded area. There were parallel lines or scratches through and beyond the abraded area. This suggests the abrasion may have been caused by the handcuff case sliding across a rough surface or a rough object scraping across the surface of the case. The keepers had visible areas of wear. One of the keepers had a dried red substance on both sides.

An SID report regarding the results of DNA testing indicates that DNA matching the Subject's profile was obtained from Officer A's belt, and from the top of Officer A's holster. The report further indicates that the Subject "is included as a possible contributor" to a mixture of DNA obtained from the body of the holster, and that one in one million individuals could be included in that DNA mixture profile. Lastly, the DNA profile obtained from the gun grip and slide was "inconclusive," due to "insufficient information."

### **Chief of Police Analysis**

In reviewing this case, the BOPC considered the report of the Chief of Police. That report included the following analysis:

Officers A and B, Newton Area, Gang Enforcement Detail (GED), were attired in full uniform and driving a marked black and white hybrid police vehicle. Officer A was the driver and Officer B was the passenger. The officers have been working together for the past five months and discussed tactics on a regular basis. As part of their tactical discussions, Officers A and B previously decided that whichever officer was closest to the person they were attempting to contact would assume the role of contact officer and the other would assume the role of cover officer.

A criminal street gang, known for its violence and extensive narcotics activity, controls the area where the officers were patrolling. Officers A and B were travelling westbound when they observed a group of approximately *four to five* gang members standing on the curb and sitting on a couch that was on the parkway. Both officers were familiar with the gang activity in the neighborhood and at this location in particular. As Officer A drove past the group he made eye contact with some of them and then continued to look in his rear view mirror to see if there was any criminal activity occurring.

As Officers A and B continued travelling westbound, they observed the Subject walking westbound away from the area where they had observed the group of gang members. Officer A recalled,

*“Um, usually, individuals of - -of, um, the age of the subject, walking through that group, um, be reasonable to assume or to - - that - - that they’re going to be associated with that gang group”*

*“There would be a variety of other factors; however, usually, when gang members are hanging out in numbers, on the sidewalk, individuals that they, either know, or are part of the gang or associated with, would be the ones that are allowed to congregate, walk through, or walk around in that area, without being confronted.”*

According to Officer A, the Subject looked back over his right shoulder in the officers’ direction from a distance of approximately 30 feet and immediately placed his hands into his *front pants pockets*.

**Note:** During his second interview, Officer A stated, *“He was placing his hands in his waistband area.”* Officer B stated, *“I saw - - I was - - we were to his right, so I saw his right hand go into his right pocket at least twice prior to us talking to him and after he looked in our direction”*

According to both officers, the Subject continued walking westbound, looked back in the officers’ direction, then looked forward, and back again.

**Note:** Officer A indicated that he had a previous contact with the Subject over a year ago; however, at the time of the stop he could not identify the person and did not know that it was the Subject.

Officer A told his partner, *“Let’s at least talk to him and have a consensual encounter.”* Officer B agreed. Officer A then parked the police vehicle, facing in a southwesterly direction, at an estimated distance of approximately 20-30 feet behind the Subject. The officers did not activate any lights or sirens when they stopped the car and Officer B broadcast that his unit was Code-6.

Officer B stated,

*"In - - on today's or last night's incident, ma'am, we were in a well-known gang narcotics location, you know. My partner and I are assigned to Gang Enforcement Detail. We observed an individual walking westbound I want to say mid-block [...on] the south sidewalk. I observed the individual, you know, look - - look around, look in our direction. I perceived that he recognized us as police officers. He went to his pockets. My partner and I decided to we wanted to talk to the individual as more of a like a, you know, consent-type thing see what's see what see if we can talk to him."*

Officer A exited the police vehicle, walked in a southwesterly direction, reached the sidewalk, and called out to the Subject, *"Hey, let me talk with you,"* at which point the Subject looked back at the officers for approximate one to two seconds, then turned and walked away with his hands concealed near his front waistband area.

Officer A stated,

*"I get [out] of the vehicle. I go, 'Hey, let me talk with you,' and he turns around for a second to stare at us. He looks at my partner give or take a few seconds, at the most one to two seconds and turns away and takes a few more steps still with his hands in his pocket."*

The Subject continued walking away and nervously placed his hands in his pockets which prompted Officer A to say *"Hey, do me a favor, get your hands out of your pockets."* The Subject, however, *looked back at Officer A, immediately turned around and placed his hands in his waistband front pocket area* while walking away at an increasingly rapid pace toward an alley. The Subject then turned and bent down between a parked car and row of bushes and appeared to Officer A to be possibly discarding narcotics or other contraband.

Officer A stated,

*"The area - - now, all my knowledge of the area, it's known, gang-narcotic location. He was observed walking away from the group of known gang members, walking towards an alley, where individuals, typically, go to ingest narcotics. His nervous demeanor, upon seeing my partner and I, as we exited the vehicle. He - - he did stop and, um, immediately placed his hands what appeared in his pockets or waistband area. I asked him kindly, said, "Do me a favor. Would you please take your hands out of your pocket," at which time he kept his hands in his pocket and didn't just walk. It was - he walked away as fast as a person could possibly walk, without running, ducked between a vehicle and the bushes."*

When the Subject ducked down between the parked car and bushes, Officer A believed that the Subject was discarding narcotics or other contraband. Officer A then approached the Subject and extended his left hand towards the Subject's upper left shoulder area and with his right hand pulled back on the Subject's right shoulder in order to handcuff him.

Officer A stated,

*“This isn’t a slow drawn out thing. This is all unfolding very quickly. Now he begins to walk very quickly at a very quick pace. Not running, but a quick walk to a parked vehicle that is facing north/south in the driveway and if I - - if I remember correctly the bump - - the rear bumper of the vehicle is right at the threshold of the sidewalk. He - - again, he attempts to I guess walk between the vehicle and the bush, but his hands the whole time never left his pockets and now I had no vision of his hands because the vehicle and with his - - with his back to me all I see is him hunching over. He starts to bend his back and hutch over. I then formed the opinion that he’s attempting to discard narcotics. That was the first thing that I thought as I approach him so now I begin to close distance on him and I eventually get within hands on.”*

### **Debriefing Point No. 1 Reasonable Suspicion Necessary for Detention**

*The term "reasonable suspicion" is used to describe the minimum level of suspicion required to lawfully detain a suspect or make a car stop. Reasonable suspicion exists when the detaining officer (or, if applicable, the officer who authorized the detention) was aware of specific facts which reasonably indicated the detainee, (1) was in the process of committing a felony, misdemeanor, or infraction, (2) was about to commit a crime, or (3) was wanted for a crime that had already occurred.*

*Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity and content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.*

*Consequently, an officer may detain a suspect even though the circumstances do not directly implicate the subject on a crime. In fact, it is sufficient that the circumstances were merely consistent with criminal activity. In the words of the California Supreme Court, “If the circumstances are consistent with criminal activity, they permit – even demand – an investigation; the public rightfully expects a police officer to inquire into such circumstances in the proper discharge of the officer’s duties.”*

### **Significant Facts**

*In determining whether reasonable suspicion existed, the courts take note of all relevant circumstances known to the officer at the time the suspect was detained. Those circumstances are then evaluated to see if they were sufficiently suspicious to justify detention. Such an evaluation is made by applying common sense, taking into account the reasonable inferences drawn by the officer as a result of the officers’ training and experience.*



*In some cases, the decision to detain is based on a single circumstance, e.g., the suspect matched the description of a wanted person or a person who had just committed a crime in the area. Often, however, the decision to detain is based on a variety of circumstances which, when considered as a whole, are sufficiently suspicious to justify a detention. (Los Angeles Police Department Legal Bulletin, Volume 20, Issue 2 October 15, 1996.)*

While Officers A and B initially attempted to conduct a consensual encounter with the Subject, The Subject failed to respond and quickly walked away. Officer A then continued to observe the Subject place his hands in and out of his pockets and near his waistband, nervously look back at him, and walk toward a nearby alley that is a known narcotics area. The Subject then turned and bent down in between a car and row of bushes when Officer A attempted to detain him. Based on Officer A's observations of the Subject's suspicious conduct and his expertise and knowledge of criminal activity in the area, Officer A formed the opinion that he had *reasonable suspicion* to believe that the Subject was possibly in *possession of narcotics*.

Officer A stated,

*"...And at that time I started to form the reasonable suspicion that this individual based on my experience in that area on - - specifically on that street next to that north/south alley that this individual had his unusually nervous demeanor, him walking away from a group of known gang members in a known gang location to - - to make me believe that he possibly is in possession of narcotics. In other words, my consensual encounter had now become reasonable suspicion to detain this individual to investigate if he's in - - in possession of narcotics..."*

Based on the totality of the circumstances, the Chief determined that Officers A and B provided sufficient articulable facts to warrant a legal detention of the Subject based on reasonable suspicion. Officer A's decision to attempt to handcuff the Subject when he believed the Subject was discarding narcotics was reasonable under the circumstances given the Subject's suspicious behavior, Officer A's experience in gang and narcotics enforcement, and the surrounding circumstances of the stop.

While the officers did not deviate from Department-approved procedures, the UOFRB recommended that the Tactical Debrief for Officers A and B include a discussion regarding consensual encounters and detentions. Therefore, in an effort to enhance tactical performance during future encounters, the Chief will direct that these topics be discussed during the Tactical Debrief.

Officer A indicated that he initially thought that the Subject could potentially be armed and trying to conceal a weapon. Believing that the Subject could be in possession of a weapon, Officer B drew his service pistol *approximately two to three seconds* after exiting the police vehicle (see Drawing/Exhibiting).

As Officer B made his approach he did not detect from his vantage point any large bulges or items that could potentially be a weapon so he quickly re-holstered his service pistol. As Officer B further examined the Subject's posture and demeanor, Officer B independently formed the opinion that the Subject might be concealing his hands for the purpose of trying to discard narcotics. The Subject then stepped off the sidewalk onto a driveway and in between a car that was parked in the driveway and a row of bushes that were located west of the driveway.

**Note:** Officer B, as the cover officer, indicated that he "*triangulated himself*" after re-holstering, to Officer A's right, just in case the Subject ran westbound.

Officer B stated in his FID interview:

*"I saw him looking around a couple of times and go – go to his pockets and – and waistband area. I exited the vehicle. Me personally, ma'am, I – I, you know, because it is a gang area, I – I was – under- well, I believe he possibly had a weapon . . . Believing that he possibly might be armed with a firearm, I unholstered – I unholstered my weapon. As I – and he's still using the vehicle as cover. As – as dealing with the individual I – I came to the conclusion that he possibly did not have a weapon.*

*He was in an out of his pockets maybe discarding narcotics. I – I didn't believe he had a weapon at that point so I holstered my weapon. I triangulated myself, you know. I – I left the – the black and white as – as cover. I came over in this general area – I don't know – in the middle of the street."*

## **Debriefing Point No. 2** Approaching a Potentially Armed Suspect, Officer A.

*There is an equation that saves lives, "Distance + Cover = Time." Time allows officers the opportunity to communicate with the suspect, plan tactics, and if necessary call for additional resources. Once the suspect is contained, time is on the side of the officers. Entering the suspect's space prematurely or forcing a suspect to take action may only escalate the situation.*

*The urgency for officers to create distance between themselves and a suspect armed with a weapon other than a firearm cannot be overstated, due to "lag time." Lag time is the time it takes a person to react to an action. Officers should not close the distance too quickly before they have assessed the situation or lag time could put them in danger. Whenever possible, officers should place an object between themselves and the suspect as cover or a barrier. A barrier could be a chain link fence, wrought iron gate or any similar object that prevents the assailant from reaching the officer.*

*If the suspect is contained and does not pose an immediate threat to officers, the public or himself/herself, time is our best tool. Time allows more opportunity to communicate with the suspect and helps to calm the situation. (Training Bulletin, Volume XXXV, Issue 9 May 2003)*

While Officer A followed and observed the Subject he determined that the Subject was attempting to conceal narcotics and then discard the narcotics or other contraband when he went in between the parked car and bushes. Officer A observed the Subject bend forward at the waist, at almost a *45 degree angle*, with his body faced toward the bushes and away from the officers. In addition, Officer B independently formed the opinion that the Subject was not armed, but instead attempting to discard narcotics.

Officer B stated,

*“So we’re both walking together, ma’am. Once my partner makes - - makes contact with - - with him, I - - I want to say his - - his hands were above his head, but at - - at that time when he makes contact, I can’t - - I can’t be sure.”*

Officer B further elaborated,

*“Subject was in between the bush - - bushes and the vehicle. More so towards the rear bumper. Bent over. And his mannerism, from the angle that I got or that I was at, I observed his right hand. Again, he’s bent over. His mannerism was right hand, as if discarding something. Like this (indicating). So this is what I meant by his hand is over his head. He’s bent over. And, again, it happened very quick. So I see this (indicating). And then that’s - - that’s what I mean by that.”*

In this circumstance, Officer B exited the police vehicle and drew his service pistol after seeing the Subject’s furtive and suspicious actions. Officer B, however, quickly assessed the circumstances and concluded that the Subject was likely not armed, but rather attempting to discard narcotics or other drug-related contraband. Officer B consequently re-holstered his service pistol and continued positioning himself as the cover officer. Meanwhile, Officer A, as the contact officer, had assessed the situation and determined that the Subject was likely attempting to discard narcotics.

Officers A and B independently came to the same conclusion that the Subject was likely unarmed and attempting to discard narcotics based on their observations of the Subject and their experiences in conducting numerous narcotics investigations in the past. Officer A’s assessment and actions are further bolstered by Officer B’s decision to re-holster his weapon while serving as the cover officer and after viewing the Subject from a different vantage point.

While Officers A and B did not deviate from Department-approved training, the Chief will direct that the topic of approaching narcotics suspects and possibly armed individuals be discussed during the Tactical Debrief given the risks associated with both types of encounters.

Upon making contact with the Subject, the Subject immediately spun to his right towards Officer A, with his head down. After spinning around, the Subject wrapped his

arms around Officer A and thrust his head into Officer A's stomach. The Subject then attempted to tackle Officer A; however, Officer A was able to wrap his arms around the Subject's stomach and spin the Subject around in mid-air causing both of them to fall to the ground. According to Officer A, he initially landed on top of the Subject; however, the Subject was able to manipulate his body and get on top of Officer A, who was now lying on his back.

The Subject positioned himself on top of Officer A with his head tucked into Officer A's chest. Officer A's head is now facing north and the Subject's head is facing west with his legs extended and perpendicular to Officer A. Officer A's tactical plan as they landed on the ground was to get control of The Subject's head, by utilizing a headlock to flip the Subject off and away from him. However, the Subject had managed to get a side-control position on A and was using his bodyweight to control Officer A's lower body movements.

**Note:** Officer A is five feet, 11 inches, 180 pounds. The Subject is six feet, one inch, and weighed 171 pounds.

Meanwhile, as Officer B was making his approach he observed his partner struggling with the Subject and heard noises coming from the north side of the street. He briefly turned around to see what was going on. Simultaneously, Officer B retrieved his rover and broadcast a request for *back-up*. Upon turning back around toward his partner, Officer B observed Officer A on the ground with the Subject on top of him.

Officer B recalled,

*"...I'm paying attention to what my partner - - what's occurring but also, as well as my surroundings. And given those surroundings, as I've stated earlier, my - - my head's - - we're trained to look around, basically. You're head's on a swivel. So I'm paying attention to what my partner is doing, but I'm also paying attention to my immediate surroundings."*

Officer B moved to Officer A's right side and at broadcast a back-up request.

### **Debriefing Point No. 3** Back-Up / Help Request

***Back - Up Unit Request*** - This emergency call shall be broadcast when an officer requires additional units immediately, but the situation does not rise to the level where serious bodily injury, death or serious threat to public safety is imminent.

*Examples: Active perimeter, foot pursuit, 415 group, a crime-in-progress, etc.*

*The officer requesting shall include the location, followed by the unit designation and all other pertinent information, including the reason for the request. A specific unit shall be dispatched "Code Three," and ALL additional responding units may also respond "Code-Three."*

***Officer Needs Help*** - This emergency call shall be broadcast when an officer requires immediate aid for a life-threatening incident or an incident that requires immediate aid because of serious bodily injury, death, or a serious threat to public safety is imminent. The officer requesting shall include the location, followed if possible, by the unit identification and all other pertinent information.

*A specific unit shall be dispatched "Code-Three" and ALL additional responding units may also respond "Code-Three." (Special Order No.13, March 31, 2009)*

In this circumstance, Officer B was distracted for a brief moment and when he turned his attention back toward Officer A he observed him on the ground with the Subject on top of him. As a result of his observations, Officer B broadcast a back-up request.

Although officers are given discretion regarding the appropriate time to broadcast for resources based on the ongoing tactical situation, it would have been tactically prudent for Officer B to broadcast a *help call* rather than a request for *back-up* in order to alert responding officers of the seriousness of the incident.

However, the evidence reflects that Officer B knew that units were responding and that he was faced with a situation that required him to take immediate action. Based on the totality of the circumstances and facts surrounding this portion of the incident, the Chief determined that Officer B's actions did not substantially deviate from approved Department tactical training. However, in an effort to enhance future tactical performance, the Chief will direct that this topic be discussed during the Tactical Debrief.

As Officer A was attempting to get control of the Subject, Officer A felt a tug on his holster that was attached to his equipment belt located on the right side of his body. As a result, Officer A gripped the butt of his pistol by pushing it down with his right hand. Believing that the Subject was attempting to get possession of his service pistol, Officer A used his right hand to press down harder, in an effort to retain control of his service pistol.

It was at this point that Officer A realized that both snaps on his double retention holster were unsecured, which he later believed may have been caused by the impact of the fall. Officer B moved in to assist his partner and observed that the Subject had his upper torso perpendicular to Officer A. The Subject managed to maintain a top side-control position, with the Subject's head facing in a northwesterly direction. Meanwhile, the Subject continued to move his body toward Officer A's right side. Officer B moved to a position on Officer A's right side, and was now facing eastbound.

As a result, the Subject's right side was now exposed to Officer B. Officer B placed his left arm on the Subject's upper back and his right knee on the Subject's lower back area. Officer B then used his left hand to pivot over the Subject's right shoulder, then grabbed the Subject's right wrist and pulled it back in an attempt to handcuff the Subject (see Non-Lethal Use of Force).

However, the Subject's fingers were wrapped around Officer A's right fingers and the Subject's hand was touching the top of Officer A's pistol. Believing that the Subject was attempting to take away his service pistol, Officer A held onto his pistol *as hard as he could*, by forcing it down with his right hand.

The Subject responded by aggressively *pulling and yanking* in an effort to gain control of Officer A's service pistol. This response resulted in the Subject's fingers being wrapped around Officer A's hand in an attempt to gain full control of his service pistol. Officer A believed that if the Subject got a hold of his service pistol, the Subject would use it to kill him and his partner.

According to A, the Subject was *compressed* on top of him while simultaneously *tugging* on Officer A's pistol. It was at this point that Officer A yelled out to his partner, "*He's going for my gun. He's going for my gun.*"

Officer B saw the Subject's upper torso on top of Officer A's upper torso, but could not see the Subject's left hand.

Officer B recalled,

*"...but the suspect's left hand was under him [the Subject] in the area where my partner and I didn't see my partner's holster or handgun, but again, but again, my partner said 'he's going for my gun'."*

Officer B drew his service pistol again and assessed his ability to use *deadly force* (see Drawing/Exhibiting). As Officer A yelled out to his partner, the Subject continued to pull at his service pistol. Officer A felt his pistol coming out of the *threshold* of the holster and advised Officer B, "*Partner he's getting my gun!*"

Officer A feared that the Subject was going to kill him with his own gun and twisted his hips inward and to his right, while lowering his hips towards the pavement in an effort to retain his service pistol and get it away from the Subject. Officer B heard Officer A's plea and believed the Subject was about to take Officer A's service pistol, resulting in an OIS involving Officer B (see Lethal Use of Force).

Officer B stood up halfway after the first gunshot and reassessed. Officer B noticed that the gunshot appeared to have no effect on the Subject. According to Officer A, the Subject had been shot in the right arm and was still fighting with him. Despite having been shot, the Subject's aggression appeared to have increased and he continued to pull at Officer A's service pistol.

Officer A felt his service pistol coming half way out of his holster and felt that the Subject had a tighter grip on his service pistol than before. Fearing that he was about to lose control of his service weapon, Officer A yelled out to his partner, "*Shoot him. You got to stop him.*" Officer B heard Officer A's plea and believed that the Subject was about to

take away Officer A's service pistol, resulting in a second OIS involving Officer B (see Lethal Use of Force).

The Subject remained on top of Officer A after sustaining two gunshots. According to A, the gunshots appeared to have no effect on the Subject. As a result, Officer A assessed his ability to use his back-up weapon, which he had unholstered from his vest.

**Note:** Officer A carried his back-up pistol, a Department-authorized .38 caliber five-shot revolver, velcroed to the left side of his ballistic vest for weapon retention incidents such as the one he was faced with on this day.

Fearing that the Subject was going get his service pistol and kill him, Officer A pushed down on his service pistol with his right hand and utilized his left hand to unzip his uniform shirt and draw his back-up pistol, resulting in an OIS involving Officer A (see Drawing and Lethal Use of Force).

After firing his round, Officer A felt the Subject go limp. Officer A was then able to maneuver his body to his left side and extract himself from underneath the Subject. Officer A pushed the Subject away from him and stood up in order to handcuff the Subject.

Immediately thereafter, Officer B broadcast, "*Officer Needs Help. Shots fired!*" After standing up, Officer A observed a group of approximately twelve people running toward them from the east and another crowd of people approaching from the west. Fearing that the hostile crowd was about to attack them and another deadly force situation was about to occur, Officer A held his back-up pistol in a low-ready position. As he held his back-up pistol, Officer A observed a male wearing a white T-shirt, running directly toward them in a very aggressive manner. Fearing for his safety and the safety of his partner, Officer A raised his back-up pistol and aimed it at the unidentified male's chest and ordered him to, "*Get the [expletive] back!*" Upon, doing so, the unknown male changed his course and ran eastbound toward a group of people.

Fearing for his safety and the safety of his partner, Officer A broadcast, "*Officer needs help!*" Officer B followed with an additional broadcast, "*Request for an RA, Male, 20-22 years old, suffering from gunshot wounds.*"

As responding units arrived, Officers A assessed the increasing hostile crowd and instructed units to protect the crime scene. Officer A realized that his primary service pistol was missing a magazine from the magazine well. Officer A looked around and observed the ejected magazine on the ground in the area where the altercation occurred.

**Note:** Officer A left the magazine on the ground. He then removed a magazine from his magazine pouch, and inserted it into his primary service pistol.

## Findings

**Tactics** – Tactical Debrief, Officers A and B.

Positive Aspects:

- Officers A and B proactively engaged in their enforcement duties.
- Officer A carried a back-up pistol.
- Officers A and B used their knowledge of the area, experience, and observation skills to constantly assess and adjust to the situation.

**Drawing/Exhibiting** – In Policy, No Further Action, Officers A and B.

**Non-Lethal Use of Force** – In Policy, No Further Action, Officers A and B.

**Lethal Use of Force** – In Policy, No Further Action, Officers A and B.

## TACTICS

*Department policy relative to Tactical Debriefs is: “The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance.” (Los Angeles Police Department Manual, Volume 3, Section 792.05)*

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

After a review of the incident, regarding Officers A and B, the Chief determined the identified areas for improvement neither individually nor collectively substantially deviated from approved Department tactical training.

Therefore, a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and individual actions that took place during this incident with the objective of improving overall organizational and individual performance.

The Chief will direct Officers A and B attend a Tactical Debrief and ensure the specific identified topics are covered.

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

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



## DRAWING/EXHIBITING

*Department policy relative to drawing and exhibiting a firearm is: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practicable, secure or holster the firearm." (Los Angeles Police Department Manual, Volume 1, Section 556.80)*

Officers A and B were driving westbound when they observed the Subject, walking westbound along the south sidewalk. Officer B stated,

*"My experience that's that specific area was high not only high in crime, specifically, violent crime. The shootings. Armed suspects. Narcotic area. Amount of radio calls."*

The Subject appeared nervous and repeatedly reached into his pockets as he continued walking on the sidewalk. Officer B stated,

*"...Appeared to be nervous. He kept going in and out of his pockets. Couple of times."*

*"I saw him looking around a couple of times and go - - go to his pockets and - - and waistband area. I exited the vehicle. Me personally, ma'am, I - - I you know, because it is a gang area, I - - I was - - I - - under - - well, I believe he possibly had a weapon."*

Believing that the Subject may be in possession of a weapon, Officer B drew his service pistol. Officer B stated,

*"Believing that he possibly might be armed with a firearm, I unholstered - - I unholstered my weapon. As I - - and he's still using the vehicle as cover."*

*"It was based on the totality of circumstances, Sir; the subject [...], his actions, his mannerisms, the location, time of day, known, um, location there that the subject came from. Gang area...."*

Because Officer B did not detect any large bulges or items that could potentially be a weapon, he holstered his service pistol.

Officer B stated,

*As - - as dealing with the individual I - - I came to the conclusion that he possibly did not have a weapon. He was in and out of his pockets maybe discarding narcotics. I - - I didn't believe he had a weapon at that point so I holstered my weapon..."*

As the Subject approached the driveway, he stepped off the sidewalk onto the driveway in between a car that was parked in the driveway and a row of bushes that were located west of the driveway.

As Officer A got closer to the Subject, he observed the Subject bent forward at the waist, at almost a *45 degree angle*, with his body faced toward the bushes and away from the officers. Based on his experience, Officer A formed the opinion that the Subject was not armed, but instead attempting to discard narcotics.

As Officer A made contact with the Subject, the Subject immediately turned toward Officer A, locked his arms around A's waist and both fell to the ground. During the altercation, the Subject attempted to remove Officer A's service pistol from his holster. Officer B approached and began to assist his partner when he heard his partner yell, "*He's going for my gun,*" causing Officer B to draw his service pistol.

Officer B stated,

*"At this time his back was facing me. He was slightly, you know to his right struggling. My partner said, 'He's going for my gun. He's going for my gun.' 'So I stood up. I unholstered again, verify what I had."*

The Subject remained on top of Officer A after sustaining two gunshots and continued fighting to remove Officer A's service pistol. Fearing that The Subject was going get his service pistol and kill him, Officer A pushed down on his service pistol with his right hand and utilized his left hand to unzip his uniform shirt and draw his back-up pistol that was attached to his vest.

Officer A stated,

*"...I keep my backup attached Velcroed in a holster to my vest underneath my uniform. I had already unbuttoned and started unzipping it in preparation to deploy my backup weapon because I wasn't about to sit there and wait or ask my partner to keep shooting or anything. It was just something that was right in front of me happening right at that moment and it - - it just the fact that this guy had sustained two close contact rounds and I know my partner carries a .45, and the fact that that didn't stop his grip, I just was, like, this - -this is - - this is immediate, yeah, and I took my backup out from my holster."*

Based on the totality of the circumstances, the Chief determined that an officer with similar training and experience as Officers A and B faced with similar circumstances would reasonably believe that the situation may have escalated to justify the use of deadly force. Therefore, the Chief found Officers A and B's Drawing/Exhibiting to be In Policy, No Further Action.

## **NON-LETHAL USE OF FORCE**

*It is the policy of this 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. (Los Angeles Police Department Use of Force – Tactics Directive, Use of Force Policy – Revised, July 2009)*

**Officer A** - Physical Force and Firm Grip

**Officer B** - Physical Force and Firm Grip

As Officer A moved closer to the Subject, he observed the Subject bent forward at the waist, at almost a *45-degree angle*, with his body faced toward the bushes and away from the officers. Based on his experience he quickly formed the opinion that the Subject was not armed, but instead attempting to discard narcotics. When Officer A made contact with the Subject, the Subject immediately turned toward Officer A, locked his arms around A's waist, and an altercation ensued.

Officer A stated,

*"I grabbed his shoulders and pull him and I tell him get his hands out of his pocket. He immediately turns down - - turns around...He immediately turned around and grabbed me and attempted to do a takedown I guess is the best word for it, but essentially like you would see in an MMA fight where they just thrust as fast as they can and bear hug - - your lower torso and slam - - attempt to slam you on the ground. I was able to shift my leg and my hips in order to prevent him from completely slamming me down and doing so I spun him around and took him to the ground; however, as soon as he hit the ground he immediately rolled on top of me."*

As Officer A was attempting to get control of the Subject, Officer A felt a tug on his holster. Believing that the Subject was attempting to get possession of his service pistol, Officer A used his right hand to press down harder, in an effort to retain control of his service pistol.

Officer B observed that the Subject had his upper torso perpendicular to Officer A and moved in to assist his partner. Officer B moved to a position on Officer A's right side, and was now facing eastbound. Officer B placed his left arm on the Subject's upper back and his right knee on the Subject's lower back area. Officer B then used his left hand to pivot over the Subject's right shoulder, grabbed the Subject's right wrist and pulled it back in an attempt to handcuff the Subject.

Officer B stated,

*"I - - I attempted to assist my partner. I placed my right knee on the suspect's torso. I attempted to gain control of his right arm."*

After a review of the incident and involved officers' statements, the Chief determined that officers with similar training and experience as Officers A and B would believe that the application of Non-Lethal Use of Force was reasonable in an attempt to overcome the Subject's resistance to effect an arrest, prevent further injury and/or escape.

In conclusion, the Chief found Officers A and B's Non-Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

## **LETHAL 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. (Los Angeles Police Department Manual, Volume 1, Section 556.10)*

## **BACK-UP AND OFF-DUTY FIREARMS**

*Back-up firearms are not mandatory but are highly recommended. They have saved the lives of countless officers.*

*When acting in the capacity of a police officer:*

- Only Department authorized firearms shall be carried. Unauthorized firearms shall not be carried. This includes back-up weapons.*
- Only Department authorized duty ammunition shall be carried. Unauthorized ammunition shall not be carried.*
- Revolvers must be altered so that they can only be fired double action.*

*All firearms shall be inspected and approved by the armory. The firearm shall be registered on the officer's personal firearms file maintained by the Department armory. Officers are encouraged to review their firearms file periodically for accuracy.*

## **BACK-UP FIREARMS**

*A back-up firearm is a weapon of last resort. It is a secondary firearm which can be used in the event that the primary firearm cannot be deployed. Examples of this include:*

- *The primary firearm breaks or jams.*
- *All the primary ammunition has been expended.*
- *The primary firearm is dropped or separated from the officer.*
- *A suspect is fighting for control of the officer's primary firearm.*

*"An on-duty officer carrying a back-up firearm or an officer carrying a firearm off-duty shall carry the firearm in a secured manner. The firearm shall be concealed and contained in such a manner as to prevent the firearm from falling out or becoming accessible to unauthorized persons when engaged in physical police activities such as a foot pursuit or physical altercation. If the firearm is secured in a pocket, no other items should be carried in that same pocket to ensure immediate and unhindered access to the firearm. Additionally, an approved firearm with a shrouded hammer is preferable for carrying in a pocket, as a firearm with an exposed hammer spur is more likely to become snagged on clothing when drawing.*

*Note: When an off-duty officer carries a firearm in his/her waistband, the firearm must be secured in a holster that is specifically designed for that firearm and the holster must be securely attached to the waistband or belt.*

*Exemption: A commanding officer may exempt an officer from these requirements when the nature or tactical requirements of a particular duty assignment require such an exemption." (Los Angeles Police Department Basic Firearms Manual, January 2014)*

**Officer B** – .45 caliber, two rounds, east to west, downward direction.

During the altercation, the Subject aggressively attempted to remove Officer A's service pistol from his holster. Officer A held onto his service pistol as hard as he could and forced it down into his holster with his right hand. When asked if the Subject was using two hands at the same time, Officer A stated,

*"I couldn't tell you. I - - all I could tell you is that I could feel an extremely strong grip wrapped around my hands and then at times was going underneath the palm of - - of my right hand that was capping the weapon in an attempt to, I guess, circumvent my grip and - - and gain control of my weapon."*

The Subject continued to struggle with Officer A while simultaneously *tugging* on Officer A's service pistol. It was at this point that Officer A yelled out to his partner, *"He's going for my gun. He's going for my gun."*

Officer B drew his service pistol and assessed his ability to use *deadly force*. As Officer A yelled out to his partner, the Subject continued to pull on his service pistol. Officer A felt his pistol coming out of *threshold* of the holster and advised Officer B, *"Partner he's getting my gun!"* Officer B heard the inflection in Officer A's plea and recognized the fear in his voice. Officer B stated,

*“And again - - again, I’ve been working with [Officer] A four or five months and he’s usually cool, calm, collect. I heard his voice that he was, you know, I mean. I’m just going to say. He was afraid because his gun. The suspect was trying to take my partner’s gun. You know, something was definitely different. At which point, I stood up. I was looking down at both of them. I verified the way they were positioned it made suspect’s left hand. Again, I was trying to control his right hand, but the suspect’s left hand was under him in the area where my partner was and I didn’t see my partner’s holster or handgun, but again, my partner said, ‘He’s - - he’s, he’s going for my gun.’ So I stood up. I unholstered again, verify what I had. I knew at which point I had to use deadly force. You know. Pepper spray in my opinion wouldn’t have been effect or been effective and I didn’t want second-hand contamination.”*

Officer B assessed his ability to fire at the top of the Subject’s right torso as he remained behind the Subject and to Officer A’s right side. The Subject’s right upper torso area of his body was flailing and fully exposed to Officer B. Officer A was lying vertically to Officer B’s right, which allowed an estimated foot of space for Officer B to shoot without a bullet inadvertently hitting Officer A.

Officer B bent down at the waist and grabbed the Subject’s right upper shoulder area with his left hand, while maintaining his service pistol in a right hand close contact position. Officer B then placed his service pistol on the Subject’s upper arm and lifted his left hand away from the Subject’s shoulder. Before firing, Officer B slightly pulled back his service pistol away from the Subject’s arm to avoid a pistol malfunction and then discharged one round in a downward direction. Officer B was aware of where Officer A was and felt comfortable he would not injure him.

Officer B stated,

*“Because he was going for my partner’s weapon, I was in fear for his life and in return my life.”*

Officer B stood up halfway after the first gunshot and reassessed. Officer B noticed that the gunshot appeared to have no effect on the Subject. According to Officer A, the Subject had been shot in the right arm and was still fighting with him. Despite having been shot, the Subject’s aggression appeared to have increased and he continued to pull at Officer A’s service pistol.

Officer A felt his service pistol coming half way out of his holster and felt that the Subject had a tighter grip on his service pistol than before. Fearing that he was about to lose control of his service weapon, Officer A yelled out to his partner, *“Shoot him. You got to stop him.”* Officer B heard Officer A’s plea and believed that the Subject was about to take away Officer A’s service pistol.

Officer B lowered himself down by bending his knees and placed his left hand on the Subject’s right shoulder. Officer B held his service pistol in a one-hand grip and placed it on the Subject’s right side then fired a second time.

Officer B stated,

*“So I fired another shot again pointing down at an angle away from my partner. Believing the suspect was out of the fight, he was still moving around, but I - - I holstered my weapon to - - in an effort to handcuff him.”*

**Officer A** – .38 caliber, one round from close contact range in a downward direction.

After the second round struck the Subject, the Subject continued his efforts to violently gain possession of Officer A’s service pistol. Believing that the Subject had already sustained two gunshots with a .45 caliber pistol with very little effect on him, Officer A assessed his ability to use his back-up weapon.

Officer A stated,

*“I keep my backup attached Velcroed in a holster to my vest underneath my uniform. I had already unbuttoned and started unzipping it in preparation to deploy my backup weapon because I wasn’t about to sit there and wait or ask my partner to keep shooting or anything.”*

Officer A was still on the ground with the Subject on top, as he continued to grip his service pistol with his right hand and push it down as hard as he could. Officer A removed his back-up revolver from his vest with his left hand. Fearing that the Subject was going to kill him with his own service pistol, Officer A reached with his left hand over the Subject’s back and pointed his revolver at the Subject’s upper back area. Officer A then discharged one round in a close contact downward direction, causing the Subject to go limp.

The Subject’s action of taking Officer A to the ground, coupled with his violent and aggressive attempt to take Officer A’s service pistol established a reasonable belief for the officers to protect themselves from an imminent threat of death or serious bodily injury. Accordingly, Officers A and B’ decisions to discharge their back-up and service pistols, respectively, were objectively reasonable.

Based on the totality of the circumstances (see Additional – Trace Evidence and Serology), the UOFRB determined, and the Chief concurs, that an officer with similar training and experience as Officers A and B would believe that the actions committed by the Subject presented an imminent threat of death or serious bodily injury. Therefore, the use of Lethal Force was reasonable in this situation and in compliance with Department policy and tactical training.

In conclusion, the Chief found Officers A and B’s Lethal Use of Force to be objectively reasonable and In Policy, No Further Action.

## Additional Tactical Debrief Topics

- **Equipment Required/Maintained** – The investigation revealed Officer A did not have a baton on his person as required. The investigation also revealed Officers A and B did not have their Hobble Restraint Devices on their person as required. The Chief will direct this be a topic of discussion during the Tactical Debrief.
- **Stepping on a Suspect's Limbs** – A Firefighter stated that as he walked up to the scene he observed a male officer standing with his foot on his The Subject's right forearm. The officer in question could not be identified. Officers are reminded that stepping on suspect's limbs, may throw an officer off balance, will be viewed negatively by the public, and could cause unnecessary injuries. According to the FID summary, personnel from FID contacted the Newton Area captain regarding the above issue and he stated he would handle the issue at the Divisional level and provide training during roll call. The Chief will also direct this be a topic of discussion during the Tactical Debrief.
- **Less Lethal Force Options** – Although officers are not required to maintain a TASER on their person, a TASER was maintained in the vehicle. In some cases, deploying less-lethal force options may increase tactical effectiveness. Therefore, the Chief will direct that this topic be discussed during the Tactical Debrief.
- **Consensual Encounters and Detentions** – Officer A and B initially attempted a consensual encounter with the Subject, which quickly turned into a physical detention based on the officers' reasonable suspicion that the Subject was engaged in possible criminal activity. The UOFRB determined, and the Chief concurs, that the Department should review current training and directives to ensure that officers fully recognize the differences between consensual encounters and detentions, which are based on reasonable suspicion or probable cause.
- **Radio Broadcast (Incorrect Location)** – Once Officers A and B made the decision to contact The Subject, Officer B appropriately advised Communications Division (CD) of their status and location as follows; however, he indicated the incorrect location. Officer B is reminded it is vital that CD have accurate information to facilitate the response of additional personnel. The Chief will direct that this topic be discussed during the Tactical Debrief.

## Additional

**Trace Evidence** – Scientific Investigation Division (SID) personnel completed an examination of Officer A's uniform and utility belt including all attached accessories, for trace evidence. The examination determined that the handcuff case had visible areas of wear, two possible paint smears (one white and one gray), and an abraded area. There were parallel lines or scratches through and beyond the abraded area that suggests the abrasion may have been caused by the handcuff case sliding across a rough surface or a rough object scraping across the surface of the case. The utility belt



keepers had visible areas of wear. One of the keepers had a dried red substance on both sides.

**Serology** – Personnel from SID swabbed Officer A’s holster, primary duty pistol, utility belt keepers, and magazine for possible biological material.

An analysis concluded that the presence of blood DNA from the Subject was found on the utility belt belonging to Officer A. Additionally, the Subject’s DNA was present on the top of and body of Officer A’s holster.

**Swivel Holster** – Officer A’s holster was a Department approved double-retention, swivel design. The UOFRB discussed whether a swivel holster design posed an unnecessary risk of a suspect being able to take control of an officer’s weapon. The Chief has directed Police Science and Training Bureau to research prior instances of suspects attempting to disarm officers and whether the holster’s design was a factor.

### **Inspector General Analysis**

In reviewing this case, the BOPC also considered the report of the Inspector General. That report included the following analysis:

#### **Investigation Quality**

- The investigation of this incident by FID was significantly hampered by an apparent unwillingness of the part of witnesses to come forward or otherwise cooperate with the Department’s investigation. In addition to its initial response to the scene on the evening of the incident, the OIG was present during two subsequent witness canvasses. The purposes of the OIG’s presence was to monitor FID’s canvassing efforts to ensure they were sufficient, and to provide witnesses with the option of providing a statement to OIG personnel if they were unwilling to talk to detectives. The OIG found FID’s canvassing efforts to be thorough, but these efforts did not yield the desired outcome.

In addition to its presence at the canvasses, the OIG printed flyers and these were posted in the area of the incident. The flyers asked witnesses to contact FID or the OIG if they had information regarding the officer-involved shooting. Once posted, several flyers were promptly taken down by a male. No witnesses contacted either FID or the OIG as a result of the distribution of flyers.

Within the constraints stemming from the lack of witness cooperation, however, the OIG found FID’s investigation of this incident to be of good quality.

## **Training Issues**

- Officers A and B both indicated that they were conducting a consensual encounter when they initially contacted the Subject; however, their words and actions were consistent with the initiation of a detention. Specifically, Officer A's instruction to the Subject to "Let me talk to you," and Officer B's initial drawing and exhibition of a firearm, were not consistent with the proper conduct of a consensual encounter, as they would cause a reasonable person to believe he/she was not free to leave.

Sufficient understanding of the limitations of police actions relative to consensual encounters, and the legal standards governing detentions, is essential to ensuring constitutional police service. Given the numerous proactive contacts that occur on a daily basis between police officers and members of the public, it is vital that the Department provide its officers with training that equips them to appropriately manage those contacts. This training need is especially relevant for Gang Enforcement Details and other units for which proactive policing forms a significant portion of their workload.

The Chief's report indicates that the Department will "review current training and directives to ensure that officers fully recognize the differences between consensual encounters and detentions." The OIG believes that an in-depth review of these issues is warranted. Based on the concerns raised by this case, as well as other incidents reviewed by the OIG, the OIG has begun its own, independent review and analysis of Department training regarding consensual encounters and detentions. Further, based on prior consultation with commissioners, the OIG has determined that the scope of the training review will additionally encompass tactical training for pedestrian contacts.

## **Equipment Issues**

- The Department currently authorizes a number of different holster types for uniformed duty use. These holster types have a variety of mechanical retention features, with some providing a higher level of retention than others. The holster worn by Officer A during this incident (pictured below) was a "swivel" design that hangs below the belt, on a shank attached to the belt, as opposed to the holster being anchored directly onto the belt itself. The retention mechanism for the holster used by Officer A consisted of a relatively low-tech system of a strap secured with two snaps, which does not represent the same protective mechanism as some modern retention holsters. Modern retention holsters require multiple actions to remove the weapon from the holster. The type of holster worn by Officer A, however, has two snaps that are relatively simple to unfasten.



In light of this incident, the OIG has recommended that the BOPC direct the Department to review a) whether the type of holster involved in this incident provides a sufficient level of mechanical weapon retention, and b) whether the swivel design is sufficiently compatible with effective weapon retention tactics by an officer in circumstances where a suspect attempts to take control of the weapon.

### **Additional**

- Current Department training regarding Legal Contacts with the Public includes the following language:

#### **CONSENSUAL ENCOUNTERS**

*A **consensual encounter** is an encounter between a police officer and an individual in which the individual voluntarily agrees to stop and speak with the officer. These encounters can take place on streets and sidewalks, in cars, on busses, in airports, homes, or businesses. A consensual encounter allows an officer who has a hunch or some minimal information that a person may be violating the law, to engage the person in a brief conversation for the purpose of confirming or dispelling the officer's suspicions.*

*What makes these encounters unique is that officers, because they have neither reasonable suspicion to detain nor probable cause to arrest, **cannot legally prevent the individual from just walking away**. The individual has a right to refuse to cooperate, in which case officers must leave the individual alone. Refusal to cooperate, by itself, is not reason enough to detain. Nor would a refusal to cooperate constitute a violation of Penal Code § 148, which makes it unlawful for a person to willfully resist, delay, or obstruct an officer in the performance of his or her duties. So, officers must seek the individual's cooperation, which mean force, threats, and intimidation are out of the question. To be successful in a consensual encounter, officers must rely on a combination of their persuasive ability, personal restraint, common sense, and a good working knowledge of the law.*

*During a consensual encounter officers can gather information, interview witnesses at the scene of a crime or accident, have a casual conversation, and disseminate information. Officers may also approach an individual and request the individual to show identification, remove hands from pockets, or step to the side and answer questions. Officers cannot require the individual to stay and talk with them, or require the individual to identify him/herself. The key element is that the person remains totally free to leave or not cooperate.*

[...]

### REASONABLE SUSPICION

*An officer may need to detain a person in order to investigate that person's involvement in possible criminal activity. To be lawful, a detention must be based on reasonable suspicion that criminal activity has taken place or is about to take place, and that the person detained is connected to that activity. This "suspicion" must be supported by **articulable facts** rather than hunch or instinct. These facts can be drawn from the officer's observations, personal training and experience, or information from eyewitnesses, victims, or others. (Emphases in the original.)*

With regards to the Chief's analysis in *Debriefing Point No. 1: Reasonable Suspicion Necessary for Detention*, the OIG does not concur with the Chief's conclusion that Officer A had reasonable suspicion to detain the Subject at the time that he initiated physical contact with him. Up to that point in the incident, the officers had observed the Subject walking along the sidewalk and saw him look back at them and place his hands in his pockets as they drove slowly along behind him. Although a group of gang members was in the street nearby, the officers had not observed the Subject with or near the group, nor observed him otherwise interact with them. Nor had the officers positively identified the Subject as a gang member, or observed any criminal activity (to include narcotics activity) by members of the group. As the officers were driving slowly behind him, the Subject looked back in their direction several times.

When the officers stopped and exited their vehicle, Officer A first told the Subject, "Hey, let me talk to you." Officer A stated that he asked the Subject to take his hands out of his pockets. Officer A's accounts of the Subject's actions with his hands varied between his initial FID interview and his subsequent deposition account: Officer A told FID that the Subject's hands remained in the area of his pockets/waistband, and later stated in his deposition that the Subject twice removed his hands from his pockets. Officer B, meanwhile, stated that the Subject removed his hands from his pockets when Officer A asked him to, then placed his right hand back into his pocket.

According to Officer A, the Subject quickly walked away from him and toward the area at the rear of a vehicle parked in the driveway of the residence outside of which

the encounter between the Subject and the officers occurred. Officer A was unable to see the Subject's hands at that time, as the Subject's hands were in front of him and Officer A was behind the Subject. As he reached a location between the rear of the vehicle and an adjacent row of bushes, Officer A observed the Subject lean forward. It was at this point that Officer A made physical contact with the Subject, effecting the Subject's detention.

Officer B did not mention the Subject leaning forward when he was interviewed by FID. In his deposition testimony, however, Officer A indicated that the Subject "was in between the [...] bushes and the vehicle [...] Bent over." Officer B additionally indicated that he saw the Subject's right hand over his head "as if discarding something." Officer A, however, did not report having made any observation of the Subject's right hand at that point in the incident.

Both officers emphasized the high-crime nature of the area in which the encounter occurred, including the prevalence of gang activity and narcotics sales. It was additionally pointed out that a nearby alley is frequented by drug users.

Both officers stated that they did not recognize the Subject at the time they initiated contact with him.

Based on the timing of Officer B's radio broadcasts, it can be determined that the encounter between the officers and the Subject, from the time the officers exited their vehicle to the point at which the physical altercation began, was very brief. A total of approximately 13 seconds passed from Officer B broadcasting his Code-6 status as he exited the police vehicle to his subsequent back-up broadcast, at which time the altercation was already underway. The distance covered by the Subject during his encounter with Officer A was estimated by Officer A to be 10-12 feet.

In considering the legality of the detention of the Subject, the OIG considered the circumstances of the officers' encounter with him, as established by the totality of the evidence in the investigation. The OIG also conducted an extensive review of relevant case law, as well as Department training regarding legal contacts with the public.

Although the incidence of crime in an area is a relevant factor in determining whether reasonable suspicion exists, it is nevertheless the case that officers must establish on the record that at the moment of the detention there were specific and articulable facts which reasonably caused the officer to believe that 1) some activity out of the ordinary had taken place or was occurring or about to occur; 2) the activity was related to a crime; and 3) the individual under suspicion was connected to the activity. The high incidence of gang crime, the nearby presence of a group of gang members, and the location of a nearby alley which drug users frequent, are factors that would have applied to **any** person walking along the section of street where the officers encountered the Subject, irrespective of that person's involvement in criminal activity. Likewise, the fact that an individual is looking back at officers who are slowly following them or placing/removing their hands in their pockets while

walking, absent more, appears insufficient to demonstrate an individual's involvement in criminal activity, notwithstanding that the actions occurred in a high crime neighborhood. For the detention of the Subject to be legal, it would be still be required that his *individual* actions were sufficiently indicative of involvement in a crime to cross the threshold of reasonable suspicion.

The Subject was broadly non-compliant with the instructions given to him before Officer A elevated the consensual encounter to a detention, in that he did not "let" Officer A talk to him, and placed his hands in and out of his pockets despite being asked to take them out. However, the Subject's apparent declination to cooperate in what was, at that time, construed as a consensual encounter was within his rights. The Subject then quickly walked away from Officer A and began to enter a driveway by walking between a parked vehicle and an adjacent row of bushes, leaning forward to some degree as he did so. Officer A could not see what the Subject was doing with his hands at this time, as the officer was behind the Subject and the Subject's hands were in front of him.

Whether reasonable suspicion exists is an objective test. Officer A's subjective belief that the Subject was in possession of narcotics is not a determinative factor. In this case, the actions of the Subject in 1) looking in the officers' direction as they drove slowly behind him, 2) placing his hands in and out of his pockets, and 3) quickly walking away to the entrance of a residential driveway while leaning forward, were insufficiently indicative of his individual involvement in a crime to support his legal detention.

## **Inspector General Recommendations**

### **Tactics**

- *Administrative disapproval, Officer A.* Tactical debrief, Officer B.
- As noted in the Chief's report in *Debriefing Point No. 2, Approaching a Potentially Armed Suspect*, Department tactical training establishes the following:

*There is an equation that saves lives, "Distance + Cover = Time." Time allows officers the opportunity to communicate with the suspect, plan tactics, and if necessary call for additional resources. Once the suspect is contained, time is on the side of the officers. Entering the suspect's space prematurely or forcing a suspect to take action may only escalate the situation.*

*The urgency for officers to create distance between themselves and a suspect armed with a weapon other than a firearm cannot be overstated, due to "lag time." Lag time is the time it takes a person to react to an action. Officers should not close the distance too quickly before they have assessed the situation or lag time could put them in danger. Whenever possible, officers should place an object between themselves and the suspect as cover or a barrier. A barrier could be a chain link*

*fence, wrought iron gate or any similar object that prevents the assailant from reaching the officer.*

*If the suspect is contained and does not pose an immediate threat to officers, the public or himself/herself, time is our best tool. Time allows more opportunity to communicate with the suspect and helps to calm the situation. (Training Bulletin, Volume XXXV, Issue 9 May 2003)*

The intent of Department training for situations such as this is to increase officer safety. In this case, Officer A closed the gap between himself and the Subject and initiated physical contact with him, despite, by his own account, not being able to see the Subject's hands. Regarding his belief and intentions when he initiated physical contact with the Subject, Officer A told FID investigators, "I was thinking he's going to toss some dope and I'm going to prevent him from doing that." Although Officer A's stated belief was that the Subject was attempting to discard narcotics, he acknowledged the possibility that the Subject could have been concealing a dangerous weapon. Officer A also made statements regarding his knowledge of the high level of gang activity and violent crime in the area where the incident occurred.

Officer A's decision to make physical contact with the Subject placed him at a significant tactical disadvantage by unduly exposing himself to the risk of assault, armed or otherwise, by the Subject. This risk was further exacerbated by the Subject's location in the confined space between the parked vehicle and the nearby bushes. At the time Officer A contacted the Subject, he believed he was dealing with a non-compliant suspect and had noted repeated reaching toward to pocket/waistband area by the Subject – an area where weapons are often concealed. Despite his statement that he believed the Subject to be a narcotics suspect, Officer A had no objective basis for discounting that the Subject was in possession of a weapon – particularly given Officer A's own statements regarding his knowledge of the high level of gang/violent crime in the area. Officer A's actions represented a substantial deviation from relevant Department training, and the OIG does not agree with the Chief's reported analysis that no deviation occurred.

Officer A's statement that he wished to prevent the Subject from discarding any narcotics he may have possessed did not justify the substantial deviation from tactical training that his decision to initiate physical contact with the Subject entailed. The OIG recommends that the BOPC adopt a finding of Administrative Disapproval for Officer A's tactics.

### **Drawing/Exhibiting**

- The OIG concurs with the Chief's findings.
- In assessing the first instance of drawing/exhibition by Officer B, the OIG was concerned by the minimal basis upon which Officer B made the decision to draw his pistol. In his first interview, Officer B stated, "I saw him [the Subject] looking around a couple of times and go [...] to his pockets and – waistband area [...] [B]ecause

it's a gang area [...] I believe he possibly had a weapon [...] Believing he might possibly be armed with a firearm, [...] I unholstered my weapon.” Later in the same interview, Officer B was asked, “And you unholstered because of what at that time?” Officer B replied, “Initially I believed he possibly was armed because again, well-known gang area. Once I originally thought he was not, I – I holstered. I reholstered my weapon.” Subsequently, in his deposition testimony, Officer B stated that he drew his weapon “[a]bout two to three seconds” after exiting the police vehicle. According to Officer B, he drew “based on the totality of the circumstances [...] [The Subject], his actions, his mannerisms, the location, time of day, [...] location there that the subject came from. Gang area. This is – it's a variety of reasons.”

Having initially drawn his pistol, Officer B reassessed and promptly re-holstered the weapon. Although his initial drawing was problematic, the OIG believes the prompt re-holstering mitigates the concern. The OIG recommends that the policy regarding drawing and exhibition of a firearm be reviewed with Officer B during the Tactical Debrief.

### **Non-Lethal Lethal Use of Force**

- The OIG concurs with the Chief's findings.

### **Lethal Use of Force**

- The available evidence in this case supports that, at the time they used lethal force, Officers A and B each had an objectively reasonable belief that the Subject's actions presented an imminent threat of death or serious bodily injury.
- In *Hayes vs. the County of San Diego*, the California Supreme Court found that, under California negligence law, an officer's pre-shooting conduct leading up to a deadly use of force may affect whether a use of force is ultimately reasonable and therefore may be considered in the analysis of a use of deadly force. Following this finding, in April, 2014, the Department's policy regarding the use of deadly force was updated with the addition of the following language: “*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.*”

The OIG confined its analysis in this case to the events immediately surrounding the shooting, and did not base its determination on pre-shooting decisions and tactics. However, in light of the above-described policy update, the OIG advised the Commission that it may consider the officers' tactical conduct and decisions leading up to the use of deadly force in determining whether that force was reasonable.

As discussed above, the OIG noted concerns regarding the actions of Officer A. These concerns relate to both the legality of the detention of the Subject, and to the tactical decision Officer A made to close the distance between himself and the Subject to initiate physical contact. These matters may be considered by the Commission in its determination of the ultimate reasonableness of Officer A's use of



deadly force, in concert with the evidence regarding the Subject's attempts to remove Officer A's firearm from its holster.

### **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 weapon by any involved officer(s); and the Use of Force by any involved officer(s). All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort to ensure that all officers' benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC unanimously made the following findings:

#### **A. Tactics**

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

The BOPC found Officer B's tactics to warrant a Tactical Debrief.

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

The BOPC found the drawing and exhibiting of a firearm by Officer A to be out of policy.

The BOPC found the initial drawing and exhibiting of a firearm by Officer B to be out of policy.

The BOPC found the subsequent drawing and exhibition of a firearm by Officer B to be in policy.

#### **C. Non-lethal Use of Force**

The BOPC found Officers A's non-lethal use of force to be out of policy.

The BOPC found Officer B's non-lethal use of force to be in policy.

#### **D. Lethal Use of Force**

The BOPC found Officer A's use of lethal force to be out of policy.

The BOPC found Officer B's use of lethal force to be in policy.

## **Basis for Findings**

### **A. Tactics**

- The BOPC found that Officer A's decision to approach and physically contact the Subject was an unjustified and substantial deviation from approved Department training.
- The BOPC adopted the Chief's recommended finding of Tactical Debrief for Officer B's tactics.

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

- The BOPC found that Officer A's drawing of the weapon was unauthorized. The BOPC evaluated Officer A's use of the drawing with consideration to the totality of the circumstances. In considering that totality, the BOPC found that the drawing was unreasonable and out of policy.
- The BOPC found that, when Officer B drew his pistol in the first instance, he had insufficient grounds to do so. The BOPC acknowledged that Officer B quickly reholstered his pistol, but noted that the drawing of the weapon was nevertheless unauthorized and represented a violation of applicable Department policy. The BOPC found that Officers B's subsequent drawing of his weapon was based on a reasonable belief that the situation had escalated to the point where deadly force may be required.

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

- The BOPC found that, when Officer A grabbed the Subject's shoulders to detain him, Officer A's actions were not objectively reasonable given that Officer A's decision to approach and physically contact the Subject was an unjustified and substantial deviation from approved Department training.
- The BOPC found that when Officer B used non-lethal force, he was reasonably attempting to protect his partner and restrain a subject who was, by that point in the incident, assaulting his partner. As such, the BOPC found Officer B's use of non-lethal force to be in policy.

### **D. Lethal Use of Force**

- **Officer A** – (pistol, one round)

The BOPC evaluated Officer A's use of deadly force with consideration to the totality of the circumstances, and not just the moment in which the force was used. In considering that totality, the BOPC found that the deficient tactics used by Officer A, and the legally inappropriate detention of the Subject that led to the subsequent altercation, rendered the use of deadly force unreasonable and out of policy.

- **Officer B** – (pistol, two rounds)

The BOPC found that, at the time he used deadly force, Officer B had an objectively reasonable belief that the Subject's actions presented an imminent threat of death or serious bodily injury. Officer B's pre-shooting conduct had not significantly contributed to the circumstances he then faced. Rather, Officer B was responding to assist Officer A. As such, the BOPC found Officer B's use of lethal force to be in policy.