

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

NON-TACTICAL UNINTENTIONAL DISCHARGE – 014-19

<u>Division</u>	<u>Date</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes () No (X)</u>
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Outside City	4/16/19		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Officer A	8 months
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Reason for Police Contact

Officer A (off-duty inside his/her residence) was in his/her living room with Witness A when a Non-Tactical, Unintentional Discharge (NTUD) occurred with Officer A's off-duty pistol. Officer A suffered a non-life-threatening single gunshot wound to his/her left leg.

<u>Subject</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit ()</u>
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Not applicable.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division (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 BOPC of Police; and the report and recommendations of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

The following incident was adjudicated by the BOPC on February 25, 2020.

Incident Summary

Officer A was off-duty at home with his/her family. According to Officer A, he/she joined his/her spouse (Witness A), and their three children in the dining room for dinner. According to Officer A, a few minutes after joining his/her family for dinner, he/she decided to walk to the nearby store to purchase something to drink for the family. Officer A retrieved his/her off-duty pistol from a locked box. After retrieving his/her

pistol, Officer A loaded it, placed it in his/her right-front pants pocket without a holster, and went to the store.

Later that day, with his/her pistol still in his/her pocket, Officer A was back at home and was seated in a recliner chair in his his/her living room. According to Officer A, he/she was going to put his/her pistol away and attempted to remove his/her pistol from his/her right front pants pocket. According to Officer A, he/she leaned back, lifted and stretched his/her left leg out, while reaching into his/her right-front pants pocket with his/her right hand to remove the pistol. According to Officer A, as he/she began to remove the pistol from his/her pocket, Officer A unintentionally placed his/her finger on the trigger and discharged a round. The discharged bullet struck Officer A in the leg, causing an injury.

According to Officer A, at the time of the unintentional discharge he/she had his/her debit card, police I.D., and keys in the same pocket as the pistol.

Witness A called 911 to request an ambulance for Officer A. An ambulance subsequently responded and transported Officer A to a hospital for treatment of the gunshot wound he/she had sustained.

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 and Exhibiting of a firearm by any involved officer(s); and the Use of Force by any involved officer(s). Based on the BOPC's review of the instant case, the BOPC made the following findings:

A. Tactics

The BOPC found Officers A's tactics to warrant a finding of Tactical Debrief.

B. Drawing and Exhibiting

Does not apply.

C. Unintentional Discharge

The BOPC found Officer A's non-tactical unintentional discharge to be Negligent.

Basis for Findings

In making its decision in this matter, the Commission is mindful that every "use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law

enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public. The Department's guiding value when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.” (Use of Force Policy, Los Angeles Police Department Manual.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in Graham v. Connor, 490 U.S. 386 (1989), that:

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where the subject’s actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a subject and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so. (Tactical De-Escalation Techniques, October 2016.)

A. Tactics

- Officer A's tactics were not related to the NTUD that occurred during this incident; therefore, they were not reviewed or evaluated. However, as Department guidelines require personnel who are substantially involved in a Categorical Use of Force incident attend a Tactical Debrief, the BOPC determined that it would be appropriate to recommend a Tactics finding of Tactical Debrief.
- During its review of the incident, the BOPC considered the following:
 1. **Utilization of a Holster** – Officer A placed his/her loaded pistol into his/her right-front pants pocket without securing it in a holster. While the pistol was concealed, it was not contained in a manner to prevent the pistol from falling out or becoming accessible to unauthorized persons. This same pocket also contained additional items, including Officer A's debit card, police ID, and keys. These items could have hindered his/her immediate access to the firearm.
 2. **Approved Duty Ammunition** – Officer A's weapon had been loaded with a mixture of ball practice ammunition and factory duty ammunition. According to Officer A, he/she had two additional factory duty rounds left over from his/her last re-qualification attempt and added them into this pistol's magazine, which had contained ball practice ammunition, resulting in mixed ammunition. The ball practice ammunition was not approved by the Department for off-duty use. Officer A acknowledged that this was an incorrect loading procedure.
 3. **Ammunition Loading Standards** – Officer A believed that his/her pistol had been loaded to full capacity, with a full magazine and one additional round in the chamber. The FID post-incident firearm/magazine inspection revealed that Officer A's pistol was not loaded to capacity prior to the NTUD. The pistol's capacity was a maximum of nine rounds, including one in the chamber (full magazine of eight rounds, with an additional round in the chamber of the pistol). FID investigators recovered six live rounds of ball practice ammunition not authorized by the Department for on duty/off-duty use, and one Department-authorized duty round. One cartridge casing from a round of Department-

authorized ammunition was also recovered. The total recovery of the seven live rounds, along with the single cartridge casing, indicated that Officer A's pistol was not loaded to capacity.

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

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

The BOPC found Officers A's tactics to warrant a finding of Tactical Debrief.

B. Drawing and Exhibiting

- Does not apply.

C. Unintentional Discharge

- **Officer A** – (one round)

Officer A was going to put his/her pistol away and attempted to remove the pistol from his/her right-side pants pocket while he/she was sitting in the recliner chair. Officer A leaned back, lifted, and stretched his/her left leg out. Officer A reached into his/her pocket using his/her right hand to remove the pistol. As Officer A began to remove the pistol from his/her pocket, he/she pulled the trigger, unintentionally striking himself/herself in the leg, resulting in a NTUD. Officer A believed he/she had placed his/her finger on the pistol's trigger due to a lack of respect for the weapon and not being focused. Officer A acknowledged he/she was at fault and felt it was something that could have been prevented. Officer A did not believe that there was a malfunction of the pistol.

The BOPC noted that Officer A did not carry the pistol in a safe manner, placing it into his/her pocket along with numerous other items. The BOPC determined that the NTUD was the result of operator error.

The BOPC found Officer A's non-tactical unintentional discharge to be Negligent.