

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

NON-TACTICAL UNINTENTIONAL DISCHARGE – 051-19

Division	Date	Duty-On (X) Off ()	Uniform-Yes () No (X)
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Pacific	10/23/19		
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Officer(s) Involved in Use of Force	Length of Service
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Sergeant A	30 years
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Reason for Police Contact

Sergeant A unintentionally discharged a rifle as he/she attempted to secure it in a rack.

Subject	Deceased ()	Wounded ()	Non-Hit ()
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Does not apply.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the 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 September 15, 2020.

Incident Summary

On the morning of October 23, 2019, a team of specialized LAPD personnel planned to surveil a subject for the purpose of taking him into custody.

The officers located and followed the subject, with the intention of stopping and apprehending him.

While stopped in traffic during the following, Sergeant A decided to make his/her rifle ready for deployment, because he/she knew the subject owned several weapons and believed he was probably armed.

In describing how he/she retrieved his/her rifle, Sergeant A indicated he/she first disengaged the locking mechanism of his/her rifle rack utilizing the release button on the center console keypad. He/she lifted the locking lever and grasped the handguard of the rifle with his/her right hand and removed it from the rack. Sergeant A grasped the front handguard with his/her left hand and pointed the rifle toward the passenger floorboard. He/she then used his/her right hand to pull the charging handle of the rifle and chambered a round. After conducting a chamber check and observing a round in the chamber, Sergeant A verified the safety was in the "on" position and placed the rifle against the front passenger seat with the muzzle pointed downward toward the floorboard.

Note: According to Sergeant A, he/she attended shooting training the day prior to this incident. At the conclusion of the training, he/she placed the rifle in the fixed locking mount of his/her assigned vehicle, with the muzzle pointing upward and the stock toward the bottom of the rack. The bottom of the magazine was facing the backseat and the rifle optic was facing the front windshield. Sergeant A indicated the rifle was loaded to "patrol ready," which he/she described as no round in the chamber and a loaded magazine in the magazine well. The rifle was locked and secured inside the mount with the safety in the "on" position.

Sergeant A estimated he/she was approximately 10 to 15 seconds behind the surveillance team, which stopped the Subject's vehicle in a parking lot. Upon arriving in the parking lot where the Subject's vehicle had already been stopped by officers, Sergeant A believed his/her officers were gaining compliance from the subject and no longer felt the need to deploy the rifle. Sergeant A indicated he/she was the only supervisor at scene and intended to secure the loaded rifle in the rifle rack in order to assume command and control of the incident. Sergeant A's intention was to return to the vehicle after the incident had concluded in order to unload the rifle.

After stopping his/her vehicle, Sergeant A used his/her right hand to grasp the rifle by the handguard, while his/her left hand remained on the steering wheel. He/she held the rifle pointed in an upward position and attempted to place it back into the rifle rack. The rifle did not secure into the rack, and instead fell forward toward the dashboard. Sergeant A was concerned the rifle would damage the navigation screen located on the front dashboard and used both hands to control the rifle's forward movement. He/she positioned his/her left hand either below the handguard or on the receiver, while his/her right hand remained on the upper handguard area.

Sergeant A again attempted to place the rifle back into the rifle rack. During this attempt, a round discharged from the rifle, resulting in a Non-Tactical Unintentional Discharge (NTUD).

The fired bullet traveled through the roof of the police vehicle. Sergeant A stated he/she did not pull the trigger or place his/her finger in the trigger guard. Sergeant A noticed the rifle's safety selector had been disengaged and was in the "off" position, but he/she was unaware how that occurred. Sergeant A opined that he/she must have inadvertently disengaged the safety, either while trying to place the rifle back in the rack or when the rifle fell forward.

Sergeant A stated the round fired as he/she lifted the rifle while it was still in the rack. He/she believed the "*plastic peg*", which is a part of the rifle rack that fits into the rifle's trigger guard, may have caused the trigger to be depressed.

After the round discharged, Sergeant A engaged the safety to the "on" position and placed the rifle on the front passenger seat.

BWV and DICVS Policy Compliance¹

NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
Sergeant A	N/A	N/A	N/A	N/A	N/A

Los Angeles Board of Police Commissioners' 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,

¹ Sergeant A was not equipped with a BWV device during this incident.

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), stating that:

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

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

Law enforcement officers are authorized to use deadly force to:

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

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

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the

situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a subject and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. Tactical de-escalation does not require that an officer compromise his/her or him/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

The BOPC found Sergeant A's tactics to warrant a Tactical Debrief.

B. Drawing and Exhibiting

Does not apply.

C. Non-Tactical Unintentional Discharge

The BOPC found Sergeant A's Non-Tactical Unintentional Discharge to be Negligent.

Basis for Findings

A. Tactics

- Department policy relative to a Tactical Debrief 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).

Sergeant A's tactics were not a factor in this incident; therefore, they were not reviewed or evaluated. However, Department guidelines require personnel who are substantially involved in a Categorical Use of Force incident to attend a Tactical Debrief. Accordingly, consistent with Department policy, the BOPC made a finding of Tactical Debrief for Sergeant A's tactics.

During the review of this incident, the following Debriefing Point was noted:

- Firearms Manipulations – Basic Firearm Safety Rules

Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect 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 Techniques

- *Planning*
 - *Assessment*
 - *Time*
 - *Redeployment and/or Containment*
 - *Other Resources*
 - *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*
- Tactical de-escalation does not require that an officer compromise his/her 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.

At the time of this incident, Sergeant A had just arrived at the termination of a following for an Assault with a Deadly Weapon suspect and was attempting to secure his/her rifle into the rifle rack at the time of the NTUD. Sergeant A was not actively involved in the tactical situation. Therefore, Sergeant A was not evaluated on tactical de-escalation efforts.

B. Additional Tactical Debrief Topics

- **Securing Firearm** – According to Sergeant A, he/she kept a holstered, but unsecured, back-up firearm in-between the front passenger seat and center console of his/her police vehicle. Sergeant A stated that he/she stored his/her back-up firearm in that manner for officer-safety due to the risks inherent in being seated in a locked vehicle and the possibility of being approached by a dangerous suspect. The smaller and more readily accessible back-up firearm could be drawn and unholstered without having to complete a large movement inside the police vehicle; unlike a larger service pistol which could reveal that a police operation is ongoing if it was observed.
- **Chambering a Round in a Rifle While Seated in Police Vehicle** – The investigation revealed that Sergeant A removed the rifle from the interior rifle storage rack inside of his/her police vehicle while seated inside of the vehicle as he/she was still in the process of approaching the location.

- **Firearm Manipulations** – The investigation revealed that Sergeant A unintentionally manipulated the selector switch of the rifle as he/she attempted to place the loaded rifle, with a chambered round, in the interior rifle storage rack while seated in his/her police vehicle.
- **Back-Up Request** – The investigation revealed Sergeant A attempted to have an Air Unit respond for the following of the Subject. Due to the Air Unit being busy, Sergeant A cancelled the request. Sergeant A, however, did not broadcast the following of the Subject on the Area base frequency or any other frequency.
- **Updating Status** – The investigation revealed that Sergeant A did not update his/her or his/her units' status from the originating location until after the tactical situation had been completed.
- **Utilization of Personal Camera** – The investigation revealed that, prior to arrival of the FID investigators and TID personnel, Sergeant A utilized his/her personal camera to take photographs of crime scene to document the numerous vehicles that were present at the time of the NTUD. All photos taken were given to TID personnel upon their arrival and stored at TID.

Command and Control

- After the scene of the NTUD had been secured and it had been verified that there were no injuries due to the NTUD, Sergeant A began his/her notifications by contacting Lieutenant A.

According to the investigation, after being advised of the NTUD by Sergeant A, Lieutenant A notified the DOC and dispatched three sergeants to the scene of the NTUD.

The actions of Sergeant A attempting to deploy his/her rifle were not necessary as he/she had multiple officers already making contact with the subject.

Tactical Debrief

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

During the review of the incident, the following Debriefing Topics were noted:

1. Unintentional Discharge

- *Firearms safety is critical. Sergeants must have the ability to draw, holster and*

manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.

Basic Firearm Safety Rules

- 1. All guns are always loaded.*
- 2. Never allow the muzzle to cover anything you are not willing to shoot.*
- 3. Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
- 4. Be sure of your target.*

Sergeants are required to know and apply the Four Basic Firearm Safety Rules throughout their careers. These rules must be ingrained into an officer's natural thought process and become second nature. Any violation of the Four Basic Firearm Safety Rules may result in the unintentional discharge of a round. This is a serious matter with the potential of having tragic results. For administrative purposes, the unintended discharge of a weapon is classified into two categories:

- 1. Accidental discharge: An unintended discharge of a firearm as a result of a mechanical malfunction of the firearm, not involving the shooter.*
- 2. Negligent discharge: An unintended discharge of a firearm as a result of a shooter not handling a weapon in a safe manner, violating one or more of the four basic firearm safety rules (Los Angeles Police Department Firearms Manual, July 2015).*

Administrative Disapproval - Negligent Discharge. *Finding where it was determined that the unintentional discharge of a firearm resulted from operator error, such as the violation of a firearm safety rule (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

- **Sergeant A** – Department-issued rifle, one round, in an upward trajectory through the police vehicle roof.

According to Sergeant A, upon observing that the officers were getting compliance from the Subject, Sergeant A attempted to place the rifle into the interior rifle storage rack of his/her police vehicle. On his/her first attempt the rifle fell forward towards the in-dash vehicle navigation screen. Sergeant A grabbed the rifle with two hands. On his/her second attempt to place the rifle in the vehicle storage rack, the trigger post was placed into the trigger guard to secure the rifle in the vehicle storage rack. Sergeant A's efforts to place the rifle in the

vehicle rifle storage rack caused the trigger to push backwards against the trigger post and caused the rifle to discharge a round while the rifle was in the rack.

The BOPC conducted a thorough review in evaluating the circumstances and evidence related to the NTUD. The BOPC determined that the NTUD was the result of operator error. Sergeant A failed to properly unload the rifle prior to placing it into the rifle storage rack. In addition, Sergeant A unintentionally disengaged the safety of the rifle and then placed the loaded rifle into the police vehicle's interior rifle storage rack, which caused one round to discharge from the rifle.

Based on the totality of the circumstances, the BOPC determined that the NTUD was the result of operator error. Accordingly, the BOPC found Sergeant A's Unintentional Discharge to be Negligent.