

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

**NON-TACTICAL UNINTENTIONAL DISCHARGE – 052-19**

**Division                      Date                      Duty-On ( ) Off (X)                      Uniform-Yes ( ) No (X)**

Outside City                      10/25/19

**Officer(s) Involved in Use of Force                      Length of Service**

Officer A    2 years, 3 months

**Reason for Police Contact**

Officer A attempted to prevent his/her pistol from slipping off the seat of his/her moving vehicle, causing a Non-Tactical Unintentional Discharge (NTUD).

**Subject    Deceased ( )                      Wounded ( )                      Non-Hit ( )**

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 22, 2020.

## **Incident Summary**

On Thursday, October 24, 2019, at approximately 1600 hours, Officer A drove his/her privately-owned vehicle to the residence of a friend, Witness A. Officer A planned to assist Subject A with evacuating his home if needed due to a nearby brushfire.

According to Officer A, he/she stayed at Witness A's residence until approximately 2300 hours and during that time he/she (Officer A) drank approximately nine to fourteen beers. Sometime between 2300 hours and midnight, Officer A left Witness A's residence and drove to a nearby bar. Officer A consumed approximately three more beers and stayed at the bar until approximately 0140 hours on October 25, 2019.

Upon leaving the bar, Officer A drove to a convenience store. He/she entered the store and selected three additional beers, approached the counter, and asked the cashier for a pack of cigarettes. At that time he/she provided the cashier with his/her Los Angeles Police Department (LAPD) Identification (ID) Card, since he/she had lost his/her other forms of identification two weeks prior, and paid with cash.

Upon completing his/her purchase, Officer A exited the store, entered his/her vehicle, and removed his/her loaded pistol from the holster of his/her Sam Browne utility belt that had been on the rear passenger seat of his/her vehicle. He/she placed the pistol on the center console with the muzzle pointed toward the passenger door. Officer A stated this is a common practice for him/her while driving at night. Officer A drove out of the store parking lot. In response to investigative questioning about his/her level of impairment, Officer A indicated that he/she felt he/she could "safely operate a motor vehicle."

Officer A negotiated a U-turn and began merging to the left for a southbound turn.

As he/she slowly approached, he/she observed two sheriff deputies from the Los Angeles County Sheriff Department (LASD) sitting in a marked black and white police vehicle parked at the northeast corner. The red lights on the roof of the deputies' vehicle were illuminated as it was serving as a traffic barricade, blocking northbound access of the road due to the active fire.

Officer A was concerned that his/her pistol would be seen by the deputies and that they would possibly mistake him/her for an unlawful firearm possessor. Therefore, he/she decided to move the pistol from the center console with the intent of concealing it. According to Officer A, he/she entered the left turn lane and began to apply the brakes to slow down for the upcoming red phase tri-light. This caused the pistol to slide around on the center console. Fearing the pistol would fall to the floorboard, Officer A quickly grasped for the weapon with his/her right hand. When he/she grabbed the pistol, a

single round was discharged and went through the right front passenger door. This immediately shocked Officer A and caused him/her to panic.

Officer A's vehicle came to a complete stop at the limit line of the intersection. He/she was unsure what the trajectory of the fired round was, but he/she could see the deputies' vehicle was to his/her immediate right. Officer A did not believe the deputies were struck by the fired round, but then observed them exiting their vehicle. He/she feared they might have perceived that he/she intentionally shot at them and would return fire. The traffic light turned green and, in a panic, Officer A negotiated the left turn and drove home.

Upon arriving home, Officer A backed his/her vehicle into his/her garage. While doing so, the rear right side of Officer A's vehicle collided with the exterior garage wall causing damage. Once parked, Officer A observed one bullet hole on the right front interior door panel and another sign of impact damage on the glass of the right front passenger window. Officer A only recalled one shot being fired from the pistol and believed the front passenger window was up when the shot was discharged.

While in the garage, Officer A conducted an inspection of his/her pistol and counted the rounds in the magazine and one round in the chamber. The number of rounds in the weapon were consistent with him/her only firing one shot. Officer A secured his/her pistol in the holster of his/her Sam Browne belt and searched for the Discharged Cartridge Casing (DCC) but could not find it. Officer A knew he/she was mandated to notify the Department regarding the discharge but stated that he/she was too embarrassed to do so at the time. Officer A entered his/her home with his/her pistol and belt and went to sleep.

According to Officer A, he/she woke up at approximately 1000 hours, entered his/her garage and observed shards of glass on the right front passenger seat of his/her vehicle. He/she removed the damaged right front window from the door frame and placed it on the garage floor.

At approximately 1300 hours, Officer A drove his/her vehicle to an auto body shop. Officer A and the manager inspected the vehicle. Officer A neither identified the bullet hole in the door nor discussed it with the shop manager. The manager provided Officer A with a repair estimate.

Officer A parked his/her vehicle at the repair shop and took an Uber home.

At approximately 1745 hours, Officer A called his/her father (Sergeant A). During that conversation Officer A informed his/her father of the unintentional discharge. Officer A's father advised him/her to immediately call the Watch Commander and report the

incident. Officer A eventually reported the unintentional discharge to Sergeant B later that afternoon.

Sergeant B then notified Lieutenant A. Sergeant B directed Officer A to stay at his/her residence and await further instructions.

**BWV and DICVS Policy Compliance<sup>1</sup>**

NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
Officer 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, 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/hers or him/her/hers 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 Officer A's tactics to warrant a Tactical Debrief.

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

Does not apply.

#### **C. Non-Tactical Unintentional Discharge**

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

## **Basis for Findings**

### **A. Tactics**

- Officer 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 Officer A's tactics.

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

- Basic Firearm Safety Rules

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

- Firearms Manipulations – Basic Firearm Safety Rules

### **Tactical De-Escalation**

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*
- Tactical de-escalation does not require that an officer compromise his/her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officer A was off-duty, and was driving his/her personally owned vehicle at the time of this incident. He/she was not engaged in any tactical operations; therefore, Officer A was not evaluated for Tactical De-Escalation.

- The BOPC also considered the following:
  - **Holstering Service Pistol** – Officer A removed his/her service pistol from the holster of his/her Sam Browne belt. Officer A placed his/her unholstered service pistol on top of his/her truck's center console and failed to maintain his/her pistol in a secured manner while driving.
  - **Preservation of Evidence** – The FID investigation determined that Officer A failed to preserve evidence after being involved in a NTUD incident, in regard to

the scene, his/her service pistol, and his/her truck. Officer A failed to remain at scene after he/she unintentionally discharged his/her service pistol. Instead, he/she drove to his/her residence. According to Officer A, while at his/her residence, he/she removed the magazine from his/her service pistol and counted the rounds inside the magazine and one round in the chamber. Officer A inspected his/her truck and observed two bullet holes (one to the front right passenger door and the other through the front right passenger glass window). Officer A searched his/her vehicle in an attempt to locate the discharged cartridge casing, but he/she could not locate it. Officer A removed the damaged glass window, containing a bullet hole, from the front right passenger door of his/her truck. Officer A later took his/her truck to an auto repair shop.

- **Protocols Subsequent to a Categorical Use of Force Incident** – The FID investigation determined there was a significant delay by Officer A in reporting the NTUD incident. The incident occurred on October 25, 2019, at approximately 0150 hours, but was not reported until 1745 hours. In addition, Officer A discussed the NTUD incident with his/her father, a Department sergeant, prior to reporting the incident to his/her division of assignment.

## **B. Drawing and Exhibiting**

Does not apply.

## **C. Non-Tactical Unintentional Discharge**

- **Officer A** – (pistol, one round)

According to Officer A, he/she entered the driver seat of his/her personally owned vehicle. Officer A removed his/her loaded service duty pistol from the holster of his/her Sam Browne belt that was located on the rear passenger seat of his/her vehicle. Officer A placed his/her un-holstered service pistol on the center console with the muzzle pointed towards the front right passenger door of his/her vehicle. Officer A drove out of the store parking lot and approached the intersection. Officer A began to brake for the red traffic light and his/her service pistol began to slide from the center console. Officer A feared that his/her service pistol would fall to the floorboard and quickly grasped for his/her service pistol with his/her right hand. When he/she grabbed the service pistol, a single round was discharged.

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. Officer A did not adhere to the Department's Basic Firearm Safety Rules. Officer A failed to maintain control of his/her un-holstered service pistol as it slid on the center console of his/her vehicle. When he/she grabbed his/her service

pistol, he/she placed his/her finger on the trigger and caused the service pistol to discharge. The BOPC noted that Officer A did not properly secure his/her service pistol in a holster, leading to the NTUD incident.

Based on the totality of the circumstances, the BOPC determined that the NTUD was the result of operator error and carelessness as Officer A did not adhere to the Department's Basic Firearm Safety Rules. Additionally, Officer A did not have his/her service pistol properly holstered or secured, and therefore, the BOPC found Officer A's NTUD to be Negligent.

The BOPC acknowledged that its authority in adjudicating this case was limited to a determination of whether the NTUD was Negligent, and that it did not extend to Officer A's substantial other conduct. The BOPC noted that significant aspects of Officer A's conduct before, during, and after the NTUD are separately being addressed via an Internal Affairs Group complaint investigation, and that this is the appropriate process to be followed in evaluating conduct outside the BOPC's jurisdiction. Such investigation may lead to the imposition of additional disciplinary action, depending on the outcome of that investigation.