

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

TACTICAL UNINTENTIONAL DISCHARGE – 072-14

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

Van Nuys 11/16/14

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

Officer A 9 years, 5 months

Reason for Police Contact

Officer A was searching a residence when he had a Tactical Unintentional Discharge (TUD).

Suspect(s) Deceased () Wounded () Non-Hit ()

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 investigation (including all of the transcribed statements of witnesses, pertinent suspect 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.

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 October 6, 2015.

Incident Summary

Witness A was standing on the second story balcony of his residence. The balcony was directly above the front driveway and a large man-made pond that was filled with Koi fish. According to Witness A, he has had an ongoing problem with birds attacking and eating the Koi. In an effort to combat this problem, Witness A had purchased a pellet rifle and used it to shoot at the birds to scare them away.

According to Witness B, who resides across the street from Witness A, he was inside of his residence and in his living room when he heard what he described as three to four gunshots. Witness B observed Witness A on his balcony holding a rifle. On prior occasions, Witness B had observed Witness A fire his rifle and had been concerned that the children playing in the immediate area would be struck by the pellets being fired from the air rifle. When Witness B again observed Witness A shooting from the balcony, he called Communications Division (CD) and reported that a male in his 30s or 40s, wearing khakis, was shooting from the balcony with an unknown weapon, possibly a BB gun. Witness B requested that his identity not be revealed and stated he did not wish to be contacted.

Communications Division (CD) broadcast an "assault with a deadly weapon, shots fired," radio call, across the street from Witness B. The comments of the call described the suspect as a male, wearing beige colored pants, standing on the balcony, shooting an unknown weapon at animals. CD updated the previous broadcast and advised that the subject possibly went back inside his home and closed the door.

Van Nuys Patrol Division uniformed watch commander Sergeant A responded with emergency lights and siren ("Code 3") to the location, arrived at scene and notified CD. In addition, uniformed Police Officers A and B also arrived on scene as the primary unit on the radio call.

Uniformed Police Officers C and D arrived at scene and parked behind Officers A and B's vehicle. As the officers exited their police vehicle, Officer D deployed the shotgun and Officer C deployed his Police Rifle.

Van Nuys Patrol Division uniformed Sergeants B and C also arrived on scene, as did Officer E. Officer B requested two additional units and an air unit to respond. Air Support Division personnel responded to the location and advised the units on the ground via the police radio of the layout of the property and also that they observed three adults and two children in the backyard. Air Support personnel further advised the adults to exit the residence one at a time and meet the officers outside the location. After the announcement, the adults complied with commands.

According to Witness A, he observed the helicopter circling his property. Concerned about police activity out front, he directed his assistant, Witness C, to walk to the front, see what was happening and report back. As Witness C walked north from the backyard to the driveway, Air Support personnel advised officers there was a male

walking north. Officer B ordered Witness C to come out to the street and detained him without incident. A few minutes later, Witness A walked to the front of the location, where Officers A and B detained him without incident. Witness A advised Officer A that his wife (Witness D), their housekeeper and two small children were still inside the house, and under the direction of Officer A, he telephoned his wife, who exited the house.

According to Officer B, Witnesses A, C and D all advised him that the shots fired were from Witness A's BB gun. Officer B relayed this information to Sergeant B, who with Witness D, advised him that their housekeeper remained inside of the house with two children, and would not come out. Sergeant B feared for the safety of the remaining occupants, gathered the officers together and held a tactical briefing. Sergeant B advised Officers A, B, C, D, and E, and Sergeants A and C of his plan to have Witness D call the housekeeper and the children out of the residence. The officers escorted Witness D to the front door, where she called out to the housekeeper, who exited the residence with the children. Witness D walked them out the east driveway to the sidewalk.

Once all of the occupants were out of the residence, Sergeant B designated the officers into a tactical formation.

Note: None of the officers donned their ballistic helmets during this incident.

As they entered the residence, the officers drew/exhibited their firearms. As the officers searched the first floor of the residence, Sergeant C covered the stairwell and second story catwalk of the residence, specifically the south facing doors on the second floor. Sergeant B covered a second story door, which faced north, located on the east side of the house. Once the first floor of the residence was searched and cleared, the officers proceeded to the second story of the residence.

Officer D ascended the stairs first, followed by Officers B, C and E respectively. Sergeants B and C remained on the first floor to cover the second story catwalk. The officers reached the top of the stairs, cleared the two adjacent bedrooms at the top of the stairs. They crossed the catwalk and approached two additional closed doors. Officer D moved past the first closed door on the left and covered the unsearched hallway as Officers B and C approached the first closed door. Officer B moved along the north wall, past Officer C's left side, reached over, opened the door, and pushed it inward right to left. Officer C stepped into the room, and Officer B took a position behind Officer C outside the doorway.

According to Officer C, all the rooms previously searched in the house had been large and he expected this room to be large as well. As Officer C stepped inside of the darkened room, he observed a washer and dryer directly in front of him, which startled him. In an effort to illuminate the room, Officer C attempted to activate the light

attached to his Police Rifle (PR) with his right thumb, inadvertently pressed the trigger and discharged a round from his PR.

Note: Officer C stated that at the time of the Tactical Unintentional Discharge, he had no recollection of having moved his finger to the trigger or moving the selector switch to the fire position.

Officer C immediately assumed a low-ready position with his PR, placed the selector switch to the safe position, and verbally shouted that there had been an accidental discharge to the other officers.

According to Officer B, he was directly behind Officer C and did not observe the shooting. Officer B looked into the room, observed no one inside and advised officers that it was only a negligent discharge, however the search of the location had not been completed. According to Officer E, who was facing east down the hallway and covering an open door, he observed the shooting out of his peripheral vision. Officer E observed Officer B outside of the room and a cartridge case fall to the ground on the east side of the hallway.

Sergeant B ensured that no one had been injured and ordered Officer C to render the weapon safe. Sergeant B remained with Officer C while Sergeant C and the other officers cleared the remainder of the second floor. Sergeant B directed Sergeant C to take Officer C to his police vehicle in order to secure the PR, while he monitored the remaining officers and notified Sergeant A that there was a Tactical Unintentional Discharge of the PR. According to Sergeant C, as he escorted Officer C out of the house, he specifically told him not to download the PR. Officer C replied that he had already downloaded the rifle while in the house.

Note: According to Officer C, though he has no recollection of where he was when he downloaded the PR, he believes that this was done in a safe location and manner.

Once they were at Sergeant B's police vehicle, Sergeant C directed Officer C to retrieve his rifle case from his police vehicle and he monitored him as he placed his PR and magazines inside.

Sergeant A arrived inside of the residence, ordered percipient officers to not discuss the incident, and took over as the incident commander and monitoring role at scene. Sergeant B, once relieved of monitoring the other officers by Sergeant A, obtained a Public Safety Statement from Officer C by his police vehicle.

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

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, made the following findings:

A. Tactics

The BOPC found Sergeant A, B and C, along with Officer C's tactics to warrant Administrative Disapproval.

B. Drawing/Exhibiting

The BOPC found Officer C's drawing and exhibiting of a firearm to be in policy.

C. Unintentional Discharge

The BOPC found Officer C's Unintentional Discharge to be negligent.

Basis for Findings

A. Tactics

- In its analysis of this incident, the BOPC identified the following tactical consideration:

1. Tactical Planning/Building Searches

The involved personnel entered and cleared an unusually large residence for additional suspects or victims without having a complete plan, or necessary personnel, equipment and resources, required to safely conduct a search of a residence that size. Officers/supervisors are trained to approach every building search methodically, while recognizing that time is on their side. During this particular search, the officers/sergeants did not don ballistic helmets, nor did they designate at least one less lethal force option officer.

It was noted that Officer D had a TASER in a holster on his person; however, he was designated as point with the shotgun and therefore not able to quickly deploy and utilize the TASER should the need arise. The search team utilized a shotgun designated officer as point, with a Police Rifle officer second, followed by two officers with service pistols drawn, then two supervisors at the rear, also with service pistols drawn. Additionally, no arrest team was assembled. And finally, the BOPC discussed that the residence was quite large with two levels, wherein the involved personnel could have benefitted by having additional resources to hold and contain cleared and un-cleared portions of the residence until the search was complete.

The totality of the circumstances regarding the aforementioned Tactical Planning and Building Search aspects of this incident substantially deviated from approved Department tactical training without justification.

2. Force Options

As mentioned briefly above, the search team had no less-lethal force option designated officer, nor was it comprised as commonly trained, as it had the point officer and second officer in possession of a shotgun and Police Rifle, respectively.

The BOPC would have preferred that the involved personnel, especially the on-scene supervisors, ensure that there was at least one less-lethal force option officer designated prior to commencing the building search, in the event that its use should become necessary. Having only lethal force options deployed and in-hand by all search team personnel, significantly limited the team's tactical and force options.

The lack of force options being readily deployed and designated substantially deviated from approved Department tactical training, without justification.

3. Public Safety at Critical Incidents

The planning and implementation included the use of Witness A's wife to approach the un-cleared residence with the intent of evacuating additional occupants.

Placing an innocent person in harm's way should be avoided at every opportunity. Implementing a plan to use Witness A's wife as an agent of the police under these specific circumstances was not reasonable, and unnecessarily decreased her personal safety. It would have been tactically prudent and safer for the involved personnel to not include Witness A's wife in a physical approach of the residence in an effort to evacuate the remaining occupants.

The use of an uninvolved person, during a potential use of a firearm in the commission of a felony, substantially deviated from approved Department tactical training, without justification. These topics were to be discussed during the Tactical Debrief.

- The BOPC additionally considered the following:

1. Downloading Weapons after a CUOF

After the TUD, Officer C downloaded his Police Rifle on the direction of Sergeant B. Officers and supervisors are reminded that subsequent to a CUOF,

unnecessary manipulation of weapons systems is discouraged and has the potential to disturb evidence necessary to conduct an accurate and thorough investigation (see Command and Control).

2. Command and Control

The BOPC was critical of Sergeants A, B and C's actions throughout this incident. The involved sergeants did not demonstrate the level of command and control or supervision expected of field supervisors during critical incidents. It is incumbent upon supervisors at the scene of an incident such as this, involving a potentially armed suspect, to demonstrate and exercise superior supervision that is consistent with Department supervisory and tactical training.

It was discovered that several tactical flaws contributed to the lack of supervisory oversight, and those shortcomings were cumulative in nature. Several of these issues included the deficient tactical planning and implementation of the plan that was developed. This incident involved a potentially armed suspect with high ground. The initial deployment and positioning of the officers upon their arrival could have been improved upon. With the benefit of the air unit overhead, the sergeants were afforded the opportunity to maintain the tactical advantage throughout the entire incident, wherein time could be used to their benefit.

Once the search team was developed, none of the sergeants ensured that the team donned ballistic helmets. Additionally, the search team was comprised of a shotgun, a Police Rifle and four service pistol designations, without a less-lethal force option deployed.

The BOPC determined that the use of Witness A's wife as an agent of the police under these circumstances was unreasonable and unnecessary to accomplish the mission. There was also an overall lack of command and control exercised by the Incident Commander Sergeant A, as the initial supervisor and senior sergeant at scene, throughout the entire incident. Both Sergeants B and C indicated in their statements that they understood Sergeant A was the Incident Commander; however, Sergeant A's performance in that capacity was not assertive. These actions were not consistent with approved Department supervisory or tactical training, or the BOPC's expectations of a field supervisor during critical incidents.

After the TUD, Sergeant B was unclear in his direction to Officer C regarding the rendering safe and securing of his Police Rifle. Supervisors are expected to provide clear and understood direction to subordinate personnel at all times.

In conclusion, it was the responsibility of each and every supervisor at scene to ensure a complete, safe and effective operation throughout the incident. Therefore, the responsibility for a successful operation, consistent with Department training, rests on Sergeants A, B and C equally under these circumstances.

Sergeants A, B and C's supervisory oversight and overall command and control throughout this incident substantially and unjustifiably deviated from approved Department supervisory training during critical incidents. This topic will be addressed during the Tactical Debrief.

The BOPC found Sergeant A, B and C, along with Officer C's tactics to warrant Administrative Disapproval.

B. Drawing/Exhibiting

- Officer C responded to an additional unit request for an ADW, shots fired radio call. Officer C was advised there were shots fired from the upper level balcony and exhibited his Police Rifle.

The BOPC determined that an officer with similar training and experience as Officer C, while faced with similar circumstances would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified. In conclusion, the BOPC found Officer C's drawing and exhibiting of a firearm to be in policy.

C. Unintentional Discharge

- Officer C was assigned to the entry team to search the residence in order to verify there were no additional suspects or victims inside. Officer C deployed his Police Rifle and entered the residence with the entry team. Upon reaching the second level of the residence, Officer B opened the door of a dark laundry room and Officer C stepped into the room and, intending to activate his tactical light, inadvertently pressed the trigger of his Police Rifle, and discharging a round in a northeasterly direction, striking the clothes dryer. The round impacted the front of the dryer, traveled through the dryer and exited the rear. The round then penetrated the drywall of the laundry room, but did not exit the opposite wall. Due to the round being contained between the walls, it was unable to be recovered as evidence.

The TUD was the result of operator error when Officer C unintentionally pressed the trigger of his Police Rifle. Therefore, the discharge was negligent.