

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

TACTICAL UNINTENTIONAL DISCHARGE – 015-23

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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North Hollywood	4/22/23		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	14 years, 3 months
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Reason for Police Contact

On April 22, 2023, officers received a radio call of a “Burglary Suspect There Now” at an apartment complex. Upon the officers’ arrival, they observed the suspect (Subject) running toward them in the apartment complex hallway. The officers searched for and discovered that the Subject was inside of an apartment. As the officers attempted to contact the Subject, a Tactical Unintentional Discharge (TUD) occurred. The Subject was not struck by gunfire and was taken into custody.

Subject(s)	Deceased ()	Wounded ()	Non-Hit ()	NA (X)
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Male, 26 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 (CUOF) 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 (UOFRB) recommendations, including any Minority Opinions; the report and recommendations of the Chief of Police (Chief); and the report and recommendations of the Office 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 March 5, 2024.

Incident Summary

On Saturday, April 22, 2023, at approximately 0229 hours, Officers A and B responded to a radio call of a "Burglary suspect there now" at an apartment complex. The officers were in a marked black and white police vehicle equipped with digital in-car video (DICV).

The comments of the call indicated that a male under the influence of alcohol, wearing a white shirt and army cargo pants, was attempting to break the living room window. The officers received further information from Communications Division (CD) that the Subject was the Person Reporting (PR)-Victim's ex-boyfriend. Several additional officers responded to assist.

CD advised the officers that they had attempted to contact the PR-Victim but was not able to contact her.

At 0236:00 hours, Officer A advised CD that they were still waiting to gain entry and asked if there was any further information. At 0236:42, CD broadcast, "15A27, the PR did not sound [intoxicated], and we could actively hear her engaging with the Subject and we did hear a struggle."

The officers gained access into the apartment complex minutes later and assumed various tactical duties and equipment.

As officers were checking the exterior of the apartment complex, they observed an open window on the north side and communicated their observations.

At 0240:39 hours, an officer observed the Subject inside the apartment with the open window. Another officer gave the Subject commands to show his hands. The Subject ignored the officer's commands and ran out the front door. The officer immediately relayed the information to the officers inside the apartment complex hallway.

Officer B observed the Subject running in the hallway directly at him/her and the other officers. Officer A, B, and other officers immediately ran after him.

Officer B ran past the open door of the apartment. Officer B turned back toward Officer A and other officers, pointed toward the open door, and stated, "Right there, right there."

As Officer A approached the open door, he/she unholstered his/her pistol and fired one round in the direction of the Subject. Then Officer A ordered the Subject out of the apartment and handcuffed him.

The Subject was not struck by gunfire, nor was the victim. The bullet lodged in the ceiling within the apartment.

During his/her first interview, Officer A stated that he/she intended to shoot when he/she unholstered his/her pistol and placed his/her finger on the trigger.

A review of his/her BWV showed that prior to the TUD, Officer A illuminated the apartment with his/her flashlight, highlighting the Subject with his hands raised above his head. According to Officer A during his/her first interview, "After I fired that round, immediately after that round came out is when my light came on. From there, that's when I saw him still making his turn and putting his hands up. They're like coming up still. And that's when it took me a second to figure out what the - - what the [expletive deleted] was he pointing at me? And in my head, it was forever."

The FID investigation revealed the necessity for a second interview with Officer A to clarify whether this was an intentional or unintentional shooting.

During his/her second interview, Officer A was asked if he/she intended to fire that round prior to it being fired or after? According to Officer A, "I intended to fire that round prior to that round actually going off because, like I said, I was - - I was coming out. And as I was coming out, I was - - that's when it was becoming a little more clear of what was going on. And at that point, I didn't intend to shoot, but like I said, brain into my hands wasn't there and the round had already gone off."

During both of his/her interviews, Officer A stated that he/she did not see whether there was anything in the Subject's hands until after he/she had fired his/her pistol. Officer A reported that he/she could not clearly see the Subject's hands and based his/her initial decision to fire on the motion of the Subject's arms.

BWV and DICV Policy Compliance

NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICV ACTIVATION	DICV RECORDING OF ENTIRE INCIDENT
Officer A	No	Yes	Yes	Yes	Yes

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force (CUOF) 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 firearm by any involved officer(s), and the use of force by any involved officer(s). Based on the BOPC's review of the incident, the BOPC made the following findings:

A. Tactics

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

B. Drawing and Exhibiting

The BOPC found Officer A's drawing and exhibiting of a firearm to be In Policy.

C. Unintentional Discharge

The BOPC found Officer A's Tactical Unintentional Discharge (TUD) 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. The Los Angeles Police Department also recognizes 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 principle 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, feasible, and reasonable to do so. As stated below, when warranted, Department personnel may use objectively reasonable force to carry out their duties. Officers may use deadly force only when they reasonably believe, based on the totality of circumstances, that such force is necessary in defense of human life. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to physical hazards, violate the law and rights of individuals upon whom unreasonable force or unnecessary deadly force is used, and subject the Department and themselves to potential civil and criminal liability. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers." (Special Order No. 23, 2020, Policy on the Use of Force - Revised.)

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:

Use of De-Escalation Techniques: It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a subject and enable an officer to have additional options to mitigate the need to use a higher level of force while maintaining control of the situation.

Verbal Warnings: Where feasible, a peace officer shall, prior to the use of any force, make reasonable efforts to identify themselves as a peace officer and to warn that force may be used, unless the officer has objectively reasonable grounds to believe that the person is already aware of those facts.

Proportionality: Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

Fair and Unbiased Policing: Officers shall carry out their duties, including use of force, in a manner that is fair and unbiased. Discriminatory conduct in the basis of race, religion, color, ethnicity, national origin, age, gender, gender identity, gender expression, sexual orientation, housing status, or disability while performing any law enforcement activity is prohibited.

Use of Force – Non-Deadly: It is the policy of the 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.

Factors Used to Determine Objective Reasonableness: Pursuant to the opinion issued by the United States Supreme Court in *Graham v. Connor*, the Department examines the reasonableness of any particular force used: a) from the perspective of a reasonable Los Angeles Police Officer with similar training and experience, in the same situation; and b) based on the facts and circumstances of each particular case. Those factors may include, but are not limited to:

- The feasibility of using de-escalation tactics, crisis intervention or other alternatives to force;
- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the suspect;

- Whether the suspect was posing an immediate threat to the officers or a danger to the community;
- The potential for injury to citizens, officers or suspects;
- The risk or apparent attempt by the suspect to escape;
- The conduct of the suspect being confronted (as reasonably perceived by the officer at the time);
- The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;
- The availability of other resources;
- The training and experience of the officer;
- The proximity or access of weapons to the suspect;
- Officer versus suspect factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus suspects;
- The environmental factors and/or other exigent circumstances; and,
- Whether a person is a member of a vulnerable population.

Drawing or Exhibiting Firearms: Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm. 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. Any drawing and exhibiting of a firearm shall conform with this policy on the use of firearms. Moreover, any intentional pointing of a firearm at a person by an officer shall be reported. Such reporting will be published in the Department's year-end use of force report.

Use of Force – Deadly: It is the policy of the Department that officers shall use deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary for either of the following reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or another person; or,
- To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible. Before discharging a firearm, officers shall consider their surroundings and potential risks to bystanders to the extent feasible under the circumstances.

Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable

officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.

The Department's Evaluation of Deadly Force: The Department will analyze an officer's use of deadly force by evaluating the totality of the circumstances of each case consistent with the California Penal Code Section 835(a), as well as the factors articulated in *Graham v. Connor*.

Rendering Aid: After any use of force, officers shall immediately request a RA for any person injured. In addition, officers shall promptly provide basic and emergency medical assistance to all members of the community, including victims, witnesses, subjects, persons in custody, subjects of a use of force and fellow officers:

- To the extent of the officer's training and experience in first aid/CPR/AED; and
- To the level of equipment available to the officer at the time assistance is needed.

Warning Shots: It is the policy of this Department that warning shots shall only be used in exceptional circumstances where it might reasonably be expected to avoid the need to use deadly force. Generally, warning shots shall be directed in a manner that minimizes the risk of injury to innocent persons, ricochet dangers and property damage.

Shooting at or From Moving Vehicles: It is the policy of this Department that firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants. Firearms shall not be discharged from a moving vehicle, except in exigent circumstances and consistent with this policy regarding the use of Deadly Force.

Note: It is understood that the policy regarding discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, officers are expected to act with intelligence and exercise sound judgement, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to clearly articulate the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

Requirement to Report Potential Excessive Force: An officer who is present and observes another officer using force that the present and observing officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer, shall report such force to a superior officer.

Requirement to Intercede When Excessive Force is Observed: An officer shall intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a suspect.

Definitions

Deadly Force: Deadly force is defined as any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to, the discharge of a firearm.

Feasible: Feasible means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Imminent: Pursuant to California Penal Code 835a(e)(2), “[A] threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to a peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”

Necessary: In addition to California Penal Code 835(a), the Department shall evaluate whether deadly force was necessary by looking at: a) the totality of the circumstances from the perspective of a reasonable Los Angeles Police Officer with similar training and experience; b) the factors used to evaluate whether force is objectively reasonable; c) an evaluation of whether the officer exhausted the available and feasible alternatives to deadly force; and d) whether a warning was feasible and/or given.

Objectively Reasonable: The legal standard used to determine the lawfulness of a use of force is based on the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states, in part, “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 test of reasonableness is not capable of precise definition or mechanical application.”

The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard.

Serious Bodily Injury: Pursuant to California Penal Code Section 243(f)(4) Serious Bodily Injury includes but is not limited to:

- Loss of consciousness;
- Concussion;
- Bone Fracture;
- Protracted loss or impairment of function of any bodily member or organ;
- A wound requiring extensive suturing; and,
- Serious disfigurement

Totality of the Circumstances: All facts known to or reasonably perceived by the officer at the time, including the conduct of the officer and the suspect leading up to the use of force.

Vulnerable Population: Vulnerable populations include, but are not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

Warning Shots: The intentional discharge of a firearm off target not intended to hit a person, to warn others that deadly force is imminent.

A. Tactics

Tactical De-Escalation

Planning – Officers A and B had been partners for approximately eight years and regularly discussed tactics including, but not limited to, contact/cover roles, use of force topics and tactical planning. After arriving to the radio call and not knowing the PR-Victim's apartment number, the officers planned on entering the apartment complex and listening for noises to locate the victim's apartment and/or the Subject's location. As officers were making entry into the apartment complex, an officer assigned roles, including Officers A and B as the contact officers, another officer as the less-lethal officer, and him/herself and another officer as the arrest team. Officer A directed other officers to check the parking lot along the northside of the apartment complex for any evidence of windows being breached.

Assessment – After CD advised they were unable to make contact with the PR-Victim again, they had actively heard the PR-Victim engaging with the Subject and heard a struggle prior to the 911 call being disconnected. Based on this update, the officers assessed the incident had escalated to a serious situation. After making entry into the apartment complex, the officers assessed that the PR-Victim's apartment was likely on the first floor, due to the Subject breaking into the apartment window. After observing the Subject run away from them, the officers were limited in implementing further assessments or de-escalation techniques.

Time – Officers were not afforded the benefit of using additional time to attempt further de-escalation techniques. Upon being given commands to show his hands, the Subject fled the apartment and was confronted by Officers A, B, and other officers. The Subject fled as officers pursued him. Immediately upon contacting the Subject at the apartment doorway, Officer A experienced the TUD.

Redeployment and/or Containment – As officers gained access into the apartment complex, Officer A directed other officers to the parking lot to look for any breached windows. After locating the Subject and observing him flee the apartment, other officers remained at the rear exit of the apartment complex and assisted with containment. Officers A, B, and two additional officers located the Subject in the hallway and pursued him. Unbeknownst to the officers, the Subject had run back inside the PR-Victim's apartment, leaving the front door open. The UOFRB noted that officers ran past the apartment's open door, with Officer A stopping at the open door. The UOFRB noted that the above actions occurred quickly and unexpectedly; however, they would have preferred for the officers to have identified the open door and to have tactically deployed on or cleared it before crossing past it.

Other Resources – A total of eight officers responded to the radio call. An officer deployed a 40 mm Less-Lethal Launcher (40 mm LLL) as they searched for the Subject. The UOFRB noted that there were sufficient officers at scene to handle the incident; however, although not required, an air (helicopter) unit could have been a resource to assist in locating the Subject.

Lines of Communication – An officer observed the Subject inside the apartment via the open window and gave him commands to show his hands. The Subject ignored the commands and ran out of the apartment's front door. Outside officers communicated to the officers inside the apartment complex that the Subject had fled from the apartment. After observing the Subject in the hallway, Officer B ordered him to "come here," which he ignored. Officers then pursued the Subject. Unbeknownst to officers that the Subject re-entered the PR-Victim's apartment, Officers ran past the open door and Officer B immediately stopped and motioned to Officer A, directing him to the PR-Victim's apartment. After the TUD, Officer A gave the Subject commands to exit the apartment, to which he complied and was taken into custody.

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

Debriefing Point No. 1: Basic Firearm Safety Rules

Officer A observed the Subject in the hallway and ran after him. As he/she approached an open apartment door, he/she unholstered his/her pistol and fired one round in the direction of the Subject. According to the FID investigation, BWV footage captured Officer A pass the open door of apartment No. 111 as he/she began to unholster his/her pistol. While doing so, he/she placed his/her finger on the trigger of his/her pistol prior to aligning his/her sights on a target.

The UOFRB assessed Officer A's adherence to the Basic Firearm Safety Rules during a tactical incident. The UOFRB noted that Office A placed his/her finger on the trigger of his/her pistol prior to coming up on target. The UOFRB further noted that Officer A stated in his/her interview that at the time of the firing, he/she did not intend to fire, which was a violation of the firearms safety rule "Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot."

Based on the totality of the circumstances, the BOPC determined that the tactics employed by Officer A were a substantial deviation, without justification, from Department-approved tactical training.

The BOPC also considered the following:

Situational Awareness – As officers pursued the Subject as he fled back through the hallway and ultimately back into apartment, Officers ran past the open door of the apartment before Officer B noticed the Subject inside the doorway. As a result of running past the open door, Officer A abruptly stopped directly in front of the open door where he/she confronted the Subject.

After the TUD, Officer A directed the Subject to exit the apartment and took him into custody with the assistance of Officer B while standing in front of the open door.

Profanity – Officer A used profanity directed at the Subject after handcuffing him.

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

B. Drawing and Exhibiting

Officer A (1st occurrence)

Immediately upon contacting the Subject after he [the Subject] fled from officers, Officer A believed that the Subject was armed. Officer A observed the Subject in a "shooting stance" and believed that he was armed with a pistol. Believing that the situation could escalate to the use of lethal force, Officer A unholstered his/her pistol.

Officer A (2nd occurrence)

After the Subject was taken into custody, Officer A was part of the search team that entered apartment No. 111 to search and clear the residence for additional threats. During his/her search, Officer A unholstered his/her pistol a second time.

The UOFRB assessed Officer A's drawing and exhibiting of his/her pistol. The UOFRB determined that Officer A had a reasonable belief that the circumstances may escalate to the point where lethal force may be justified. The UOFRB noted that this belief was developed by Officer A with his/her perception that the Subject was armed and in a "shooting stance." The UOFRB also noted that as Officer A assisted with the search of

the apartment, it was appropriate for him/her to unholster his/her pistol to clear the apartment.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A would reasonably believe there was a substantial risk that the situation may escalate to the point where lethal force may be justified. Therefore, the BOPC found Officer A's drawing/exhibiting to be In Policy.

C. Tactical Unintentional Discharge (TUD)

Officer A – Pistol, one round in an upward direction.

As Officer A reached the open door of apartment No. 111, he/she unholstered his/her pistol and fired one round in the direction of the Subject. During the second interview with Officer A, he/she stated that he/she intended to fire his/her pistol upon perceiving the lethal threat; however, when he/she obtained his/her sight picture, the threat was not there. According to Officer A, by the time he/she processed the lack of a lethal threat, he/she had already begun unholstering his/her pistol with his/her finger on the trigger, resulting in the TUD. Officer A stated that at the time his/her pistol fired, it was not his/her intention to do so.

The UOFRB evaluated the circumstances and evidence related to the TUD. The UOFRB discussed the decision to re-interview Officer A to clarify whether the round he/she fired was an intentional or unintentional act. During the first interview, Officer A articulated that he/she intended to fire his/her pistol when he/she unholstered due to his/her perception that the Subject was a lethal threat. However, during his/her second interview, Officer A clarified that although he/she intended to fire his/her pistol when he/she unholstered, after he/she obtained his/her sight picture, he/she no longer observed the threat and did not intend to fire. The UOFRB noted that Officer A had his/her finger on the trigger of his/her pistol prior to being on target and he/she indicated that he/she did not intend to fire at the time he/she did. The UOFRB also noted that Officer A's pistol was examined by Forensic Science Division (FSD) and found to be functional and the trigger pull to be within Department specifications.

Based on the totality of the circumstances, the BOPC determined that the TUD was the result of operator error, and Officer A's actions violated the Department's Basic Firearm Safety Rules, requiring a finding of Administrative Disapproval, Negligent Discharge.