

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

NON-TACTICAL UNINTENTIONAL DISCHARGE – 015-18

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

Central 2/28/18

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

Senior Property Officer A 11 years, 7 months

Reason for Police Contact

Senior Property Officer A attempted to clear a weapon that had been booked into the property room, resulting in an accidental unintentional discharge.

Suspect 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.

In accordance with state law, divulging the identity of police officers in public reports is prohibited, so the masculine pronouns (he, his, and him) will be used in this report in situations where the referent could in actuality be either male or female.

The following incident was adjudicated by the BOPC on January 8, 2019.

Incident Summary

Senior Property Officer A, along with Property Officers B and C, were in the property receiving room. They were conducting the end of the month reduction of boxed firearms being held for fingerprints or DNA evidence.

Officer B had completed unboxing several handguns and had started processing rifles when he opened a box containing a rifle. Officer B observed the selector switch was in the "Fire" position and turned it to the "Safe" position before removing the rifle from the box. Officer B supported the rifle with his left hand and attempted to pull back the charging handle with his right hand. The handle was jammed. Officer B attempted several more times to open and visually inspect the chamber. Failing to verify the condition of the weapon, Officer B carried the firearm to his supervisor, Officer A.

According to Officer A, Officer B told him he was having a problem with the rifle and the charging handle would not go back. Officer B handed Officer A the rifle. Officer A inspected the rifle and found the selection lever was on "Safety" and there was no magazine in the magazine well. Officer A supported the rifle with his right hand and attempted pull back the charging handle with his left hand. Officer A is left handed. Officer A could not pull back the charging handle. He observed the charging handle was not completely closed but could not see into the chamber to determine if the firearm was loaded. The rifle was pointed down towards the floor and, while insuring he was not touching the trigger, he pulled the charging handle. He was unable to move it. He pulled on the charging handle a second time and the rifle fired.

Something struck Officer A in the neck. He initially thought it was a bullet. Officer A fell forward on his hands and knees and placed the rifle on the floor. The paramedics arrived and examined Officer A. It was determined that he was not struck by a bullet. He was struck by the ejecting spent cartridge case. He declined any further medical treatment. Officer A stated he did not remember being asked any public safety questions.

Sergeants A and B were at their respective desks, approximately 40 feet away, on the far side of the property room. There was a wall between the sergeants and the property officers' work area and Officer A's desk. The sergeants had no view of the incident; however, they heard the gunshot and immediately ran to the scene.

Sergeant B described the distance between the sergeants' desks and Officer A's desk as approximately 150 feet. The distance from Officer A's desk to the east back-wall was measured at 30 feet, and the distance to the sergeant's desk was an estimated 10-15 feet further north.

According to Sergeant A, he was the senior supervisor and designated himself the Incident Commander. Sergeant A described Officer A as being in shock. Officer A was slow to respond to questions. Sergeant A called for paramedics.

According to Sergeant B, he asked Officer A questions related to the Public Safety Statement (PSS). He had modified the questions due to his knowledge that there were no suspects involved in the NTUD. Sergeant B picked up the rifle to confirm it was safe. There was no magazine in the firearm and nothing in the ejection port. Sergeant B placed the rifle back down on the floor. Sergeant A directed property officers not to touch anything.

Department Operations Center (DOC) was notified of the non-tactical unintentional discharge of a firearm with no injuries (NTUD).

Force Investigation Division Detectives reviewed the circumstances surrounding the separation, monitoring and the admonition not to discuss the incident prior to being interviewed by FID investigators. The scene and all personnel were confined to the basement level of Property Division. All protocols were followed and were appropriately documented.

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/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 Property Officer A's tactics to warrant a Tactical Debrief.

B. Drawing/Exhibiting

- Does Not Apply.

C. Unintentional Discharge

- The BOPC found Officer A's unintentional discharge to be accidental, warranting no further action.

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 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 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 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. Therefore, the BOPC determined that it would be appropriate to recommend a Tactics finding.

During its review of this incident, the BOPC noted the following:

- **Firearms Manipulations** – Four Basic Firearms Safety Rules/Weapon Inspections
- **Clearing Weapons** – The investigation revealed that Officer A attempted to clear a rifle with a jammed bolt action. Officer A was reminded to contact the Firearms Analysis Unit (FAU) when clearing jammed or inoperative weapons, including weapons when there is either a round in the chamber that cannot be extracted or where the condition of the weapon cannot be verified.

These topics were to be discussed at the Tactical Debrief.

B. Drawing/Exhibiting

- Does Not Apply

C. Unintentional Discharge

- **Senior Property Officer A** – (one round)

According to Officer A, he is left-handed. Officer A took possession of the rifle, placed his left hand around the stock and placed his right hand underneath the barrel. Once he had control of the rifle, he pointed it towards the floor, removed his left hand from the stock, and placed two fingers on the charging grip. He attempted to retract the bolt, but the charging handle would not move. He attempted to retract the bolt a second time and the rifle discharged. Officer A stated he did not place his finger on the trigger of the rifle.

After reviewing the evidence, the BOPC found that it is reasonable to believe that the Unintentional Discharge was a result of a weapon malfunction and not operator error. Officer A was acting within the scope of his duties and did not violate any firearms safety rules. Officer A's finger was not on the trigger and the rifle was pointed in a safe direction.

Therefore, Officer A's finding for the Unintentional Discharge was classified as an Accidental Discharge.

This topic was to be discussed at the Tactical Debrief.