

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

**TACTICAL UNINTENTIONAL DISCHARGE – 008-21**

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

Harbor                      3/6/21

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

Officer A                      1 years 3 months

**Reason for Police Contact**

On the evening of March 5, 2021, and into the morning hours of March 6th, an off-duty police officer was hosting a birthday party at his/her residence. At approximately 0430 hours, the officer and a guest of the party became involved in a verbal dispute that escalated to a physical altercation. As the guest walked out of the residence, she threatened to return and cause harm to the officer and his/her family. The officer retrieved his/her duty pistol from inside a kitchen drawer and unintentionally discharged a single round. The round penetrated the drawer and lodged into an interior wall. No one was injured as a result of the discharge. The officer failed to report the incident. The guest left the location and ultimately notified the Department of the incident.

**Subject(s)                      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, including any Minority Opinions; the report and recommendations of the Chief of Police; 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 January 25, 2022.

### **Incident Summary**

On Friday, March 5, 2021, Officer A, was informed by his/her live-in girlfriend, Witness A, that she had planned a party at their residence to celebrate Officer A's 30<sup>th</sup> birthday. Officer A stated he/she was surprised, thankful, and excited for the party. For the prior six years Witness A and Officer A had been in an intimate relationship and they have one child in common.

At the time of the incident, Officer A was a Probationary Police Officer.

According to Witness A, she invited approximately 10 to 12 guests to the party, the majority of whom were her relatives. The guest list also included three of Officer A's friends/co-workers and Witness A's former college classmate, Witness B.

The birthday party began at approximately 1900 hours, with guests arriving at various times. According to numerous attendees, the mood during the party was jovial with guests playing games, listening to music, eating food, and drinking alcoholic beverages.

According to Officer A, he/she consumed four shots of cognac during the evening. Witness A estimated she consumed approximately six shots of vodka throughout the night. Witness B stated she drank a total of three shots of tequila at the party. According to Witness A, at approximately 2300 hours, Officer A left the party and went upstairs to the master bedroom and went to sleep. Their infant daughter was also in the bedroom sleeping.

The party continued and sometime after midnight, an argument ensued inside the residence when Witness A's twin-sister, Witness C, wanted to leave the party and drive while intoxicated. The argument continued outside into the parking lot where family members attempted to convince Witness C not to drive. Witness C did not heed her family's advice and she drove away.

At approximately 0100 hours, the family was notified that Witness C had been involved in a traffic collision and was now in the hospital with serious injuries. Witness C was the only person injured as a result of the traffic collision.

According to Witness A, she woke up Officer A, informed him/her of the car accident, and stated she was leaving to go to the hospital. Officer A stayed home to care for their daughter.

Witness A and several of the guests responded to the hospital. They were unable to visit Witness C due to COVID restrictions, so they waited outside for several hours for an update on Witness C's condition. According to Witness A, Officer A called during this time period and asked her when she was returning home because their daughter

was awake, crying, and hungry. Witness A advised him/her that she would return home to care for their child.

At approximately 0336 hours, Witness A and Witness B arrived at Witness A's residence. A few of the guests who went to the hospital also returned to Witness A's residence to retrieve their belongings before leaving for the night.

**Officer A, Witness B, and Witness A were ultimately interviewed, and each provided their account of the events leading up to the altercation and the subsequent TUD. Force Investigation Division investigators noted inconsistencies/discrepancies between the involved parties' statements. Therefore, the following is a synopsis of their individual statements as provided to investigators.**

Based on video evidence from a Nest security camera, FID investigators determined that Officer A, Witness A, Witness B, Witness D, and Witness E, an unidentified adult male, along with two infants were inside the residence when the physical altercation occurred. According to Witness D, she left the party hours earlier and was not present when the incident occurred.

The family declined to provide the contact information for the male identified as Witness E; therefore, he was not interviewed.

**Officer A's account:**

According to Officer A, he/she was awakened by Witness A and advised that Witness B did not want to leave the residence. Officer A stated that he/she could hear Witness B yelling profanities in the other upstairs bedroom and was refusing to leave. Officer A confronted Witness B, told her the party was over, and asked her to leave.

They walked downstairs and Witness B stated, "I'm going to [expletive] kill you." As they approached the kitchen area, Witness B looked in the direction of a kitchen knife, and Officer A believed she may try to arm herself with the knife. Wanting to prevent that from occurring, he/she raised his/her hands to block Witness B's path and his/her hand hit her face. Officer A described his/her hands being raised in front of him/her, approximately chest high, with his/her palms open. Officer A further stated that Witness B was slightly bent over, "clawing" at him/her, and scratched his/her right leg while she was attempting to reach for the knife. The investigation determined there was a set of kitchen knives on the counter next to the refrigerator.

According to Officer A, he/she grabbed Witness B's wrist, turned her around, and managed to get Witness B to the front door of the residence. As she was walking toward the door, Witness B stated, "[Expletive]. I know where you -- I know where your [expletive] family lives. I'm going to [expletive] kill you and your family." Concerned that she may return and cause them physical harm, Officer A walked to the kitchen to get his/her pistol.

According to Officer A, he/she placed his/her unholstered duty pistol in the kitchen drawer on the night of March 2<sup>nd</sup>.

While keeping his/her eyes on the front door, Officer A reached into the kitchen drawer and felt Witness A's hand on the gun, and the pistol discharged. According to Officer A, he/she believed his/her hand was touching Witness A's hand and the firearm when it discharged.

Officer A stated that he/she took control of the gun and then walked outside to ensure Witness B did not return to their home. Once outside, he/she observed Witness B with a baseball bat in hand. He/she then confronted her and told her to leave. Witness B then entered her vehicle and drove away, and Officer A returned to his/her residence. Officer A went back inside his/her residence and placed his/her unholstered pistol back in the kitchen drawer. Officer A then observed the spent casing in his/her kitchen sink. He/she picked it up and tossed it in the trash can underneath the sink and went to bed.

Officer A failed to notify a supervisor and report the incident to the Department. According to Officer A, he/she didn't notify the Watch Commander about the incident because he/she felt embarrassed.

Witness A claimed Officer A was near the front door when he/she unintentionally discharged the firearm.

During the subsequent on-scene investigation, a single discharged cartridge casing was located in the kitchen sink.

**Witness A's account:**

According to Witness A, Witness B drove her home from the hospital. Upon their arrival, Witness A told Witness E, Witness D, and Witness B that it was time for them to leave. According to Witness A, for unknown reasons, Witness B was refusing to leave and was becoming increasingly aggressive. Witness A believed Witness B's behavior and demeanor were a result of her alcohol consumption. Witness A then went upstairs, woke up Officer A, and told him/her she needed help because Witness B was refusing to leave. Officer A went downstairs and told Witness B to leave, but she refused.

According to Witness A, Officer A was attempting to restrain Witness B from hitting him/her. Witness B appeared to be going to the kitchen to get a knife. An argument ensued and escalated to a physical altercation which she described as a "tassle" as they made their way toward the front door. At some point during the incident, Witness A heard Witness B state, "I will kill you and I'll go to my car and be right back."

Witness A was aware that Officer A's firearm was in the kitchen drawer. Not wanting anyone to get hurt, Witness A went to the kitchen to retrieve Officer A's pistol with the intent to place it upstairs. According to Witness A, when she grabbed the gun in the

drawer, she accidentally placed her finger on the trigger and unintentionally fired the gun. When the gun discharged, Witness B and Officer A were near the front door. Officer A managed to get Witness B out of the residence and then he/she took possession of the gun.

Officer A stated he/she was in the kitchen, with his/her hand on Witness A's hand, when the pistol discharged.

**Witness B's account:**

According to Witness B, she drove Witness A back home from the hospital. When they arrived, Witness A offered to have Witness B stay at her residence. Witness B agreed to stay to ensure Witness A was okay after her sister's accident and went upstairs to lay down in the child's bedroom because it was empty. A short time later, Witness A told her to come into her bedroom while she tended to the baby. When Witness B entered the bedroom, she observed Officer A asleep on the bed. At one point, Witness A walked out of the bedroom to make a phone call and was gone for approximately 30 minutes. Witness B went looking for Witness A and found her sitting on the floor inside the closet of the baby's room visibly upset because of her twin-sister's accident. Witness B stated she wanted to comfort her friend and laid down on the floor and placed her head on top of Witness A's lap.

After a few minutes passed, Officer A entered the bedroom, observed them on the floor, and appeared visibly angry. Officer A angrily told Witness A to get up, then pulled her up by the arm and dragged her across Witness B's body. Witness A asked him/her why he/she was doing that and told him/her to stop; however, he/she continued to drag and pull her up. According to Witness B, she used her leg to kick and push Officer A away. Officer A fell and then turned toward Witness B and punched her in the mouth.

According to Witness A, Officer A never grabbed her, and Witness A never observed Officer A strike Witness B.

At that point Witness B stood up, gathered her belongings, went downstairs and walked toward the front door to exit the residence. Witness E was sitting on the couch and asked her what happened. Witness B replied that Officer A had punched her in the mouth. According to Witness B, she told Officer A that she knew where he/she lived. When she made that statement, she intended to convey, "That, you know, if I have to -- I have to call the cops, then, you know, deal with the situation, I -- like this isn't over. [He/she] just punched me in the face. I have to do something about this."

Once outside, Witness B stated she called her father, Witness F, and began explaining what occurred. As they were speaking on the phone, she heard the sound of a single gunshot. Witness B also heard screams, looked in the direction of Witness A's apartment, and observed Witness D run out the apartment. Shortly thereafter, she observed Officer A walking toward her with a gun in his/her hand.

At approximately 0432:49 hours, Nest security video captured Witness B exiting the residence, slamming the front door, and walking toward the parking lot. Security video from the parking lot captured Witness B walking to her vehicle and retrieve a baseball bat.

At approximately 0436:36 hours, the Nest security video captured Witness D (Witness A's niece) exit Officer A's apartment and run out of camera view.

At approximately 0436:42 hours, Officer A exited the apartment barefoot, wearing a white t-shirt and dark color underwear, while holding a pistol in his/her right hand down at his/her side. According to Officer A, he/she walked towards the parking lot and observed Witness B, who was near her vehicle, holding a baseball bat. Officer A then told Witness B, "Go home. It's not worth it." Witness B replied, "What the [expletive] are you going to do?" Again Officer A repeated him/herself as Witness B entered her vehicle and drove away.

According to Witness F, (Witness B's father,) his daughter called him from the parking lot of the apartment complex to tell him what had occurred. While he was on the phone with her, Witness F heard what sounded like a gunshot. Witness B advised him that Officer A was approaching her and Witness F heard his daughter say, "Is that a gun?"

At approximately 0436:50 hours, Witness E exited the apartment and walked toward the parking lot, followed by Witness A directly behind him. After Witness B drove away Officer A, Witness A, and Witness E returned to the apartment and closed the door.

Witness E and Witness D left the residence at approximately 0437 hours and 0507 hours, respectively.

Witness B entered her vehicle and drove to her father's residence (Witness F) and advised him of the incident. Witness F accompanied his daughter back to Officer A's residence. According to Witness F, as they were driving back to the location, Witness A called Witness B. Witness F placed the call on speaker so her father could hear it. During the conversation, Witness F heard Witness A state, "So when [he/she] grabbed the gun -- she said, like, you know, when [he/she] grabbed it or whatever, it discharged."

Once they arrived back at Officer A's residence, Witness F called the police and waited at the apartment complex entrance for their arrival.

The call was assigned to uniformed Officers B and C, and Sergeants A and B.

At approximately 0643 hours, Sergeant A and Officers B and C arrived on scene and met with Witness B and Witness F at the entrance gate of the apartment complex and proceeded to obtain the details of the incident.

At approximately 0647 hours, Officer A and Witness A exited their apartment with their infant and walked to the parking lot. They entered their vehicle; Officer A was the driver

while Witness A sat in the back seat with her child. They then drove toward the exit of the apartment complex. The apartment complex contained numerous separate apartment buildings and was gated with a single point of entry and exit.

At approximately 0651 hours, BWV captured Officer A drive past Sergeant A and Officers B and C as they were speaking with Witness B. The officers' marked black and white police vehicles and Witness B's vehicle were near the entrance of the gates and would have been clearly visible to Officer A. Witness B had her back toward the gate when Officer A drove past them. Officer A exited the apartment complex and drove away.

Sergeant A and the officers did not personally know Officer A.

Once Sergeant A confirmed that the incident involved a Department employee, the appropriate notifications were made.

Sergeant C also responded to the scene. He/she contacted Officer A by phone and directed him/her to return to his/her residence. Upon his/her arrival, Officer A was separated, monitored, and transported to the Area Community Police Station by Sergeant C according to categorical use of force investigation protocols.

Witness A, Witness B, and Witness F agreed to be interviewed by investigators at Harbor Station. Additional Harbor Area police personnel secured Officer A's residence and waited for the arrival of FID and Internal Affairs Division (IAD), who took over the responsibilities of the investigation.

**BWV and DICVS Policy Compliance**

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

**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 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 Out of Policy.

## **C. Unintentional Discharge**

The BOPC found Officer A's Unintentional Discharge 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 suspect 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 rescue ambulance 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, suspects, persons in custody, suspects 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 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.

**Planning** – According to Officer A, he/she sometimes left a handgun in the kitchen drawer for home protection. However, as the investigation revealed, Officer A's actions in doing this created the dangerous circumstance of an unsecured firearm.

**Assessment** – Once Witness B exited his/her townhome, Officer A failed to properly assess that the dynamics of the situation had changed. If he/she perceived Witness B as a threat to his/her safety, Officer A could have locked the door and contacted the police. Instead, Officer A chose to arm him/herself and leave his/her home, wearing only a T-Shirt and underwear. Officer A failed to assess that without the benefit of police attire or police identification, he/she could have been easily mistaken for an armed suspect had neighbors called the police.

**Time and Redeployment** – There is a formula, distance, plus cover equals time. Time is an essential element of de-escalation as it allows officers the opportunity to communicate with the suspect, refine tactical plans and, if necessary, call for additional resources. By choosing to leave his/her townhome and approach Witness B, Officer A failed to utilize the element of time and did the opposite of redeployment.

**Other Resources and Lines of Communication** – While he/she perceived Witness B's threat as credible, Officer A did not call 9-1-1 nor did he/she contact Officers B, C, or Sergeant A as they were speaking with Witness B at the entrance to his/her complex. Also, Officer A did not take steps to notify the Department of the TUD.

The BOPC noted that approximately four minutes passed between Witness B leaving the townhome and Officer A exiting with his/her service pistol. The BOPC opined that in those four minutes, Officer A could have locked his/her door and called 9-1-1. The BOPC also opined that during those four minutes, Officer A could have called his/her watch commander, advising the Department of this incident. The BOPC also noted that approximately two hours after the TUD, Witness B and her father returned to Officer A's complex and called the police. In those two hours, Officer A still had not notified the Department of this incident. Instead, Officer A chose to leave his/her complex, driving past uniformed officers who were speaking with Witness B outside the front entrance. Officer A made no effort to communicate with the officers or identify him/herself.

- During its review of the incident, the BOPC noted the following tactical considerations:

### **1. Off-Duty Actions**

When Witness B refused to leave Officer A's townhome, verbally threatening his/her family, Officer A forced her to the exit. Instead of calling police after Witness B left his/her townhome, Officer A armed him/herself with his/her service pistol, exited his/her townhome, walked to the parking lot in his/her underwear and T-Shirt, and confronted Witness B.

The BOPC noted that Officer A's birthday celebration culminated with a minor altercation between him/her and Witness B. Despite being trained to de-escalate

situations, Officer A chose to walk outside his/her townhome, barefoot, wearing only underwear and a T-shirt, holding his/her unholstered service pistol. Officer A did not have police identification, a police radio, or a cellular telephone. The BOPC did note that according to Officer A, Witness B threatened to come back and kill him/her and his/her family. However, once Witness B exited Officer A's townhome, he/she should have responded by locking the door and calling his/her watch commander, if not 9-1-1. The BOPC opined that Officer A's decision placed him/her at a tactical disadvantage and served to escalate rather than de-escalate the situation.

Based on the totality of the circumstances, the BOPC determined that Officer A's actions were a substantial deviation without justification from approved Department tactical training.

- The BOPC also considered the following:

**Firearm(s) Carried in A Container** - Per Department policy, an off-duty officer may carry a concealed firearm in a container that is immediately accessible to and under the control of the officer. Such a container may include, but is not limited to, a briefcase, fanny pack, backpack, or purse. Unless the container is specifically designed to carry the firearm, the firearm shall be placed in a holster specifically designed for the firearm which covers the firearm's trigger and trigger guard, before it is secured in the container. Here, Officer A transported his/her loaded unholstered service pistol from work to home in the glove box of his/her personal vehicle.

**Safe Storage/Home Safety** - Per LAMC Section 55.21, no person shall keep a firearm within a residence unless the firearm is: 1. stored in a locked container or disabled with a trigger lock that has been approved by the California Department of Justice; 2. carried on the person of the owner or other lawfully authorized user of the firearm who is over the age of 18; or, 3. within close enough proximity and control that the owner or other lawfully authorized user of the firearm who is over the age of 18 can readily retrieve and use the firearm as if carried on the person.

The LAPD policy states in relevant part, that all officers must be vigilant with firearms within their home. To prevent a potentially tragic situation when storing a firearm, the following rules should be practiced in addition to all other firearm safety rules: firearms must be inaccessible to children and unauthorized persons at all times; precautions must be taken against theft by storing firearms in a secure location and/or in a locked container; a gun safe is highly recommended; if a secure container is not available, the firearm may be secured with a trigger or cable lock.

Officer A resides in the City of Los Angeles. During the party, Officer A's loaded unholstered service pistol was lying in a kitchen drawer. According to Officer A, while he/she has a safe (lockbox) he/she sometimes places a firearm in the drawer. During the party, an off-duty officer observed Officer A's service pistol in the kitchen drawer. The officer advised Officer A to put his/her service pistol upstairs. Officer A

responded that he/she uses it for home protection and left his/her service pistol in the kitchen drawer; it remained there after Officer A went upstairs to bed.

According to Officer A, prior to leaving his/her townhome on the morning of this incident, he/she left his/her loaded .38 revolver on the floor in his/her daughter's room. Officer A explained that he/she left his/her .38 on the floor, intending to clean it. Office A further explained that his/her daughter never goes in her room.

**Holstering A Back-Up or Concealed Off-Duty Firearm** - Per Department policy an officer carrying a firearm off-duty shall carry the firearm in a secured manner. The firearm shall be concealed and contained in such a manner as to prevent the firearm from falling out or becoming accessible to unauthorized persons when engaged in physical police activities such as a foot pursuit or physical altercation. The firearm shall be carried inside of a holster that is specifically designed for the make, model, and caliber of the firearm and shall cover the firearm's trigger and trigger guard. If the firearm is secured in a pocket, it shall be secured in a holster, and no other items shall be carried in that same pocket to ensure immediate and unhindered access to the firearm.

Returning home to meet with Sergeant C, Officer A's holstered pistol was in his/her vehicle's driver-door pocket. Prior to meeting with officers, Officer A removed his/her pistol from the holster, placing the pistol in the center console and the holster in the drivers' door pocket.

**Preservation of Evidence** - Looking in the kitchen sink, Officer A observed a spent casing. According to Officer A, he/she disposed of the casing in the trash. According to the FID investigation, a casing was recovered from the kitchen sink. According to the FID investigation, when recovered, Officer A's service pistol was in the kitchen drawer, lying on its left side, with the muzzle pointed east. The magazine was located next to the firearm but was not inserted. The viewing port on the top of the barrel/slide indicated the service pistol's chamber was unloaded. According to Officer A, he/she did not manipulate the firearm or remove the magazine after the incident.

**Protocols Subsequent to a CUOF** - Officer A did not notify the Department of the TUD. According to Officer A, he/she was nervous and embarrassed but planned to notify the Department later that morning. Later that morning, at approximately 0651 hours, Officer A drove past Sergeant A and Officers B and C as they were speaking with Witness B near the complex's entrance gate. Officer A did not notify Sergeant A, Officer B, or Officer C of the TUD.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.



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

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

## **B. Drawing and Exhibiting**

- **Officer A**

As Witness B walked out of the residence, she threatened to return and cause harm to Officer A and his/her family. Perceiving Witness B's threat as credible, Officer A retrieved his/her service pistol from the kitchen drawer. Officer A then exited his/her townhome, walked to the parking lot, and approached Witness B while holding his/her service pistol at his/her side.

The BOPC noted that according to Officer A, he/she retrieved his/her service pistol from the drawer because he/she perceived Witness B's threats as credible. Officer A's state of mind was further evidenced by the fact that he/she went outside of his/her townhome while armed with his/her service pistol. Based on Officer A's state of mind, the BOPC opined that the act of removing his/her service pistol from the drawer was akin to drawing a firearm from a holster and should be reviewed through the same lens. The BOPC also opined that Officer A exhibited his/her service pistol when he/she walked outside his/her townhome and approached Witness B while holding it at his/her side.

The BOPC noted that according to the Department's policy on the Use of Force, "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." In this case, Witness B was not armed during the altercation inside the townhome nor was she inside A's townhome when he/she drew or exhibited his/her firearm. Had Officer A remained inside his/her townhome and called 9-1-1, he/she would not have needed to draw or exhibit his/her firearm. Additionally, as noted by the BOPC, "Unnecessarily or prematurely drawing or exhibiting a firearm...may result in an unwarranted or accidentally discharge of the firearm." Based on his/her own statements, Officer A's service pistol unintentionally discharged as he/she drew it from the kitchen drawer.

Based on the totality of the circumstances, the BOPC determined that an officer with similar training and experience as Officer A, while faced with similar circumstances, would not reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found Officer A's drawing and exhibiting of a firearm to be Out of Policy.

### **C. Unintentional Discharge**

- **Officer A** – (pistol, one round)

**Background and Scene Description** - The TUD occurred at Officer A's residence.

According to Officer A, while retrieving his/her service pistol from the kitchen drawer, he/she felt Witness A's hand on the pistol, then it discharged. According to Witness A, Officer A's service pistol discharged when she accidentally placed her finger on the trigger while grabbing the pistol from the drawer. According to Witness A, when the gun discharged, Witness B and Officer A were near the front door. According to Witness F (Witness B's father), as they were driving back to Officer A's complex, Witness A called Witness B; Witness F placed the call on speaker. During the conversation, Witness F heard Witness A tell Witness B that when Officer A "grabbed the gun," it "discharged".

The BOPC noted that according to Officer A, at the time his/her service pistol discharged he/she was watching the front door while reaching back, attempting to retrieve his/her service pistol from the drawer. While the investigation was unable to determine who pressed the trigger, Officer A stated that his/her hand was on the gun when it discharged. While Witness A claimed that she unintentionally discharged the service pistol while Officer A was standing by the front door, the BOPC noted Witness F's account of the phone call between Witness A and Witness B, specifically hearing Witness A state that the gun went off when Officer A grabbed it. Witness A's statement to FID not only conflicts with Witness F's and Officer A's statements, but it also appears to conflict with security footage. The footage, which depicts an adult female (identified as Witness D) fleeing the townhome, followed by an armed Officer A, was consistent with Witness B's account of hearing a gunshot and then observing a female running from the townhome approximately four minutes after she (Witness B) left the home. The BOPC also noted that the trajectory of the round indicated that Officer A's service pistol was lifted from the drawer when it discharged.

The BOPC determined that based on the totality of the circumstances, it was more likely than not that Officer A was handling his/her firearm when it discharged into the drawer. Whether Officer A inadvertently pressed the trigger or Witness A pressed the trigger as Officer A was blindly attempting to arm him/herself, he/she handled his/her firearm in an unsafe manner. Additionally, there was no evidence that the discharge was the result of a mechanical malfunction. The BOPC also felt that Officer A's decision to store his/her service pistol in a kitchen drawer, loaded and unsecured, contributed to the unintentional discharge.

Based on the totality of the circumstances the BOPC determined that the TUD was the result of operator error, requiring a finding of Administrative Disapproval, Negligent Discharge.