

**Non-Fatal Officer Involved Shooting of  
Deputy Andrew Toone  
Los Angeles County Sheriff's Department**

**Deputy Donald McNamara, #472744**

**J.S.I.D. File #21-0084**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**February 28, 2024**

**MEMORANDUM**

TO: CAPTAIN ANDREW D. MEYER  
Los Angeles County Sheriff's Department  
Homicide Bureau  
1 Cupania Circle  
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Deputy Andrew Toone  
J.S.I.D. File #21-0084  
L.A.S.D. File #021-04213-1337-486

DATE: February 28, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 4, 2021, non-fatal shooting of Deputy Andrew Toone, by Los Angeles County Sheriff's Department (LASD) Deputy Donald McNamara. We have concluded the shooting was accidental and Deputy McNamara is not criminally responsible.

The District Attorney's Command Center was notified of this shooting on March 4, 2021, at approximately 6:18 a.m. The on-call deputy district attorney concluded the circumstances did not meet the Justice System Integrity Division (JSID) requirements to respond to the scene. It was later determined that the District Attorney Response Team should have responded to the scene.

The following analysis is based on investigative reports received from Homicide Bureau Lieutenant Vincent Ursini on October 18, 2023, and audio recordings of witness interviews, photographs, and additional lab reports received on December 22, 2023. All deputy interviews were voluntary. There is no audio or video recording of the incident.

**INTRODUCTION**

On March 4, 2021, at approximately 4:42 a.m., members of the LASD Special Enforcement Bureau (SEB) assisted the LASD Lakewood Detective Bureau with the service of a high-risk search warrant at an apartment in the City of Bellflower. The SEB entry team consisted of Sergeant William Murray, Deputy Darell Edwards, Deputy Luis Mendoza, Deputy Jason Puga, Toone and McNamara.

McNamara's duty issued Heckler & Koch MP5 submachine gun discharged once while he was handcuffing a resident detained in the apartment. Toone was struck in his right calf by the single 9mm round. Toone was taken to the hospital for treatment of a through and through gunshot wound and recovered.

## FACTUAL ANALYSIS

The small single bedroom apartment was located on the second floor of a two-story apartment building. The apartment's floorplan consisted of a front entry into a living room with a dining and kitchen area to the right. The living room was 16.8 feet wide and 11.3 feet long. The living room had a couch against the far-left wall. A television sat on a media console against the far-right wall next to a coffee table. Two vacuum cleaners stood against the far wall between the threshold and television. The center of the living room wall opposite the entryway had a doorless threshold that led to a small hallway. A bathroom was located across the threshold and a bedroom was down the hallway to the right. A futon sat between the living and dining areas. The primary subject of the search warrant was [REDACTED]. The apartment was the residence of [REDACTED], who lived there with his grandmother, [REDACTED].<sup>1</sup> [REDACTED] and [REDACTED] are brothers.



Figure 1: LASD photograph of the apartment.

## INTERVIEWS OF DEPUTY DONALD MCNAMARA

McNamara was interviewed twice by LASD Homicide Bureau Sergeants Art Spencer and Chaffey Shepherd.<sup>2</sup> At the initial interview, investigators did not know whose firearm had discharged the round. McNamara was interviewed a second time after lab tests determined the round was fired from his MP5.

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<sup>1</sup> [REDACTED] was 78 years old. She was disoriented and was not interviewed for the investigation.

<sup>2</sup> Spencer is now a Lieutenant.

The first interview took place around 12:38 p.m., on March 4<sup>th</sup>. The interview was voluntary and audio recorded. McNamara told investigators he did not know whose weapon discharged the round. Upon entry Toone covered the kitchen area off to the right. McNamara and Edwards moved across the living room and covered the hallway from the threshold with McNamara on the left and Edwards on the right. McNamara saw ██████ in the hallway to the right. Edwards covered ██████ in the hallway to the left. Edwards took ██████ into custody. Murray took the open position to the right of the threshold. Murray said he could see a female (█████) in the bathroom and he wanted McNamara to get the second guy (█████) out that McNamara was covering. McNamara called ██████ toward him and ██████ complied. McNamara had ██████ turn around and put his hands on top of his head. ██████ turned around and put his left hand on top of his head but continued to move his right hand. McNamara pulled ██████ into the living room area and told ██████ to get on his knees.

McNamara told investigators, “When he got on his knees I was able to put both of his hands behind his back, at which point, I slung my weapon and I went for my handcuffs.” McNamara continued, “I was able to handcuff [him]. As I’m starting to handcuff him, I feel some pressure from behind me, at which point I didn’t really think anything of it. I was focusing on the subject. About three to five seconds later I heard a [gunshot].”

Investigators later asked McNamara, “What did you do with your firearm again?” McNamara replied, “I slung- so I have a sling, a two-point sling on it, and I have a retention strap. I pull that retention strap tight so that my MP5 is pushed more towards my vest which gives me the ability to manipulate my hands better. And then I had the suspect on his knees and I handcuffed him.”



Figure 2: LASD photograph of McNamara’s MP5 and two-point sling with retention strap.

McNamara confirmed in response to an investigator's inquiry that he fires the weapon with his right trigger finger. Investigators then opined that the MP5 muzzle would be to McNamara's left side and down to his left hip. McNamara replied "Generally," and explained that the muzzle could be higher or almost six o'clock depending on how tight the retention strap is cinched and the angle of McNamara's body. McNamara told investigators, "I typically like it to be straight down, but it doesn't always end up in that position."<sup>3</sup>

## **PYSICAL EVIDENCE**

A fired 9mm round and fired 9mm cartridge case were in the living room by the couch.

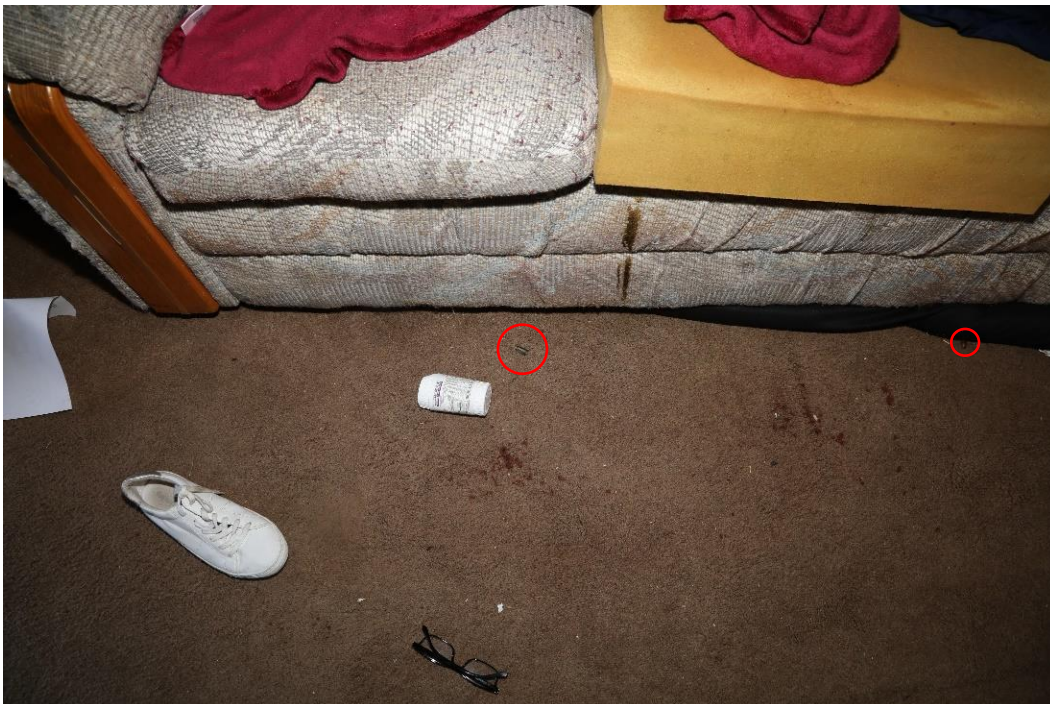


Figure 3: *LASD photograph shows the fired cartridge case, center, and fired bullet, right.*

McNamara carried a duty issued Heckler & Koch MP5 select-fire submachine gun. The MP5 was able to fire in semi-automatic (Single Fire) or fully automatic (Sustained Fire) modes.

The select-fire lever had three options: Safe, Single Fire and Sustained Fire. The lever was located on the left side of the firearm above the trigger. LASD Scientific Services Bureau (SSB) concluded the fired round came from McNamara's MP5. The MP5 did not fire when set to the "Safe" position.<sup>4</sup>

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<sup>3</sup> During his second interview with investigators McNamara further explained that the MP5 was slung to the front of his body around his left shoulder (see below).

<sup>4</sup> SSB's ballistics comparison and safety function check of McNamara's MP5 was in March 2021. The MP5 was examined again in August 2021 to determine if the firearm was capable of firing with the lever between select-fire positions. The MP5 did not fire when the lever was between "Safe" and "Single Fire." The MP5 did fire when the lever was between "Single Fire" and "Sustained Fire."



Figure 4: LASD photograph of McNamara's MP5 with the select-fire lever set to "Safe."



Figure 5: SSB picture of McNamara's MP5 with select-fire lever positions illustrated.

Investigators spoke with McNamara again on March 10, 2021, around 1:23 p.m. Investigators had additional questions after SSB determined the round that struck Toone came from McNamara's MP5. The interview was voluntary and audio recorded. McNamara told investigators Murray directed him to go hands on with [REDACTED], so he grabbed [REDACTED], and brought him more towards the team in the living room area. McNamara pulled [REDACTED], two to three steps into the living room and had [REDACTED], get down on his knees. McNamara continued,

“I had my right hand on both of his hands. His hands were clasped behind his back. My handcuffs are on the left rear part of ... my vest. I grabbed the handcuffs and I proceeded to handcuff him. Holding him with my right hand, handcuffing him with my left.” McNamara was crouched over ██████, handcuffing him, when McNamara felt someone bump him “just a little bit” as the person tried to go around McNamara. McNamara told investigators, “It pushed me almost directly forward.” McNamara explained contact between team members is common as they move around each other with lots of gear. McNamara was about to get ██████ up off his knees when McNamara heard the gunshot.

Prior to grabbing ██████, McNamara had his hands on his MP5. Investigators asked McNamara what he did with the MP5 as he transitioned from holding the MP5 to physically grabbing ██████. McNamara told investigators, “I slung it. I cinched it down towards me. Basically, my SOP every time I go hands on.”<sup>5</sup> Investigators asked McNamara if he recalled if his MP5 was on or off safety when he transitioned from holding it, to slinging it and cinching the MP5 to his body. McNamara told investigators, “I recall putting my weapon on safe and cinching the weapon to my body. I don’t know if I cinched it quite as tight as I typically do, just kind of based on the tempo of the events that were unfolding in front of me. I do recall cinching it down with my left hand before I went hands on with the subject. But I do recall safing my weapon.”<sup>6</sup> Investigators asked McNamara, “So you- but when you sling your weapon you sling it to the front?” McNamara told investigators, “Yes, sir. And it’s- just for clarification, it’s already slung over my body. I’m just trying to mitigate any error that could occur with that weapon coming into contact with other objects. So, it’s already around my left shoulder and basically, it’s slung around me. It’s a two-point sling. I do that for a reason. But I bring it a little tighter towards my body by cinching it down.”

Investigators asked where exactly the MP5 is typically positioned. McNamara told investigators, “It kind of varies just based on the physics of where I’m at and what’s happening.” Sometimes it will cinch with the muzzle straight down at 6 o’clock, sometimes towards 8 o’clock and as far as 9 o’clock.

Before the ballistics results, McNamara did not believe his weapon had discharged. Investigators showed McNamara pictures of his equipment from March 4<sup>th</sup> and asked if anything on his tactical entry vest could have caused the accidental discharge if the MP5 was cinched looser than usual. McNamara told investigators the only thing he believed could have allowed his weapon to fire was the pouch that held two MP5 magazines. The pouch holds three MP5 magazines snugly, but one was in his MP5. McNamara speculated that if the pouch cover was not pulled down completely when he bent over, one of the magazines could have slid and protruded out of the exposed side of the pouch. McNamara told investigators, “It’s conjecture clearly, I didn’t see it occur. However, there have been other incidents where I have retightened it down just to ensure the retention is completely tight.” McNamara recalled the MP5 was

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<sup>5</sup> SOP is an abbreviation for standard operating procedure.

<sup>6</sup> McNamara continued to clear the apartment. McNamara did not recall if he took the MP5 off “Safe” when he reengaged.

cinched “pretty taut,” but it would still have separated from his body as he bent over. McNamara identified the MP5 magazine pouch and handcuff pouch in pictures of his tactical entry vest.<sup>7</sup>



*Figure 6: LASD picture shows the items attached to McNamara's tactical entry vest on March 4, 2021. An MP5 magazine is visible through the exposed side of the magazine pouch, left, and the handcuff pouch, right, is empty.*

## **INTERVIEW OF DEPUTY ANDREW TOONE**

On March 9, 2021, around 2:11p.m., Investigators Spencer and Shepherd interviewed Toone. The interview was voluntary and audio recorded. Toone told investigators he entered the apartment and cleared the kitchen area on the right. Toone went back to the living room. Toone could see ██████, and ██████ in the bathroom. Edwards was positioned on the right side of the hallway threshold and McNamara on the left. Edwards took ██████ into custody. Murray took the position to the right side of the hallway threshold. Toone was near the couch approximately five feet behind McNamara and Murray. McNamara moved one step to the right to handcuff ██████. Toone took one step to the left to go cover the vacant position to the left of the hallway threshold. Toone started to maneuver his way into position and heard the gunshot. Toone told investigators he could not recall if he stepped on the couch, but remembered the couch was in his way and he was either trying to maneuver over it or around it.

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<sup>7</sup> No photograph was taken with the MP5 slung on McNamara.



Toone heard the gunshot and froze. Toone was two to three feet from McNamara. Toone's right leg was closest to McNamara. McNamara, [REDACTED], and Toone faced the threshold. Toone looked over and saw McNamara on his knees or crouched over. Toone told investigators, "As soon as I heard the shot, I looked over at him and, I just, he was handcuffing the guy and I remember seeing his MP5 kind of pointed in my direction." The MP5 was in front of McNamara "kind of hanging." Toone thought McNamara was using his hands to handcuff [REDACTED]. They looked at each other in shock. Toone felt his leg burn and said he was shot. Toone sat down on the couch right behind him. Toone assumed the round came from his right based on the sound and McNamara's position. Toone told investigators that if he bent down, he could have tapped McNamara. Investigators asked Toone if he tapped or leaned on anybody. Toone told investigators, "I definitely didn't tap anybody. I wouldn't have let go of my gun." Toone told investigators, "We move in small houses that are cluttered all the time. So, if I bumped somebody or rubbed somebody, it happens so much, where if other than somebody actually falling, it wouldn't stand out to me." Toone marked photographs with the estimated positions of Toone, McNamara and [REDACTED], at the time of the discharge.

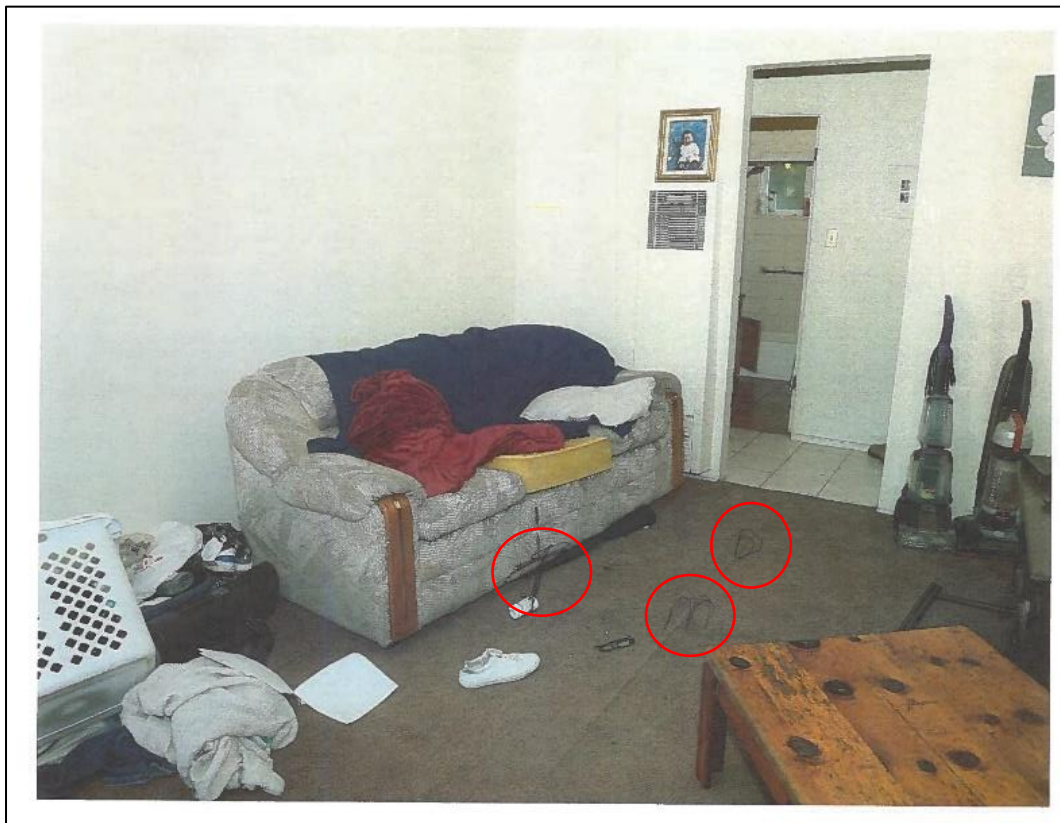


Figure 7: LASD photograph marked by Toone with estimated positions at the time of discharge. "T" is Toone, "M" is McNamara and "D" is the detainee.

## INTERVIEW OF [REDACTED].

On March 4, 2021, around 10:10 a.m., Investigators Spencer and Shepherd interviewed [REDACTED] at Lakewood Sheriff's Station. The interview was voluntary and audio recorded. [REDACTED] lives in the apartment with [REDACTED], his grandmother. [REDACTED] takes care of her. [REDACTED] is

██████████'s brother, but ██████████ does not permanently live at the apartment. ██████████ let ██████████ stay at the residence because ██████████ had nowhere else to sleep that night. ██████████ slept in the bedroom, ██████████ slept on the couch in the living room and ██████████ slept on the futon located between the living room and dining room to the right of the front entrance. ██████████ woke up when he heard "Sheriff's Department!" When ██████████ opened the bedroom door there were guns and lights. ██████████ was in the bathroom and ██████████ was on the futon. The deputies "got" Marruffo, ██████████, and McNamara were in front of the couch in the living room. ██████████ faced the television opposite the couch with his back to Toone. ██████████ was standing with his hands behind his back. McNamara held ██████████'s hands with one hand when the gun went off. ██████████ told investigators it "shocked the hell out of me!" ██████████ was escorted downstairs in handcuffs to a squad car. Investigators asked ██████████ when he was handcuffed. ██████████ told investigators he thought he was handcuffed when he was placed against a wall on the second-floor walkway before he was escorted down the stairs. ██████████ believed McNamara was the one who shot because McNamara was right next to ██████████ and Toone was right behind.

## LEGAL ANALYSIS

McNamara was assisting in the service of a high-risk search warrant. A peace officer may detain occupants of a residence at the time a search warrant is served. *Michigan v. Summers* (1981) 452 U.S. 692. McNamara was lawfully performing his duties detaining an occupant in the apartment when the MP5 discharged.

A person may not be held criminally liable for an unintended act. This principle applies even in the case of a grossly negligent discharge of a firearm pursuant to Penal Code § 246.3. CALCRIM No. 970 sets forth the elements for the crime of grossly negligent discharge of a firearm as follows:

1. The defendant intentionally shot a firearm;
2. The defendant did the shooting with gross negligence;
3. The shooting could have resulted in the injury or death of a person; and
4. The defendant did not act in self-defense, or in defense of someone else.

As the first element makes plain, grossly negligent discharge of a firearm requires that the person who fired must have intended to do so. The evidence examined in this investigation shows that there was no such intent. McNamara, who fires the MP5 with his right trigger finger, was using his right hand to hold ██████████ and his left to apply the handcuffs when the round discharged. Though inconclusive, the single round appears to have discharged after contact between the MP5 and McNamara's tactical entry vest. In any event the discharge was not an intentional act on McNamara's part who did not pull the trigger of his MP5. Accordingly, McNamara is not criminally liable because the discharge was the result of an unintended accident.

## **CONCLUSION**

We find that the discharge that resulted in an injury to Deputy Toone was not intentional or the result of gross negligence. Deputy McNamara is therefore not criminally responsible for the accidental discharge.