

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

**Tactical Unintentional Discharge – 009-09**

<b>Division</b>	<b>Date</b>	<b>Duty-On(X) Off()</b>	<b>Uniform-Yes(X) No()</b>
Newton	02/24/09		

<b>Officer(s) Involved in Use of Force</b>	<b>Length of Service</b>
Police Officer A	2 years, 4 months

**Reason for Police Contact**

Officers observed an individual spray painting gang graffiti on an exterior wall of a business and pursued him. Officer A unintentionally discharged his pistol during the pursuit.

<b>Subject(s)</b>	<b>Deceased ( )</b>	<b>Wounded ( )</b>	<b>Non-Hit ( )</b>
Unidentified male.			

**Board of Police Commissioners' Review**

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent suspect criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the BOPC of Police; and the report and recommendations of the Inspector General. The Los Angeles Police Department Command Staff presented the matter to the Commission and made itself available for any inquiries by the Commission. Because state law prohibits divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on February 2, 2010.

**Incident Summary**

Officers A and B were on routine patrol when they observed a subject spray painting gang graffiti on an exterior wall of a business. Officer B, who was driving the police vehicle, activated its overhead emergency lights and approached the subject in order to detain him. The subject observed the approaching police vehicle, put the spray can he was using in his pants pocket and ran from the officers. Officer B parked the police

vehicle and Officer A exited the vehicle to chase the subject. Officer B also exited the police vehicle, several seconds after Officer A, and began to follow his partner.

While pursuing the subject, Officer A's radio became disconnected from his equipment belt and fell to the pavement. Officer A did not retrieve his radio and continued in pursuit of the subject. As he pursued the subject, Officer A ordered him to stop several times.

Officer A observed the subject momentarily stop alongside a large sport utility vehicle (SUV) which was parked in front of a residence. Officer A briefly lost sight of the subject, and then regained sight of him as the SUV drove away. The subject then jumped over a chain link fence by the residence.

Officer A drew his pistol, as he believed that the subject could have obtained a gun from the occupant(s) of the SUV. Moreover, Officer A considered that he was attempting to apprehend a "felon," and had recovered guns from vandalism suspects on prior occasions.

Officer A, while still holding his pistol, ran to where the subject jumped over the fence, placed his left hand on the horizontal top rail of the fence and attempted to swing his left leg over the fence. As he did so, the top rail of the fence gave way and Officer A unintentionally discharged one round from his pistol, which was pointed toward the ground.

Officer A checked the immediate area to determine if anyone was injured as a result of his firing his weapon, and determined that there was not. Officer A then climbed over the fence and proceeded towards the rear yard of the residence in search of the subject, but was unable to locate him. Officer A then returned to the front of the residence where he met Officer B.

Meanwhile, as Officer B ran in the direction of Officer A, he observed him in front of the residence, but did not see the subject. While proceeding in the direction of Officer A, Officer B began to broadcast his location and that he and Officer A were involved in a foot pursuit. As he did so, Officer B turned in the direction from where he had run to verify his location. Upon turning, Officer B heard a single gunshot.

After hearing the gunshot, Officer B turned back towards where he last observed Officer A and observed him run towards the rear yard of the residence. Officer B, who did not know who had fired the gunshot, drew his .pistol and proceeded in the direction of the residence.

Upon arrival at the residence, Officer B entered through a front gate and walked down a driveway to the back yard, where he met Officer A. Officer A told Officer B that the subject was "gone." Officer B then holstered his weapon. Officer A then told Officer B that he had accidentally discharged his weapon while in pursuit of the subject. Officer B next broadcast a request for an Air Support unit to respond to the location.

In response to Officer B's broadcasts, several uniformed officers responded to the location and a perimeter was established in an attempt to locate the subject, but he was not located.

### **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/Holstering of a weapon by any involved officer(s); and the Use of Force by any involved officer(s). All incidents are evaluated to identify areas where involved officers can benefit from a tactical debriefing to improve their response to future tactical situations. This is an effort to ensure that all officers benefit from the critical analysis that is applied to each incident as it is reviewed by various levels within the Department and by the BOPC. Based on the BOPC's review of the instant case, the BOPC unanimously made the following findings.

#### **A. Tactics**

The BOPC found Officer A's tactics to warrant Administrative Disapproval, and Officer B's tactics to warrant a Tactical Debrief.

#### **B. Drawing/Exhibiting/Holstering**

The BOPC found Officers A and B's drawing to be in policy.

#### **C. Tactical Unintentional Discharge**

The BOPC found that Officer A's negligent discharge warranted Administrative Disapproval.

### **Basis for Findings**

#### **A. Tactics**

In adjudicating this incident, the BOPC considered that:

1. The officers did not advise Communications Division (CD) of their location or other pertinent information until after the unintentional discharge. It would have been prudent for Officers A and B to advise CD of their location once the determination to make contact with the subject was made. Although, there may be circumstances that prevent officers from advising CD of their status and location, in this situation, the officers had adequate time to notify CD prior to their attempt to make contact with the suspect.

Therefore, the BOPC found that the officers should be reminded to notify CD of their status and location when conducting field activities in order to assist in facilitating the response of additional units should the necessity arise.

2. It is an important tactical concept during foot pursuits for partner officers to work as a team. Accordingly, officers should not split-up during a foot pursuit and are strongly discouraged from doing so.

Although Officer A was unaware of his exact location or the location of his partner, he continued to pursue the subject. This, coupled with the fact that he was no longer in possession of his radio and had no means of communication, placed Officer A at a severe tactical disadvantage.

Therefore, Officer A is to be reminded to maintain a tactical advantage by remaining within a distance that affords him and his partner the opportunity to render immediate aid should the need arise.

3. It appeared that the officers had a tactical plan yet neither one of the officers adhered to the plan or their Department training. This, along with Officer A continuing to pursue the subject without his radio placed him at a severe tactical disadvantage without any means of communication with his partner or additional resources.

The officers should be reminded to make a broadcast any time they are involved in a foot pursuit. A timely broadcast of the rapidly unfolding events is crucial for obtaining the necessary resources to effectively manage the tactical incident.

4. There was no evidence to support that Officer A considered establishing containment on the suspect. Although vandalism was the initial crime, based on Officer A's training and experience he believed the suspect was armed. Therefore, the BOPC would have preferred that Officer A had pursued the subject in a containment mode while considering the available tactical advantages, including cover and concealment where available.
5. The BOPC further noted that Officer A observed a vandalism suspect run across the street and then lost sight of the subject behind a vehicle. Believing the subject had armed himself with a handgun, Officer A elected to draw his service pistol and pursue the subject with his service pistol in his right hand. Although the drawing in this incident was reasonable, Officer A should have holstered his service pistol prior to attempting to follow the subject over the fence.

## **B. Drawing/Exhibiting/Holstering**

The BOPC further noted that Officer A observed the subject spray painting gang related graffiti on the wall of a business, leading him to believe the suspect was a gang member and potentially armed. Additionally, Officer A lost sight of the subject when he was

behind an SUV and he believed that the subject might have possibly gotten a gun from someone in the vehicle. Moreover, the BOPC noted that Officer B stated that he was attempting to broadcast his location when he heard a shot fired and he then drew his service pistol because he was concerned about his partner's safety.

Accordingly, the BOPC found that it was reasonable for Officers A and B to believe that the tactical situation had escalated to the point where lethal force might become necessary. The BOPC found Officers A and B's' Drawing/Exhibiting to be in policy.

### **C. Unintentional Discharge**

The BOPC noted that Officer A chased the subject while holding his service pistol in his right hand. As he attempted to jump over a chain-link fence, an unintentional discharge occurred. Officer A failed to adhere to the basic firearm safety rules, resulting in an unintentional discharge. Moreover, the unintentional discharge of Officer A's service pistol unjustifiably and substantially deviated from approved Department training and was negligent in nature.

Therefore, the BOPC found the unintentional discharge to be Negligent, warranting Administrative Disapproval.