

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

UNINTENTIONAL DISCHARGE – 100-08

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
Pacific	11/24/2008		

Officer(s) Involved in Use of Force	Length of Service
Officer C	3 years, 7 months

Reason for Police Contact

Homicide Investigation

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 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 Chief 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.

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 October 27, 2009.

Incident Summary

Officers A, B and C responded to a Housing Project to investigate a homicide. The homicide victim was a known local gang member and the officers believed that the individual was killed by a gang member from another area.

According to Officer A, “my partners and I went to patrol the area that the [other gang] claim as their turf.” Officers A, B and C had a description of “a red car, with a partial plate” that was possibly involved in the homicide, but had no other suspect information.

According to Officer A, upon arrival in the area, the officers observed an unknown male subject about a quarter-block away from them who looked in their direction and then ran from them. The male jumped over a fence. Officers A, B and C exited their marked police vehicle where they saw the subject jump the fence. According to Officer A, he and Officers B and C “communicated that [Officers B and C] were going to go westbound up the alley in order to try to get second-corner containment as the [subject] continued to go northbound through the houses.”

Officer A separated from Officers B and C to gain a different vantage point. Officer A moved west in the alley, approximately 62 feet. Officer B moved to a position in front of the police vehicle. According to Officer B, he “saw the [subject] running northbound [...] through the yard to the street” and “broadcasted via Simplex to Officer A that the [subject] made it out to the street.” Meanwhile, Officer C unholstered his pistol, moved west, and followed Officer B north through an apartment walkway.

Officers A and C next saw another unidentified male subject, wearing a blue sweatshirt, run between two houses and out of their view. Officer A broadcast this information on his radio. Officers A and C checked the immediate area where the male with the blue sweatshirt had last been seen but did not locate him. Officers A and C then returned to the street.

According to Officer A, “when Officer C was by my side, we communicated together and via the radio to Officer B that Officer C was going to stay in the area pretty much right in front of [the location] in order to contain the south perimeter, and I [Officer A] ran westbound [...] in order to contain the west perimeter.” Meanwhile, Officer B “drove the police car up to this one street north of [the location] in order to contain that corner.”

Officer C took a position in the driveway of [a building] to search again for the male. According to Officer C, “then he [Officer A] starts sliding westbound on the north side about four houses, then he just disappeared northbound.” Officer C then unholstered his pistol while in front of his location.

According to Officer A, he “flashed [his] flashlight toward Officer C who flashed it back so that we knew exactly where we were.” According to Officer C, he “secreted [himself] in darkness and just to see if I could hear anything and sure enough he [the unidentified male] pops up from behind a car and he runs behind another car. He ran across the street.” The subject then ran toward the street and then into a walkway between two buildings, and Officer C pursued him.

According to Officer B, he heard Officer C broadcast that “had a [subject] running westbound towards [the street].” According to Officer C, at that point he pulled his hamstring. The hamstring pull caused Officer C to reach for his right leg with his right

hand. As he did so, Officer C unintentionally fired one round from his pistol into his right thigh. Officer C then fell to the ground and lost his grip on his pistol and his radio, which flew forward from his position. Officer C crawled along the ground to recover his radio and broadcast over his radio that he had been shot. He did not immediately broadcast his location because he did not know it.

Officer C saw a resident of the apartment complex open the front door. Officer C asked for the address. The male “just mumbled like [a house number] and shut the door,” so Officer C just broadcast the number.

Meanwhile, Officers A and B heard Officer C’s broadcast. Officer B broadcast “Officer Needs Help” on his Area’s base frequency and the last known location of Officer C, but could not immediately locate Officer C. Officer B then used his radio to ask Officer C to “give me your light.” Officer C then used his flashlight to indicate his location and Officer B found Officer C in the walkway.

Operating under the belief that Officer C had been shot by the subject he had pursued, Officer B unholstered his pistol and cleared the area. Officer B returned to Officer C’s location and saw his pistol on the ground. Officer B picked up Officer C’s pistol and saw that the gun had undergone a malfunction. Officer B, he cleared the malfunction from Officer C’s pistol so that Officer C would “be able to protect himself in case the [subjects] came back.” Officer B attempted to give the pistol back to Officer C; but due to his injury, Officer C was unable to take possession of it.

According to Officer A, meanwhile, he heard Officer C’s “shots fired” broadcast on the Simplex channel. Officer A responded and located Officer C, unholstered his pistol and cleared the walkway. Officer A then requested a Rescue Ambulance (RA) for Officer C and asked Officer C if he had been shot by the subject. According to Officer A, Officer C “told me that he thought he may have shot himself, but he wasn’t sure.”

Officer C was transported to a hospital, where he was treated for his injury.

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, B, and C's tactics to warrant Administrative Disapproval.

B. Drawing/Exhibiting/Holstering

The BOPC found Officer A, B, and C's drawing/exhibiting to be in policy.

C. Tactical Unintentional Discharge

The BOPC found Officer C's unintentional discharge to be negligent.

Basis for Findings

A. Tactics

1. Communication

The BOPC noted that a gang-related homicide had occurred and Officers A, B, and C conducted a follow-up to a known rival gang's area in an attempt to locate potential homicide suspects, enforce the gang injunction, and monitor the area for possible retaliation from the victim's gang. The officers did not update their status with CD to indicate that they were at the initial shooting location. Therefore, the officers are reminded that in order to facilitate the response of additional units, should they become necessary, they must advise CD of their updated location.

2. Tactical Planning / Apprehension vs. Containment

The BOPC further noted that the officers collectively decided that they would conduct the follow-up investigation. However, the investigation revealed that there were no further discussions pertaining to the tactics they would utilize if they had encountered any suspect(s). According to the officers, they had discussed tactics relating to foot pursuits and other tactical situations prior to this incident, but when asked if there was a specific plan prior to searching the alley, Officer C answered, "*No. And I've mentally gone over it myself, and "It just kind of happened quick. You know, we're looking, we scan, we hit the alley and boom, there they are."* This lack of planning is evident when the officers encountered subjects, resulting in multiple foot pursuits. According to Officer A, "*I was never in direct foot pursuit. I was more in running for containment..."*" and according to Officer B, "*I went over Simplex and I said, 'I'm going to go one north and try to contain - - try to contain that alley.'" Based on their statements, Officers A and B followed the subjects movements in an attempt to establish containment. However, the investigation revealed that Officer C pursued the last subject with the intent to apprehend him as noted in his statement, "*And about midway- - I got pretty good wheels. I was catching up to him..."*" The officers' lack of planning resulted in them working to accomplish different goals.*

Therefore, as communication between officers is paramount for officer safety and in order to ensure that the officers maintain a tactical advantage, the officers are reminded of the importance of coordinating their roles to ensure that each officer is aware of the intentions of the other officers, and that the integrity of the contact and cover concept is not compromised.

3. Simplex Channel

The BOPC found that the officers utilized a Simplex channel to communicate. History has shown that Simplex frequencies are somewhat unreliable and that, occasionally, important communications between officers are missed. Tactical frequencies are not only more reliable than Simplex channels, but are monitored and recorded by CD. In the event of an emergency being broadcast over a tactical frequency, CD personnel would be able to assist in the response of additional resources. However, since Simplex channels are not monitored, the request for help may go unheard. Officer safety is enhanced through abiding by established communication protocols. To accomplish this, the officers should operate on their assigned base frequency or a monitored tactical frequency.

4. Separation

The BOPC found that Officer A left the police vehicle, pursued a subject, and separated a distance of approximately 125 feet from his partners, resulting in Officers B and C temporarily losing sight of him.

After Officer C caught up with Officer A, Officer A proceeded to move to the corner of the block with the intent to contain the subject while leaving Officer C at the last known location of the subject. This created an approximate separation of 275 feet, placing each officer at a severe tactical disadvantage. In the meantime, Officer B drove the police vehicle to a position one street north of Officer C's location in an attempt to establish containment and requested additional resources.

Officer C observed a subject flee and broadcast that he was pursuing the subject. Officer B was not in position to observe Officer C engage in the foot pursuit. Officer A observed only what he "believed to be" Officer C running across the street. As a result of the separation, Officer C was alone at the time of the unintentional discharge and neither of his partners heard the gunshot. Officers A and B were unaware of Officer C's dire situation until he was able to pull himself along a pathway, retrieve his radio, and broadcast that he had been shot. Furthermore, Officer C was unaware of his location and relied on a resident to provide him with the address. Had Officer C been unable to broadcast information, the separation between the officers could have led to tragic consequences as Officers A and B would have no way of knowing what had transpired.

5. Running with pistol drawn

The BOPC further noted that Officer C observed a subject run across the street and elected to pursue him while maintaining his service pistol in his right hand and his radio in his left. During the foot pursuit, Officer C pulled his hamstring muscle and reached toward it with his gun hand, resulting in an unintentional discharge. The round struck Officer C in the right thigh.

6. Help Call

The BOPC noted that after Officer C shot himself, he broadcast "Help" on Simplex. Although Officers A and B were aware of the general vicinity of Officer C, Officer C was unaware of his exact location, resulting in Officer B driving past him. Once Officer C was advised by a citizen of his location, he broadcast the location on Simplex and was subsequently located by Officers A and B. Officer B then broadcast the pertinent information and address on the appropriate base frequency. Therefore, Officer C is reminded of the importance of knowing his location and to broadcast pertinent information on the appropriate base frequency to ensure the necessary resources are requested and deployed.

The BOPC found Officers A, B, and C's tactics to warrant Administrative Disapproval.

B. Drawing/Exhibiting/Holstering

• Officer A

The BOPC noted that Officer A observed a subject run through an alley and jump a fence as he and his partners were approaching him in their vehicle.

According to Officer A, "*Believing that the [subject] that was fleeing from us may be a [gang member]; may have been involved in the earlier shooting and may have been armed,*" Officer A drew his service pistol as he searched the parking area and courtyard leading to the street.

Officer A holstered his service pistol until he reached an area where he believed the subject had crossed. Officer A again drew his service pistol to conduct a search of the area. Following the search, Officer A holstered his service pistol and moved to position on the perimeter.

Officer A then heard the "shots fired" broadcast and responded to Officer C's location. Once there, Officer A drew his service pistol because he feared Officer C had been shot by a subject and believed the subject was still in the area.

- **Officer B**

The BOPC further noted that Officer B drew his service pistol upon responding to Officer C's broadcast that he had been shot. According to Officer B, *"I believed that the situation could escalate to the point where deadly force would be justified due to the fact that my partner said he had just been shot, and, you know, and I could see evidence of that."* Therefore, it was reasonable for the involved personnel to believe that the tactical situation could escalate to the point where lethal force may become necessary.

- **Officer C**

Officer C drew his service pistol when he observed Officer A in front of a building and moved through the courtyard to join him. Officer C holstered his service pistol when he joined Officer A. Officer C then drew his service pistol again as he and Officer A searched the area where they believed the subject may have fled to and reholstered after the area was cleared. When Officer C left to take up a perimeter position, Officer C drew his service pistol a third time and held it in a close contact position as he hid in the shadows. Officer C then elected to re-search the area that he and Officer A had previously searched. During the search, a subject fled from the area toward the street and into a courtyard.

It was reasonable for the involved officers to believe that the tactical situation could escalate to the point where lethal force may become necessary. Therefore, the BOPC found Officers A, B, and C's Drawing/Exhibiting to be in policy.

C. Unintentional Discharge

The BOPC noted that Officer C maintained his service pistol in his right hand and his radio in his left. Officer C observed a subject run across the street and elected to pursue the subject with his pistol drawn. Officer C failed to adhere to the basic firearm safety rules, resulting in an unintentional discharge. Officer C's pistol functioned as designed, and the discharge was the result of a deviation from Department training.

The BOPC found the unintentional discharge of Officer C's service pistol to be negligent.