

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

UNINTENTIONAL DISCHARGE – 051-08

<u>Division</u>	<u>Date</u>	<u>Duty-On(X) Off()</u>	<u>Uniform-Yes(X) No(X)</u>
Foothill	05/26/08		

<u>Involved Officer(s)</u>	<u>Length of Service</u>
Police Officer A	2 years, 7 months

Reason for Police Contact

An officer conducting a vehicle stop failed to place the unit in park before exiting, then attempted to do so while handling a pistol, resulting in an unintentional discharge.

<u>Subject(s)</u>	<u>Deceased ()</u>	<u>Wounded ()</u>	<u>Non-Hit (X)</u>
Male, 22 years of age.			

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.

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 May 19, 2009.

Incident Summary

Detective A planned a surveillance of Subject 1, who was on parole and reportedly was carrying a gun. Detective A briefed Officers A, B, and C, and told the officers that if Subject 1 was in a vehicle and needed to be stopped, uniformed officers in a marked police vehicle would be summoned to make the vehicle stop.

Detective A and the officers deployed to the surveillance location, and identified the subject and his vehicle. All of the officers were wearing plain clothes. Detective A and Officer A were not wearing body armor or raid jackets. Officers B and C were wearing body armor and raid jackets.

Meanwhile, uniformed Police Officers E and F conducted an unrelated traffic stop in the area of the surveillance. At the conclusion of the traffic stop, Officers B and C drove up, identified themselves, and advised of the surveillance on the subject who was believed armed. Officers B and C requested assistance in conducting a felony vehicle stop. Officers B, C, D and E then relocated to the area and remained out of sight of the surveillance.

While Officer E waited, he used his cellular phone to contact the Area Watch Commander, Sergeant A. Officer E informed Sergeant A that he and Officer D had been contacted by officers who requested assistance conducting a felony traffic stop. Sergeant A told Officer E that he was going to dispatch an additional unit to assist with the traffic stop.

Detective A and Officer A observed Subject 1 open the passenger door to his vehicle and remove what appeared to be blue-steel pistol from his waistband. Subject 1 walked back to the apartment, returned with two other subjects, then entered the vehicle and drove out onto the street. Detective A broadcast that Subject 1 had possession of a pistol.

Detective A advised Officers D and E to go mobile, and to request a backup and an Airship. Detective A also advised the officers that upon arrival of backup, they should do a high-risk felony stop on the vehicle.

Officers E and D passed Detective A and Officer As' vehicle and positioned their vehicle behind Subject 1's vehicle. Detective A and Officer A followed behind Officers D and E and were followed in turn by Officers B and C.

According to Officer E, he was about to put out the broadcast when Subject 1 made a quick turn into a driveway. Officer D followed the vehicle onto the half circle driveway and stopped behind it.

After Officer D stopped, he exited the vehicle, drew his pistol, then stood behind the driver door and commanded Subject 1 to exit the vehicle. Officer D thought he had put the police vehicle in park. Officer D opened the door, got out, and drew his gun. Officer D then saw that police car was still moving, so Officer D hopped back in the vehicle with his gun still in his right hand, and tried to put the vehicle in park with his left hand. Officer D's gun then discharged one round. Officer D did not communicate to Officer E that he had discharged a round.

Meanwhile, Officer E exited the police vehicle, drew his pistol, took cover behind the passenger door and began to verbally command the passenger to show his hands. However, the police vehicle moved forward approximately five feet until it stopped

approximately one foot from subject vehicle bumper. Officer E then heard a firearm discharge, and immediately thought that because he had visual observation of the subjects and saw no movement, the round must have been discharged by Officer D.

Detective A and Officer A parked in the driveway behind Officers D and E's vehicle. Officer A deployed behind Officer E and drew his pistol, and Detective A drew his pistol and stood to the rear of the marked police vehicle.

Officers C and B parked on the half circle driveway. Officer B exited his vehicle, drew his pistol and deployed behind Officer E, and Officer C exited his vehicle, drew his pistol and took a position of cover behind his vehicle's door. According to Detective A and Officers A, C and B, they did not witness or hear the discharge of Officer D's pistol.

The subjects in the vehicle were then detained without further incident.

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 Detective A and Officers A, B, C, D and E's tactics to warrant a tactical debrief.

B. Drawing/Exhibiting/Holstering

The BOPC found Detective A's, and Officers A, B, C, D and E's, drawing and exhibiting of a firearm to be in policy.

C. Use of Force

The BOPC found Officer D's unintentional discharge to be negligent, warranting administrative disapproval.

Basis for Findings

A. Tactics

In its analysis of this incident, the BOPC noted the following tactical considerations:

1. The Watch Commander was not advised prior to setting up an Observation Post (OP).

Department Orders direct that personnel shall obtain approval from the Area watch commander (WC) or Officer In Charge, and notify the WC of the involved Area prior to the utilization of an OP.

In this instance, Detective A and Officers A, B, and C responded to a location with the intent to remain stationary for a period of time in order to gather intelligence and observe Subject 1's actions. These actions were consistent with those of establishing an OP. Although this was a spontaneous OP and a written Operation Plan was not required, Department policy required that the Area Watch Commander be notified of the OP and be provided with specific details such as the specific location, duty assignments (i.e., arrest teams, communication officer, etc.), the nearest hospital, and radio frequency to be utilized.

In order to prevent the potential for misidentification by uniformed personnel, Detective A and Officers A, B, and C were reminded of the importance of making the appropriate notification to the Area Watch Commander while conducting an OP.

2. There was no broadcast of a "stake-out."

Department Policy directs that a unit intending to "stake out" shall notify the control operator of the location.

The purpose of officers broadcasting a stake-out when conducting an OP is to help prevent uninvolved personnel from inadvertently becoming involved in the incident. This is important for two reasons. The presence of uninvolved personnel in the area of an operation may have an unintended deterrent effect that may prevent the operation from proceeding as planned. More importantly, if uninvolved personnel inadvertently come into contact with undercover officers during a tactical situation, the uninvolved personnel may mistake the undercover officers for armed criminal suspects with potentially tragic consequences.

It would have been safer for Detective A or Officers A, B, or C to broadcast a stake-out in the area to prevent a patrol unit from becoming unnecessarily involved in the unfolding situation.

3. Detective A and Officer A were not wearing body armor.

Department policy directs that plainclothes detectives who are in the field conducting tactical operations or engaged in field operations likely to result in contact with subjects shall wear body armor.

In this instance, Detective A obtained reported information, and confirmed through his own observations, that Subject 1 was armed with a pistol. There was substantial information relayed to and observed by Detective A and Officer A that should have led them to believe there was a heightened potential that they would come into contact with an armed subject. Although Detective A and Officer A were in plainclothes, current Department policy required that they wear their issued body armor when such contact was likely. The wearing of ballistic vests is vital to officer safety and should not be overlooked. Detective A and Officer A should be reminded to wear their required equipment while performing field duties likely to result in contact with subjects.

4. Officers D and E did not discuss a tactical plan prior to following the subject vehicle.

The California Commission on Peace Officers Standards and Training instructs that the primary officer and cover officer must effectively communicate with one another, advising any critical occurrences or safety issues. Although there is no codified Department rule addressing this consideration, Officers are taught to discuss tactical issues when working together. They are encouraged to discuss different tactical situations that they may become involved in and pre-plan appropriate responses. Communication among partners and to the other officers present is paramount for officer safety and planning.

This was Officer D and E's second day working together and they were unfamiliar with each other's tactics and training. There was ample time for the officers to discuss potential scenarios and tactics they would employ prior to being called in to stop the vehicle; however they did not do so.

Officers D and E should be reminded of the importance of discussing tactics on a daily basis and, time permitting, prior to engaging in a tactical situation.

5. Communications Division (CD) was not advised of the location of the incident until after the tactical situation had ceased.

Department Training directs that when a unit is conducting a field investigation and no assistance is anticipated, a "Code Six" followed by the location shall be broadcast.

In this instance, Officers D and E failed to notify CD as they began to follow the subject vehicle. The subject vehicle turned into a driveway where a high-risk pullover was conducted and the suspects were taken into custody. Only then was CD updated with the location and status.

Officers D and E should be reminded that in order to assist in facilitating the response of additional units, should they become necessary, they must advise CD of their updated location. Additionally, although there were two additional plainclothes units with Officers

D and E, it would have been appropriate for them to request an additional uniformed patrol unit for the following and the subsequent high-risk pullover.

Detective A and Officers A, B, and C followed Officers D and E in their respective vehicles prior to conducting the high-risk pullover. Once the suspect's vehicle pulled into the driveway and Officers D and E began to address the suspects, Detective A and Officers A, B, and C pulled into the driveway and positioned themselves to assist with the high-risk vehicle pullover. Although not critical of their decision to take action, an appropriate broadcast to CD that would have included their status and location, plainclothes officers' involvement, and their descriptions. Detective A and Officers A, B, and C should be reminded of the importance of notifying CD of their status, updated location and description, especially while operating in plainclothes.

6. Officer D did not place the police vehicles' transmission into the park position prior to exiting the vehicle.

In this instance, Officer D realized that his police vehicle was still moving, and with his firearm still drawn, reached into the vehicle and placed the vehicle into park with his free hand. First and foremost, if officers are deploying on subjects from a police vehicle, it is the driver's responsibility to ensure that the vehicle is placed in a tactically advantageous position and that the vehicle is placed in park. By doing so, the driver makes it safe to exit and allows the officers to tactically deploy on the subjects. Officer D did not place the vehicle in park as he exited, which created a tactical disadvantage for the officers as he had to re-focus his attention on the vehicle, instead of directing his full attention toward the armed suspect.

Officer D should be reminded of the additional responsibilities placed upon the driver of police vehicles while engaging subjects, and the potential negative ramifications that may present themselves if these responsibilities are not adhered to. This topic should be discussed at the Tactical Debrief.

The BOPC found that a Tactical Debrief is the appropriate mechanism for Detective A and Officers A, B, C, D, and E to evaluate the events and actions that took place during this incident and assess the identified tactical considerations to better handle a similar incident in the future.

Drawing/Exhibiting

Officers D and E drew their service pistols in order to conduct a high-risk pullover with the knowledge that one occupant was armed with a handgun.

Detective A and Officer A arrived on scene and stopped their unmarked police vehicle to the rear of the marked black and white police vehicle. Detective A and Officer A exited the vehicle and, fearing a confrontation with an armed subject, respectively drew their service pistols.

Officers B and C stopped their unmarked police vehicle along the left side of the marked police vehicle. Officers B and C exited the vehicle and in fear of a confrontation with an armed subject, they each drew their service pistols.

Based on Detective A's and the officers' knowledge that there was at least one firearm in the subject vehicle, it was reasonable to believe that the situation might escalate to the level where deadly force would become necessary. Therefore, the BOPC found that the drawing and exhibiting by Detective A and by Officers A, B, C, D and E to be in policy.

Use of Force

The BOPC noted that the unintentional discharge was due to operator error. Department approved training relative to basic firearm safety rules directs that the operator's finger should be off the trigger unless the operator has sights aligned, and intends to shoot.

Officer D's failure to adhere to the basic firearm safety rules resulted in an unintentional discharge. Officer D placed his partner, the additional responding officers and potential bystanders at significant unnecessary risk of being struck by unintentional gunfire. The unintentional discharge of Officer D's service pistol unjustifiably and substantially deviated from approved Department tactical training and was negligent in nature.

Therefore, the BOPC found Officer A's unintentional discharge to be negligent, requiring administrative disapproval.