



Case Report by Principal - MICHELLE L. RODRIGUI

Print Date: 8/14/2013

<u>Case Number</u>	<u>Incident Date</u>	<u>Issue Date</u>	<u>Complete Date</u>	<u>Complaint Description</u>	<u>Disposition</u>
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Total Cases per Principal: [REDACTED]

**Internal Investigation
Administrative Worksheet**

PI# 13-078

Principal(s): Deputy Michelle Rodriguez

Complainant(s): Administration

Facility/Division Commander: South Operations/Capt. Rudy

Disposition:

☐ Unfounded / ☒ No Further Action / ☐ Exonerated / ☐ Not Sustained / ☐ Sustained

☐ Administrative Leave

Discipline: ☐ Written Reprimand ☐ Suspension (# of hours _____)

☐ Demotion (to rank of _____)

☐ Dismissal

Comments / Other: _____

Administrative Disposition by: hmtsa

Date: 09-26-13

Administrative Appeal Hearing

Date: _____ **Time:** _____

In Attendance: _____

Comments: _____

Disposition: _____

Disposition by: _____ **Date:** _____

Complainant: Administration

Case Name: 13-078

Date of Complaint: 10/5/10

Division / Division Commander: South Operations Division / Captain Rudy

INITIAL ACTION

- ☐ **No Further Action**
- ☐ **Division Review**
- ☐ **Division Personnel Investigation**
- ☒ **Personnel Investigation**
- ☐ **Internal Criminal Investigation**

Internal Affairs:

Logged, P.I # and an Immediate Assessment by Internal Affairs:

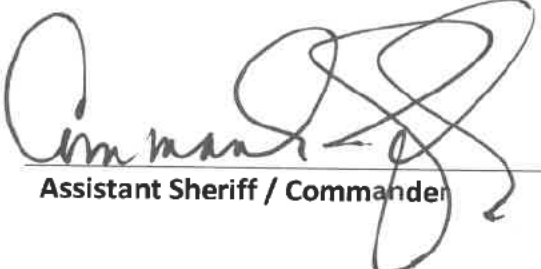
I.A Sergeant Reviewed by: _____ Date: _____

Internal Criminal:

Sergeant: _____ Date: _____

Investigator: _____ Date: _____

- ☐ **Administrative Leave**



Assistant Sheriff / Commander

09-06-13

Date

**ORANGE COUNTY SHERIFF'S DEPARTMENT
INTERNAL MEMO**



TO: Lieutenant Wang
FROM: Sergeant Inouye
DATE: September 25, 2013
RE: Administrative Review – Personnel Investigation #13-078

On September 23, 2013; I spoke to Deputy Michelle Rodriguez and advised her of the option of providing a statement regarding her officer involved shooting on October 5, 2010 which she declined.



**ORANGE COUNTY SHERIFF'S DEPARTMENT
INTERNAL MEMO**



TO: Lieutenant Mitch Wang *W*
FROM: Sergeant Gene Inouye
DATE: August 14, 2013

RE: Administrative Force Review #13-078

Internal Affairs Sergeant David Johnson completed the Administrative Force Review of Deputy Michelle Rodriguez' officer involved shooting that occurred on October 5, 2010. In Sergeant Johnson's review of the incident, he determined the following areas of concern involving OCSD policy:

1. Deputy Rodriguez' Patrol Video System was not activated at the time of the incident, which could be a violation of OCSD Policy Manual Section 446.3.1f(b)7.
2. Deputy Rodriguez initiated a foot pursuit of the subject by herself, which could be a violation of OCSD Policy Manual Section 458.4.

Other areas of concern that were identified include:

1. When Deputy Rodriguez saw that the suspect was involved in suspicious activity, she notified dispatch that she was on a "Ped Stop" instead of a "925 subject", which would have been more descriptive and would be viewed as more urgent to dispatch and her partners.
2. When Deputy Rodriguez deployed her taser at the suspect, he was too close and therefore did not have any effect on the suspect.
3. When Deputy Rodriguez was struggling with the suspect over her handgun, she could have disabled the handgun by ejecting the magazine.

The Orange County District Attorney's Office issued a letter dated February 23, 2011 that stated that Deputy Rodriguez' actions were reasonable and justified and did not support any finding of any criminal culpability on her part.

The Orange County District Attorney's Office filed several felony charges against suspect Thomas Spence on October 7, 2010 including: CPC 245 (d)(1) – assault with a firearm on a peace officer, CPC 12022.53 (b) – enhancement use of firearm, CPC 148 (d) – resist public officer with attempt firearm removal, and CPC 243 (c)(2) – battery upon a peace officer. On September 24, 2012; Spence pled guilty to CPC 245 (d)(1), CPC 148 (d), and 243 (c)(2) and was sentenced to four (4) years in state prison.

Deputy Rodriguez is currently assigned to North Patrol and has not been the subject of any personnel investigations after the date of this incident, nor does she have any past sustained personnel investigations.

Refer to all supporting documents for additional details.



- **Administrative Force Review Summary by
Sergeant Johnson**

SHERIFF'S DEPARTMENT, ORANGE COUNTY
Santa Ana, California

TO: Lieutenant S. Dubsky DATE: June 15, 2011
FROM: Sergeant D. Johnson INTRA-DEPARTMENTAL MEMO
RE: Administrative Force Review ¹³⁻⁰⁷⁸~~11-002~~, No Hit Officer Involved Shooting

Investigative Summary

Type of Incident: Deputy Involved Shooting- Non Hit

Opening Statement:

On Tuesday, 10-5-10, Deputy Michelle Rodriguez was working as a uniformed patrol deputy in the city of Laguna Niguel. At approximately 2137 hours, Deputy Rodriguez observed a subject (later identified as Spence, Thomas Andrew [REDACTED]) in the greenbelt area behind the closed commercial store at 28940 Golden Lantern. Deputy Rodriguez observed Spence with his hands in his pants and believed he was possibly trying to sexually gratify himself. Deputy Rodriguez was wearing a Sheriff's uniform with OCSD patches, badge, name plate and Sam Brown belt.

When Deputy Rodriguez attempted to contact Spence he fled and she began chasing him. On two occasions, she grabbed Spence and he turned in her direction. The second time Spence faced Dep. Rodriguez and ignored her commands to get on the ground. Spence walked towards Dep. Rodriguez and she fired her Taser at him but it was not effective. Spence grabbed Dep. Rodriguez's shoulders but she was able to push him away. Dep. Rodriguez tried striking Spence with her ASP baton but the blows had no effect. At some point Spence got Dep. Rodriguez's flashlight and held it behind his back. Fearing Spence may attempt to use the flashlight as a weapon against her, Dep. Rodriguez drew her Glock handgun and pointed it at Spence. Spence ignored Deputy Rodriguez's commands and grabbed her firearm. During a struggle for the firearm, Spence attempted to twist the firearm towards Dep. Rodriguez. She felt Spence's finger in the area of the trigger and fired two rounds to stop the perceived threat by Spence to use her gun and cause her great bodily injury or death. Dep. Rodriguez attempted to fire the gun a third time however, the gun malfunctioned.

Involved Personnel:

Rodriguez, Michelle #7285
Laguna Niguel Police Services
Date of Employment: 5-13-02
Date Assigned to Patrol: 8-14-09
Completed Patrol Training: 11-12-09
Prior Shooting Incidents: none
Prior Founded Force Incidents: none

Spence, Thomas Andrew

8-7-99; CVC 10851
5-8-02; CPC 273.5
6-28-04; CVC 23152(a), 23140 (a), 20002(a), 12500(a)
10-28-04; H&S 11550(a)
5-31-06; CVC 14601.2(a)
5-7-10; CVC 23152(a); CPC 243(b), 148(a) (1)
8-1-10; CPC 148(a)

[illegible]

Sgt. T. Jansen #762, OCSD

Suspect Spence had abrasions on his hands and knees, his left bicep, left ear, and on his forehead.

Physical Evidence:

From the scene:

- (1) Taser door cover part, plastic pieces, Taser AFIDS
- (1) Magazine with (12) unfired cartridges
- (1) Bullet fragment
- (1) Unopened "Bud Ice" beer bottle

From the suspect at Mission Hospital:

- Suspect blood sample (CFP Robert Vega)
- Digital photographs of Suspect
- Suspects clothing
- (2) Taser probes attached to a black tie.
- (1) Expended Taser cartridge and Taser wires.

Blood draw showed .17 BA no other drugs found.

The same DNA profile was obtained from the apparent blood on right side of the slide and from oral swab standard from Spence.

Spence would also not be excluded as the major contributor to DNA from swabs of the flashlight (handle and top ring and lens), the metal surfaces of the ASP, or the non ridged areas of the slide and barrel.

No typing results were obtained from the swab of the frame of the handgun. The swab of the grip yielded insufficient DNA for typing.

All latent prints were determined to be of no value.

Investigating Sergeants Observations: N/A

Weapons Used by Deputy Personnel:

Service Weapon Type: Glock Model 22, .40 caliber handgun, s/n [REDACTED]
Baton/ ASP/ Flashlight: Taser X-26, s/n X00-407068, ASP baton,
Type of Ammunition: Federal brand, .40 S&W caliber, each with an HST jacketed hollow point bullet.
Date Employee last qualified: 7-8-10
Date last trained with Weapon: 7-8-10

Weapons Used by Suspect:

Type of Weapon Used: Deputy's Flashlight and handgun

Weapons recovered: Both weapons were recovered.

Casings Recovered: One casing was recovered in the weapon. The other casing was never found. OC Crime Lab attempted to use a metal detector at the crime scene with negative results.

Gunshot Residue Results: Not conducted

Weapon checked for fingerprints/ DNA Results: Spence's DNA was found on the right side of the slide of the weapon, the top ring, lens, and handle of the flashlight, and the metal surface of the ASP.

Property Damage:

One apparent bullet strike on the underside of the roof overhangs behind 28940 Golden Lantern.

Criminal Investigator/ Charges Filed:

Investigators name: M. Thompson/ Salcedo

Court: Harbor

Charges: CPC 245(d) (1), 12022.53(b), 243(c) (2), 148(d)

Court Date: Last was 3-14-11

Lighting and Weather Conditions:

Dry weather with some lighting from the rear of the parking lot lights in the shopping center. The sidewalk between the buildings and hillside is separated by a small concrete drainage ditch or curb. There was some water in the ditch.

Involved Employees Statements:

Deputy Rodriguez: (Summary of interview with Homicide Investigators)

On Wednesday, 10-6-10, Deputy Rodriguez gave a free and not compelled statement to OCSD Investigators M. Thompson and D. Salcedo. AOCDS President Wayne Quint and AOCDS Attorney David Goldwasser were also present. The interview was at the Aliso Viejo Sheriff's Substation.

Deputy Rodriguez said she started her shift on 10-5-10 at 1600 hours. Her assigned position that day was patrol in Laguna Niguel. She was wearing her complete Sheriff's green uniform with patches, a badge, and her name plate. . She was also wearing her complete Sam Brown belt equipped with various pieces of equipment. She had her flashlight, a Streamlight, about 12 inches long, in the sap pocket of her uniform pants. She was not aware of any problems with her equipment prior to beginning her shift. Her PVS was system was not active at the time of the incident.

On 10-5-10, between 2030 and 2100 hours, she was dispatched to a "Disturbing the Peace" call at Patsy's Bar at Golden Lantern and Crown Valley in Laguna Niguel. Based on prior problems at this bar, four OCSD units responded. (According to the CAD, the call was dispatched at 2118 hours, and units were on scene at 2121 hours. Deputy Rodriguez was cleared from the call at 2123 hours.) The other units had already arrived and handled the call. Deputy Rodriguez drove through the parking lot to the Armstrong Nursery at Golden Lantern and Aloma to write some reports. She estimated she was there for about four minutes before she saw something.

Deputy Rodriguez observed a subject later identified as Thomas Andrew Spence, [REDACTED] in the green belt area behind the closed commercial center at 28940 Golden Lantern, across the street from where she was parked. She said it appeared all of the businesses were closed.

Deputy Rodriguez watched as Spence walked in the area behind the buildings then into the greenbelt area in between the businesses on the west and the residences on the west side of Calle Juca to the east. (Between the greenbelt and the walkway is a concrete drainage ditch.) Spence lay down between two bushes. The lighting was very limited but she watched Spence for about five minutes to see what he was doing. She walked across the street and attempted to contact Spence who did not seem to notice her. When she got closer, about three feet away, she saw that his pants were undone and he had his hands in his pants possibly trying to sexually gratify himself. She called in a "Ped Stop" on her radio and shined her flashlight on him. She said, "Hey, what are you doing?" and asked him to come down to the curb.

Spence appeared disoriented. He took his hands out of his pants pocket. He looked towards Dep. Rodriguez, and then started to look around. He said something but Dep. Rodriguez could not recall exactly what he said. She said his tone of voice sounded aggressive or hostile. Spence looked up the hillside, and then started running up the hillside between the commercial businesses and houses. Dep. Rodriguez advised dispatch that the subject was running from and then began to chase him. As she chased Spence, she noticed he appeared to be intoxicated, stumbling down the hill towards the back of the commercial buildings.

Dep. Rodriguez remembers grabbing Spence on two occasions. He would turn in her direction and come back towards her. The second time, Spence faced her, took an aggressive stance, and started walking towards her saying "shoot me, kill me" and making suicidal statements. She felt Spence was willing to hurt her.

Spence kept walking towards her. Dep. Rodriguez deployed her Taser at Spence, but he was too close. Both darts went in to his tie and there was not sufficient distance between the probes to be effective. She estimated Spence was less than one foot away from her. Spence grabbed her shoulders but she was able to push him away, about three feet away. She drew her ASP baton and hit him twice using only one hand, while ordering him to get on the ground. The hits were to his left knee and torso area. They did not seem to have any affect except make him more aggressive. Once she had her ASP out, she noticed Spence was holding her flashlight behind his back with his right hand. The light was still on. She did not know how he was able to get it. She remembers that she was not holding it when she deployed the Taser.

Dep. Rodriguez was afraid that Spence would use the flashlight as a weapon against her. She drew her Glock handgun and pointed it at Spence. Spence continued making statements, "just shoot me." Dep. Rodriguez identified herself as the Sheriff's Department and ordered him to get on the ground. Spence ignore her commands and moved closer to her. He dropped the flashlight and grabbed on to her handgun with one hand at first, then two. During a struggle for the firearm, Spence attempted to twist the firearm towards Dep. Rodriguez. She lowered the gun and fired one round. He momentarily stopped pulling on the gun. He started to twist the gun towards Dep. Rodriguez again and she fired a second round. Dep. Rodriguez then went to the ground, using her body weight to prevent him from being able to twist the gun in her direction. He was still able to point the gun in her direction. She tried jamming her finger into the trigger in order to prevent him from firing the gun. She could feel his finger in the trigger area.

Dep. Rodriguez was asked if she attempted to fire her gun a third time and she said no because the gun was pointing towards her. Later she said she did try firing a third shot prior to going to the ground but the gun would not fire. It was not known if there was a malfunction of the weapon or not. She believed at the time they were struggling for control of the weapon that it would still fire.

Dep. Rodriguez was on the ground on her right side, trying to prevent Spence from getting her gun. He was on top of her. She estimated the struggle lasted about two seconds before he got up and started going towards the side of the building. She held on to her gun and tried to secure it. She could not get it into the holster because the slide had not gone all the way forward due to the malfunction. She continued following Spence to make sure he did not get away. When he tried turning a corner of building he stumbled and fell on to his stomach. Dep. Rodriguez got on top of him and tried placing his hands in handcuffs. She was able to get his left hand handcuffed but could not get his right hand cuffed. She was giving him commands, but Spence was holding his right hand above his head and was not cooperating. This is when Sgt. Jansen and Dep. Schwitters arrived and assisted getting Spence handcuffed. Spence was taken to the sidewalk area where he began to yell. Dep. Rodriguez remembered him yelling something like, "shoot me, kill me." Spence never said anything regarding the shooting, baton strikes, or Taser. He was checked by OCFA and verified he did not have any gunshot wounds.

Dep. Rodriguez was not sure how many rounds were loaded in her magazine. She believed there were 15 rounds in the magazine and one in the chamber. She said she fired her gun because she feared Spence was attempting to take her gun away from her and possibly use it against her. She believes his intent was to kill her.

It was not immediately apparent Dep. Rodriguez knew Spence was related to the disturbance at the bar. Once he was taken in to custody, she looked in the bushes in the area where he had been and found a bottle of beer. She initiated contact with Spence because he may have been involved in some type of criminal activity. Dep. Rodriguez said she could smell the odor of an alcoholic beverage on Spence. She said every time she gave him a command, it seemed to make him angrier.

Witness statements:

██████████ said she heard male and female voices behind her residence on the hill between 2120 2130 hours. She walked in to her backyard to see what was going on. She heard the male say, "Get the fuck away." The female said "Sir, get on the ground" and "Sir, you don't want to do that." ██████████ then saw a flashlight waving around in the air and heard scuffling. The female said, "Get on the ground." Shortly after, she heard two gun shots. She went back in to her house and called 9-1-1.

██████████ heard a female say, "Get out of my backyard." He then heard a male and female yelling at each other and shortly after, heard two "pops." He did not call 9-1-1 because he already saw a patrol car on his street.

██████████ could hear her next door neighbor yelling. She went in to the bathroom to listen better and she heard a "pop" noise. She described the "pop" noise as sounding like a firework. While she was in the bathroom, she heard a female voice yell, "Get on the ground. She remembers hearing a second "pop" noise but doesn't know when she exactly heard it. She immediately called 9-1-1.

At about 2130 hours, ██████████ was in the kitchen of his house when he heard an unknown noise. He heard a voice that he recognized as his neighbors saying, "What the hell are you doing here?" and "get the fuck out of here." ██████████ said he saw a flash of light from the hillside behind his house followed by a "bang" noise. ██████████ and his mother walked outside to the front of their house. About 30 seconds later he heard another "bang" followed by a third "bang" about a minute later. He described the bangs as sounding like "fireworks." His mother, ██████████ called 9-1-1.

██████████ said he was in the living room with his son ██████████. He heard what sounded like fireworks. They stayed in the living room and did not hear anything else.

██████████ said he was in the living room with his father, ██████████. He heard what sounded like fireworks. They stayed in the living room and did not hear anything else.

██████████ is a bouncer at Patsy's Bar. He said he was involved in a verbal argument that turned physical, with Spence, prior to the shooting.

██████████ said when he arrived for work at about 2100 hours, a waitress ██████████ told him to watch for a white male wearing a white shirt, black tie and black pants. She said the subject took a drink outside the front door earlier and was being an "asshole." ██████████ walked around the interior of the bar for about ten minutes before seeing the subject outside walking on the sidewalk. He was walking towards Patsy's from a neighboring restaurant named El

Cortez and was carrying a pint sized beer glass in his left hand. The glass appeared to have beer in it. (█████ was shown a picture of Spence and he immediately identified as the same subject he had seen walking outside.) █████ said alcohol was not permitted outside so he asked Spence to take the beer inside. Spence yelled at █████ "Don't tell me what to do." █████ told Spence he worked at Patsy's and he could not have the drink outside. Spence moved closer to █████ so █████ put his hand in front of him to keep Spence at a distance. Spence began pointing his finger at █████. █████ moved his hand in a round motion pushing Spence's hand away from him. Spence was yelling and told █████ not to touch him. █████ described Spence's demeanor as "super combative" and "aggressive." Spence pushed █████'s chest with his right hand. █████ saw Spence raise the beer glass in his left hand and believed Spence was going to either spill the beer or hit him with the glass. █████ had a small metal handheld flashlight in his right hand and hit the glass, breaking it. █████ told someone to call the Sheriff's department at that time. Spence turned and ran northbound to Crown Valley Parkway. When the first deputy arrived, █████ explained what happened and said Spence was gone.

█████ said he arrived on scene right after the shooting. He identified himself to Dep. Arredondo as a friend of Spence. He told Dep. Arredondo the following: He met Spence on the internet website Facebook. He has only known Spence for about three days. Today he said he picked up Spence from his mother house in Mission Viejo and drove him to West Court in Westminster. After court, they went to the El Torito in Dana Point Harbor to eat lunch. There, they each ordered and drank four margaritas.

At about 1630 hours, they left El Torito and drove to pick up a couple of █████ friends in Dana Point and Laguna Niguel. After, they went to Patsy's Irish Pub in Laguna Niguel at about 1700 hours. While at Patsy's, Spence drank four Corona beers. He started to speak in a loud tone and become physically aggressive. Spence walked up to █████ and slapped him a couple of times in the face. When █████ told Spence to stop, Spence slapped him on his left cheek. █████ walked outside and sat on the curb in front of the pub. Spence followed, but was holding █████ of beer. █████ told him he could not have the beer outside and to go back inside. Spence did not listen so █████ walked back inside Patsy's and sat at the bar. He heard some arguing outside and the sound of glass breaking. He walked back outside and Spence was gone. █████ was unable to find him. Later when █████ heard the sounds of sirens of police cars, he thought it had involved his friend Spence. █████ walked to Aloma and Golden Lantern and informed a deputy that he knew Spence.

Dep. S. Schwitters #4644

Schwitters was responding to the area of Aloma and Golden Lantern after Dep. Rodriguez advised she was in foot pursuit of a subject. While enroute, Sgt. T. Jansen advised he heard two gunshots. He arrived about the same time as Sgt. Jansen and they began to look for Deputy Rodriguez.

As they walked along the rear of the strip mall, he saw Dep. Rodriguez's flashlight on the ground about 10-15 feet from the south end of the building. As they got to the flashlight, they saw Dep. Rodriguez on top of a suspect, later identified as Spence. Spence was on his stomach and Dep. Rodriguez was trying to handcuff Spence. She had been able to handcuff

his left hand, and was trying to gain control of his right hand. Schwitters was able to help Rodriguez get Spence handcuffed.

He and Sgt. Jansen were asking Spence if he was shot. Spence seemed to be crying and was not answering their questions. Schwitters could smell a very strong odor of alcohol emitting from Spence's body. He asked Spence if he needed any medical attention and Spence did not reply. They helped Spence to his feet and walked him out to the curb so the fire department could treat him. Once he was cleared by the fire department, he was placed in the back of a patrol unit.

Sgt. T. Jansen #762

On 10-05-10 at about 2137 hours, he heard Dep. Rodriguez call out a ped stop on Aloma and Golden Lantern. A few seconds later, she advised the subject was running from her. He was responding from Greenfield and Crown Valley.

Once he arrived, he saw there were two other units in the parking lot of the Shell Gas Station at 28922 Golden Lantern. Dep. Rodriguez had advised she was behind the animal shelter and there were sounds of a struggle over the radio. At about 2139 hours, while looking for Dep. Rodriguez, he heard the sound of one gunshot, followed by one more shortly after. He followed the sounds and found Dep. Rodriguez behind the building at 28940 Golden Lantern.

Dep. Rodriguez was holding a subject later identified as Spence. She had one handcuff on him. He and Deputy Schwitters helped her get the other hand in cuffs and under control. She had holstered her duty weapon but her Taser, baton and flashlight were on the ground in the area. The magazine from her duty weapon was also on the ground.

Dep. Rodriguez said Spence may have been shot. Sgt. Jansen and Schwitters checked him but could not find any injuries. They walked him out to the curb so that the fire department could treat him. After he was treated he was transported to Mission Hospital for a medical evaluation.

Suspect Statements:

Spence was interviewed by Investigators Hatch and M. Thompson on 10-6-10 at about 0209 hours at the Sheriff's Headquarters in Santa Ana. Spence had previously been transported and medically cleared from Mission Hospital. He had been transported to headquarters by Deputies McDonald and Arredondo

Spence waived his Miranda Rights and admitted to being with his friend [REDACTED] earlier in the day. They had left a court appearance and went to the El Torito in Dana Point Harbor. They each had three margaritas. He didn't know what time they were drinking but it was still daylight. From there they went to one of [REDACTED] friends' house in Dana Point, then to Patsy's. It was Spence's first time at Patsy's. Spence said he was drinking with [REDACTED] and three of [REDACTED] friends. Spence said he drank margaritas and Corona beers at the bar. He said he could feel the effects of the alcohol.

Spence said he decided he didn't want to be around [REDACTED] anymore because he was "two sided." Spence said he was also upset at how the bar staff had been treating him. He walked away from [REDACTED] and his friends and went by the pool table. He remembered walking out of the bar but did not have any recollection about being kicked out or having a conversation with the bouncer. He did recall standing in the parking lot having a conversation with somebody but he couldn't remember who.

Spence said he remembered leaving the bar and walking down Crown Valley Parkway. He got into a conversation with someone who was having an argument with someone else. He said he didn't know the person and tried to talk to them about it, but it didn't go the way he wanted it to. He continued walking towards the 7-11 on Golden lantern. Spence said he didn't have any money to buy beer. He was told a bottle of beer was found in the area where he was arrested. He said "Now that were talking about all of this, I can remember, uhm, I can remember being like questioned or assaulted or whatever by a woman officer. And uh, her basically threatening me and telling me that it was a severe situation and I needed to cooperate." He said the officer was "undercover but she did have a badge or something like that. I do remember her being a police officer and I do remember her, I do remember submitting to her commands but at first being reluctant upon it." He said he wasn't entirely sure the female was a police officer.

Spence remembered the female officer "shooting me or shooting somebody shooting somebody." He remembered a gun going off and the noise awakening him. He said he froze then submitted to everything she was saying. He said, "from that point on knowing and realizing I had gotten myself into something pretty deep and that I needed to just talk and, and just do everything that she said."

Spence said he remembered walking on Crown Valley Parkway towards PCH and he was in "the hills." When asked how the initial contact with the female officer went, Spence said he thought it was just like a regular meeting not like him meeting an officer. Spence remembered her ordering him around. He remembers she told him to "shut the fuck up" and he "needed to obey what she was saying." Spence thought to himself "oh shit, I need to be listening to her." He heard her say, "sit down and cooperate." He said he could be wrong but remembered the officer saying he had "blown her cover." He thought she was wearing normal clothes.

Spence said he didn't believe the situation that he walked in to and thought it was "completely bullshit" and he didn't believe a word she said. Spence said he tried getting the "hell out of here" He remembered they were on some sort of hillside between the houses and the road. He remembered sliding down to get away.

Spence remembered being on top of the hill and near a bush. He said he did not know how he got on top of the hill. He remembered arguing with the female officer. He said "the argument was that, that I was going to go. That I wanted to get the hell away and that, uh, she didn't want me to or she wouldn't let me."

Spence said the officer pulled out a gun on him. He didn't know if it was in a holster or not, but it was on her right hip. When she pulled the gun, he knew she was telling the truth. He said, "The alcohol didn't help at all but, uh, you know, I'm just like in complete disbelief of

her, you know, and then when she pulled the gun that's when I realized that she was telling me the truth and that I had reason to fear for my life and that I should listen to her." When asked if he remembered getting in to an altercation with the officer, Spence said, "Uh well yeah, well I remember wanting to leave and trying to leave and leaving and her telling me no and her shooting." When asked if she fired the Taser at him, he said no. Then he said he thought he remembered a Taser but only remembered her pulling out a gun. He didn't remember her using a baton against him.

Spence said he felt weird talking about the incident since he couldn't really remember the incident. When asked if he immediately complied he said he did. He said he never approached the officer or grabbed her gun. He then said "When she first pulled it, I think I can remember trying to get it from her because I wasn't sure if she was an officer or not. I mean, because she didn't clarify it to me that she was really an officer. She told me that she was an officer but she had already had her gun drawn and at that point, you know, to me it was just some regular person, blowing you know, smoke up my ass." He thought he was dealing a "tweaker" who was making up a story involving a gun. The gun was in both hands of the officer. She kept telling him she was an officer but he didn't believe her.

Spence said he thinks he fought her for the gun. He tried to get it out of her hands because he didn't believe her. He thought she was some crazy person trying to kill him. He said he remembered fumbling over the gun. He remembered grabbing the gun where the hands go. He said when he was fighting with the officer he remembers the gun "flipping." He said it triggered in his head he needed to listen to the officer because she told him "enough" times she was an officer. He said he told her he was sorry.

He remembers hearing the gunshots when he grabbed for the gun. He recalled hearing two shots. He said the officer was holding the gun when the shots were fired. He remembered the gun somehow being in his hands at some point. When the shots were fired, the gun was pointing away from them outward. He said he remembered grabbing the top part of the gun with his left hand. When asked who had control of the gun, Spence said, "She did. I think I was trying to gain control over it." When asked if he was trying to take the gun away from her, he said, "I think so." Spence said the officer was saying to him while they were struggling for the gun "that I needed to, that I needed to follow her order, her instructions and I needed to basically listen to her." She again told him he had blown her cover.

When asked again about his alcohol consumption, Spence said he drank two margaritas, a Corona, and a shot of Jack Daniels. He said he was a "lightweight" ever since he had his [REDACTED] from a car accident when he was 14 years old. He said he thought the hard alcohol affected him differently. He did not think the shot of alcohol would make him "blackout." He said he normally just drinks socially and not to get drunk. He said he thought he was fine tonight until he drank the shot.

Spence said he is not seeing a psychologist or psychiatrist or taking any medication for his prior accident. He did say he was in jail for 74 days in 2010 and took [REDACTED] medication. He said alcohol is "kind of a hindrance" and the accident changed the way he can handle his alcohol. Spence said this does not happen to him every time. He didn't know if it depended on how much he has to drink, what he has to drink, or how quickly he drinks. He has been to

AA and knows how quickly you drink can have an effect on whether you blackout or not. He did not think he was drinking quickly tonight.

Spence denied taking any drugs. He said before his accident he did take acid and mushrooms. He has never used meth.

Spence again said he didn't recall the officer striking him with a baton or wrestling on the ground with her. He did not recall how he was handcuffed or even how he got down from the hill. All he could remember was running away. He did recall the other officers arriving on scene and being arrested. He didn't understand what he was being arrested for. He did not think the officer had his best interests in mind so he ran away. He said she was just doing her job by checking on him and he thought running away might have been disobeying a police officer but he didn't think about it at the time.

Spence said the officer told him at least twice that she was an officer. He said she was yelling at him about blowing her cover and "fucking everything up." Spence said when he was struggling with the officer over the gun; He didn't recall pointing the gun at her. He did recall changing the angle of the gun away from him. He didn't remember if the gun was pointed at the officer or just away from both of them. He did not remember if he used one hand or both hands to grab the gun.

Spence was asked if he was alone. He said he couldn't remember but thought there was another guy who "hopped the fence and ran away." He did not remember seeing a police car or any lights. He recalled there being light. He denied seeing a flashlight or handling a flashlight. He denied ever telling the officer to just shoot him. He said it was just the opposite. The officer said she was going to shoot him if he didn't do what she says.

Spence described the officer as "She was White, I think. I think she had like sandy blonde hair or brown hair I don't really remember." He thought she was wearing regular clothes. He said he has short term memory loss. He thought she was wearing a white polo shirt.

After the shots were fired, he remembered the officer saying, "Officer down. Officer down. Requesting back-up." He did not remember if she had a radio or not. He recalled seeing police cars on the street.

Spence said he has had past encounters with law enforcement where he was uncooperative or was lying. He said during his DUI arrest in May 2010, he was fighting with two officers. He thought he was just defending himself but no one was going to believe him because he was not a police officer. Spence said he has not had any previous contact with Deputy Rodriguez.

After a short break, Spence asked the Investigators who they worked for. He became agitated once he learned they were from the Sheriff's department. He was told he had been involved in a serious situation. He said he didn't doubt the seriousness of the situation, but began yelling about not being told what was going on. Spence thought his rights were being violated and he needed an attorney.

Areas of Concern:

Her PVS was system was not active at the time of the incident.

When she got closer, about three feet away, she saw that his pants were undone and he had his hands in his pants possibly trying to sexually gratify himself. She called in a "Ped Stop" on her radio and shined her flashlight on him. She said, "Hey, what are you doing?" and asked him to come down to the curb. Call out a 925 person versus a ped stop.

Spence looked up the hillside, and then started running up the hillside between the commercial businesses and houses. Dep. Rodriguez advised dispatch that the subject was running from and then began to chase him. Foot pursuit policy- Don't chase after, exposing yourself from any cover/concealment you may have. Responding units had a hard time finding her.

Dep. Rodriguez deployed her Taser at Spence, but he was too close. Both darts went in to his tie and there was not sufficient distance between the probes to be effective. She estimated Spence was less than one foot away from her. Using Taser at closer than recommended distance.

Spence ignore her commands and moved closer to her. He dropped the flashlight and grabbed on to her handgun with one hand at first, then two. During a struggle for the firearm, Spence attempted to twist the firearm towards Dep. Rodriguez. She lowered the gun and fired one round. He momentarily stopped pulling on the gun. He started to twist the gun towards Dep. Rodriguez again and she fired a second round. Disable gun by ejecting magazine before fire, you had a back up.

OCSD Policies

Patrol Video System (PVS)

446.1 POLICY STATEMENT

The use of a Patrol Video System (PVS) can provide powerful evidence in support of public safety. Therefore, to assist with keeping the public trust and maximizing the effectiveness of this valuable tool, procedures for use of the PVS system are set forth below.

It is the policy of the Orange County Sheriff's Department for Sergeants, Deputy Sheriffs, Sheriff's Special Officers (SSO) and Community Service Officers (CSO) to deploy the PVS every shift worked in a department vehicle equipped with the PVS system. Throughout the remainder of this policy, "Deputy" will be synonymous for all of the aforementioned personnel. .

446.1.1 DATE POLICY APPROVED OR REVISED

Effective: June 17, 2010

446.2 PURPOSE

The primary purpose of the PVS system is documentation and preservation of video evidence. In addition, the recording of our department's interactions with its citizens provides transparency and accountability for the Citizens of Orange County. The PVS is designed to assist and compliment deputies in the performance of their duties. Through proper utilization, the PVS will aid in the prosecution of criminal offenders, refute allegations of departmental wrongdoing, assist and provide evidence during civil litigation, and provide video documentation for future training needs.

The PVS system is intended to support deputies' actions during various citizen encounters by providing a visual and audio record of contacts. The video will provide an accurate, unbiased account of the incident being recorded and, as such, supplement the deputy's report.

Nothing in this policy prevents the Department from utilizing PVS video footage during an internal affairs investigation; although, it should be noted in many instances PVS video footage has been valuable in refuting false allegations against Department personnel.

446.2.1 EXPLORATORY SEARCHES

Review of PVS video by a supervisor without a specific reason to do so is prohibited. Specific reasons to review PVS video may include but are not limited to commendations, training, the investigation of complaints, an unambiguous and reasonable concern of unprofessional conduct, quality assurance and the review of critical incidents

446.3 TRAINING

It is the policy of the Department for all deputies assigned to Field Operations to be properly trained in the use and operation of the PVS system. In those unique situations where a deputy has not received PVS training, the deputy will secure supervisor approval prior to operating a PVS equipped vehicle. Please note when the vehicle is started, the PVS will automatically activate in the background mode and begins recording activity, audio is not recorded in background mode. Additionally, the PVS will switch to an active record mode whenever the forward red light is turned on, all emergency lights are turned on, VLP

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microphone is activated, the operator manually depresses the red record button, and/or the vehicle is involved in a collision. For the aforementioned reasons, deputies not trained in the use of PVS system, should contact the PVS custodian or a patrol supervisor for guidance prior to operating a PVS equipped vehicle and/or when the PVS records information of evidentiary value or interest to the Department. In-service training will be provided for deputies already assigned to the Patrol Command who are using the digital PVS for the first time. This training will be provided by County Communications, a trained supervisor or deputy, and/or the PVS custodian.

Newly assigned trainees to the Patrol Command will be provided a minimum of one hour of personal tutelage and two hours of in-field application.

At a minimum training shall consist of:

- (a) Instruction in the function and use of the PVS.
- (b) Instruction in the proper times to activate or deactivate the PVS system.
- (c) How to make a "case."
- (d) How to preserve a "case" as evidence.
- (e) How to request a digital copy of a recording for Court.
- (f) How to report a PVS that is in need of repair.
- (g) When and when not to utilize the Nightwatch function.
 - 1. Note: To prevent overexposure of the video images, the Nightwatch function should only be used in very low light condition; i.e. a dark alley which has little to no ambient lighting.

The individual conducting the in-field training will assure the Deputy and/or trainee receiving the instruction fully understands the PVS system and its proper operation.

Training will be consistent with other patrol training a deputy receives during Field training and will be recorded in the trainee's file by the Field Training Officer.

Deputies who have already completed field training will sign a Digital PVS training Log acknowledging they have been trained. Once signed, the form will be forwarded to the Sheriff's Risk Management Bureau for retention. If a deputy is still in need of training it will be their responsibility to advise their supervisor by way of memo.

446.3.1 PVS USAGE

At the start of a shift, the deputy will check to assure the video files from the previous shift were successfully downloaded. Downloading is indicated at the top of the PVS screen as the available free memory on the system's Compact Flash card. A completely downloaded Compact Flash card is indicated as "15.4 GB", which means there are no video files left on the PVS and downloading is complete. Any malfunction or failures during the download must be immediately reported to the shift supervisor and a work order shall be submitted to the PVS custodian by the reporting deputy.

- a. Any digital recordings on the PVS will automatically begin to download wirelessly whenever the patrol car comes within a few hundred yards of designated stations if the unit is not in active record mode.
- b. Any digital recordings from a prior shift which were not downloaded prior to returning the unit to service should be reported to a field supervisor.

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c. Vehicles returning to service that have not fully downloaded previous recordings, may have their respective Compact Flash card changed by a field supervisor. Deputies should not utilize a Compact Flash card that does not have a minimum of approximately seven gigabytes of remaining memory. Available memory is indicated on the top of the PVS video screen as a numeric value; i.e. 10.4 GB.

d. Supervisors will have Extra Compact Flash cards for the PVS system for those times where a shift may run longer than normal or a double shift is scheduled or anticipated and the vehicle cannot go to one of the download locations.

e. Field supervisors, who have changed out a Compact Flash card, as described above, will turn the full or partially used Compact Flash card in to the appropriate PVS custodian.

The PVS system records onto a Compact Flash card that has an approximate 12 - hour recording capacity. To ensure a Compact Flash card will last an entire tour of duty and to maximize system storage capacity, deputies should only record active "events" as described in paragraph "f" of this policy.

In addition to these recordings, the system is constantly running in what is referred to as "background mode." When recording in background mode, two frames per second and no audio are captured while the vehicle is running. In an actual active-recording mode, the system is capturing approximately thirty frames per second with audio. Once the power to the vehicle has been turned off, the system will enter a delayed shut-down mode for approximately forty-five minutes; although, the PVS will not actually record video footage, it will continue to download video files to the server.

f. Each deputy shall record, both visually and audibly, the following:

1. All calls for service

- (a) This shall include all deputies who arrive to a call for service whether or not he/she was assigned to the call.
- (b) PVS shall be activated while en route to the call and remain on until the call is completed.

2. Pursuits

- (a) Audio and Video recording will begin automatically with the activation of the overhead lights.
- (b) Video recording will continue until the unit is manually deactivated.

3. Car stops

4. Arrests

5. DUI observations and field balance and coordination tests

6. Traffic enforcement and pedestrian stops

7. Contacts with the public whenever possible

8. Exceptions to the PVS recording policy are permitted where a confidential informant's identity must be protected, or an investigative technique preserved as authorized by California Evidence Code 1040, 1041, and 1042. Deputies will be required to provide justification for not recording a particular incident or contact as described above.

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The above list is not all-inclusive and each deputy is encouraged to use his or her judgment regarding PVS usage. If a deputy fails to record a disputed incident they should provide justification for the lack of a recording and should document this explanation in their daily activity log; i.e. crime in progress happening unexpectedly without sufficient time to activate the PVS. During incidents as described, a deputy should activate their PVS as soon as practical and safe to do so.

The PVS system is always recording in a background mode. When a deputy activates the record button (via microphone, the record button on the system monitor, or overhead lights) the system will retain 30 seconds of recording prior to activation. This will allow traffic violations, erratic driving, suspicious activity and other unusual happenings to be captured.

When the PVS has been activated to document an event, it will not be deactivated until the event has been concluded. Except in the event of an extended incident, i.e., traffic control or accident scene, the deputy may deactivate the system to conserve recording time. In such cases the deputy shall document the reason for stopping the recording by orally noting, on the recording, the intent to stop capturing a specific event or incident prior to stoppage.

Deputies should be aware of the additional applications of the PVS including the use of the audio recording capability when incidents occur outside the view of the camera. Such applications may include recording conversations during domestic disputes occurring inside a residence or recording statements made during a "keep the peace" call occurring behind an apartment complex. By being aware of the PVS capability deputies can maximize its use.

g. Except for K-9 patrol cars, each unit is equipped with a rear seat camera and microphone.

446.3.2 DEPUTIES' RESPONSIBILITIES

Prior to the beginning of each shift, each deputy utilizing a PVS system shall log onto their respective PVS with their assigned USB key. If the PVS is utilized without a USB key, the deputy will notify the PVS custodian so the PVS recording may be properly marked with the appropriate deputy's information. After log-on is complete, deputies shall perform the below pre-operational and operational inspection to ensure the PVS is functioning correctly.

Perform a Pre-operational Inspection Test:

- (a) VoiceLink Plus® (VLP), 900MHz digital spread spectrum wireless microphone:
 - 1. Adequate power source (batteries)
 - 2. Connected to the recording equipment (remote links with onboard vehicle system).
 - 3. Remote activation of system via transmitter (microphone).
- (b) Camera Lens:
 - 1. Windshield and camera lens are free of debris.
 - 2. Camera facing intended direction.
- (c) PVS Recording mechanism:
 - 1. Powers up when car is turned on

Perform an Operational Inspection Test:

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- (a) Remove the microphone from the charger and place it in an accessible location on your belt, shirt pocket, etc. and clip the microphone to your lapel. At the end of a patrol shift, microphones should remain in the vehicle charger or returned to the equipment room.
- (b) Start recording for a short period. It is recommended that the recording be initiated by turning the microphone on, then walk in front of the vehicle (camera), state your name, date and unit number, then play it back to confirm the audio and video were recorded properly.
- (c) Unless authorized by a supervisor, vehicles will not be utilized for patrol without a properly functioning PVS system, which includes video and audio capabilities. iv) Sheriff's K-9 patrol vehicles will be equipped with a power control switch to turn off the PVS. K-9 deputies shall only turn the power off to their PVS at the end of watch (EOW) and/or prior to driving their patrol car home. This provision is in place for officer safety reasons.
- (d) Any malfunctions of the PVS equipment shall be documented on a "Sheriff's Department County of Orange Vehicle Trouble Report" in the "other" category and then the repair request will be given to the PVS custodian for processing. Additionally, the deputy's immediate supervisor will be informed verbally of the PVS malfunction prior to the unit being placed in service.
 - 1. When the PVS is not operating properly, the appropriate supervisor shall make the determination in regards to whether or not the patrol vehicle will be utilized. If the vehicle is placed in service without an operating PVS, a notation of the supervisor's name approving the vehicle going into service will be made in the Deputy's daily log.
 - 2. Damage or theft of a PVS shall be documented on the appropriate Department form and reported to the employee's immediate supervisor. Lost or damaged PVS USB keys may be replaced by the PVS custodian.

446.4 VIDEO STORAGE

PVS video files will not be duplicated and/or a copy of a video file released except by court order, District Attorney Discovery request, Risk Management Bureau request, or upon written authorization of a sergeant.

Each command/bureau that houses a download server will designate a custodian of records to coordinate the production of copies to be released to authorized persons as described above.

Each command/bureau will also house back-up storage devices for the PVS stored files. The back-up storage devices will be removed by a communications technician who will in turn release them to the respective authorized PVS custodian after the custodian completes a receipt for the device.

Each command/bureau will also be responsible for the secure storage of the back-up storage devices. The storage devices will be kept for a minimum of 30 months from the date of the last recording on the device.

446.5 PVS MALFUNCTIONS

For in-car PVS equipment repairs, supervisors may notify their local fleet manager or call Sheriff's Communications at 714-704-7999.

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Patrol Video System (PVS)

Field supervisors will report a complete system failure or malfunction to Sheriff's Communications at 714-704-7999. After normal support hours (07:00 - 16:30 PST) a supervisor should call Control One at 714-628-7008. Control One will contact Communications.

Communications will notify Sheriff Dispatch if they become aware of system failure or malfunction. Dispatch will in turn notify the affected supervisors. In addition, Communications will notify the Sheriff Dispatch when the system is repaired and fully functional.

446.6 EVIDENCE PRESERVATION

A PVS recording of evidentiary value will be saved by creating a "case" for the digital recording and by checking the "do not dispose" box.

Once a case has been created it shall be "named" or labeled by its assigned DR number, call number or citation number.

Cases saved by checking the "do not dispose" box will not be purged from the system until the case in question has been adjudicated.

A case saved in the above manner will be considered saved as evidence.

Any report related to a digital recording, which has been saved as described above, should indicate in the evidence section of the report that a digital recording of the incident was preserved and saved as evidence.

Only those digital files which have been saved as a "case" can be burned to a DVD.

Should questions arise, further guidance is available from Sheriff's Communications at 714-704-7999.

446.7 MOTOR-DEPUTIES' AUDIO RECORDINGS

In lieu of a PVS, deputies who are assigned to motorcycle duty shall carry and utilize an audio micro-digital recording device. The micro-digital recording device is required to be used in the same manner as outlined in this section (Section 61) covering use of the PVS system.

- (a) All digital recordings made during the course of a motor-deputy's duties should be downloaded to the "Motor-Deputy Audio-Share-Drive," which is a read-only system. No changes may be made to the audio file once the file has been downloaded to the share drive.
- (b) Digital recordings should be downloaded daily, if possible, and no later than the first day the motor-deputy returns to work after any recording is made.
- (c) All digital recordings will be retained pursuant to Government Code §26202.6. for a period of one year, unless the tapes are evidence in any claim or pending litigation. Any recording needed for a claim or lawsuit will be retrieved and booked into evidence by the Risk Management Bureau and the arresting or initial handling deputy will be notified.
- (d) Tapes of evidentiary value (civil or criminal) should be burned to an audio C.D. and booked as evidence, as well as being downloaded to the share drive.

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- (e) Once downloaded to the share drive, audio files will not be duplicated and/or a copy of an audio file released except by court order, District Attorney's discovery request, or upon written authorization of a sergeant.
- (f) An Audio file needed for an official purpose, after having already been downloaded to the share drive, may be secured by submitting a request to the appropriate PVS custodian.

446.7.1 FIELD DUTIES NOT UTILIZING PATROL CARS OR MOTORCYCLES

Pursuant to a Bureau Commander's orders, personnel not operating a PVS equipped vehicle and/or motorcycle (i.e. ATV beach patrol, foot or bicycle patrol) can check out a personal digital recorder and utilize the device pursuant to the standards explained in item nine of this policy.

Foot Pursuit Policy

458.1 PURPOSE AND SCOPE

Foot pursuits are inherently dangerous and require heightened officer safety awareness, keen perception, common sense and sound tactics. It is the department's position that although surveillance and containment are safer tactics for apprehending fleeing persons, it is understood a foot pursuit may sometimes be necessary. The purpose of this policy is to establish department-wide guidelines, which can be applied to most foot pursuits, in an effort to standardize tactics and procedures that have been proven to be effective.

458.1.1 POLICY

It is the policy of the Orange County Sheriff's Department to assertively apprehend fleeing suspects in a manner maximizing both public and deputy safety, while acting in accordance with established policy and procedures.

The safety of department personnel and the public is paramount and should be the overriding consideration in determining whether or not a foot pursuit will be initiated and/or continued. Any doubt by participating deputies or their supervisors regarding the overall safety of any foot pursuit should be decided in favor of communication, coordination, surveillance, and containment.

458.2 FOOT PURSUIT DEFINED

A foot pursuit is an incident where a deputy chases (on foot) a person who is evading detention or arrest.

458.3 MULTIPLE DEPUTY FOOT PURSUIT

When conducted by multiple (two or more) deputies, foot pursuits can be an appropriate and effective tactic. Should partner splitting occur for any reason, deputies should follow the guidelines of "One-Person Foot Pursuits."

Partner splitting occurs when loss of visual contact, distance or obstacles separate partners to a degree they cannot immediately assist each other should a confrontation take place.

458.4 ONE-PERSON FOOT PURSUIT

One-person foot pursuits and the splitting of partners during foot pursuits present additional dangers to the deputy involved. The deputy's decision to pursue must weigh the dangers of the pursuit against the necessity to apprehend. If a lone deputy initiates a foot pursuit and the immediate apprehension of the suspect fails or is not possible, the objective should be to set up a containment perimeter. The initiating deputy should wait for additional deputies to arrive and in a coordinated effort take the suspect into custody.

Should the decision to initiate a one-person foot pursuit occur, the deputy should adhere to the following guidelines which include but are not limited to:

1. If a deputy decides to chase a suspect into a building, use extreme caution and consider the following:

- The suspect(s) increased access to weapons

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Foot Pursuit Policy

- The potential threat of additional suspect(s) or associates to the deputy inside the building
- The suspect(s) knowledge of the buildings floor plan (e.g. suspects' home)
- Suspect(s) ability to ambush the pursuing deputy
- Possible diminished radio reception

2. If the immediate apprehension of a fleeing suspect fails or is not possible, the deputy should broadcast identifying information about the suspect and location in order to initiate a containment perimeter by assisting deputies (Refer to Initiating Deputy Responsibility below).

3. If you can no longer see or hear the suspect, the deputy should consider setting up a containment perimeter in the area of the last known location.

4. Should containment be established and the suspect is believed to be within the containment, a coordinated search for the suspect begins. However, if the suspect is seen fleeing outside or beyond the containment perimeter, then a foot pursuit can be initiated again.

5. Should communication with dispatch be lost and cannot be re-established (e.g. Damaged pacset or out of range), the pursuing deputy should consider terminating the pursuit.

6. If the suspect surrenders during the foot pursuit, the deputy should follow the Arrest Techniques in Section 5 of the Patrol Operations Procedures Manual:

- *Superiority in Manpower and Firearms: Avoid making arrests alone; whenever possible, wait for sufficient back-up. Always attempt to have superiority in manpower and firearms before attempting the arrest. Don't try to go it alone; wait for your back-up. Don't get caught up in the excitement of the chase; think and plan the entire time.*

A deputy initiating a foot pursuit should broadcast, as soon as practical, the following information to dispatch:

1. Unit identifier and location
2. Number and location/direction of suspect(s)
3. Suspect(s) description
4. Reason for the foot pursuit
5. Whether or not the suspect is armed, if known

458.4.1 ASSISTING DEPUTY RESPONSIBILITIES

Whenever any deputy announces that he/she is engaged in a foot pursuit, all other deputies should minimize non-essential radio traffic to permit the involved deputies maximum access to the radio.

Any deputy who is in a position to intercept a fleeing suspect or who can assist the primary deputy with the apprehension of the suspect shall act reasonably and in accordance with department policy, based upon available information and his/her own observations.

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Foot Pursuit Policy

458.4.2 TACTICAL CONSIDERATIONS

A deputy should consider the following factors when determining whether to initiate and/or continue a foot pursuit:

1. Deputy and Public Safety

- Is the suspect fleeing in a manner that significantly increases the level of danger or risk to the deputy or public? (e.g. Running across a freeway)

2. Weapons

3. Ability to communicate effectively with dispatch.

4. Seriousness of the crime (e.g. CPC 187, 245, or H&S 11350).

5. Availability of resources to assist in the foot pursuit (e.g. Air Support, K-9 and available units to assist), if known at the time.

6. Conditions and abilities of the deputy, including physical and mental conditions.

Based on these factors, if the deputy determines not to pursue, a containment perimeter should be coordinated immediately.

This policy does not restrict Deputy Sheriffs in their mission of apprehending violators of the law nor does it restrict situations involving "Exigent Circumstances."

- "Exigent Circumstances"- means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence or property.

458.4.3 FIREARMS

Running with a firearm in hand can increase a deputy's chance of having a negligent discharge. The drawing, exhibiting and running with a firearm in hand is based solely upon the deputy's reasonable belief the situation may escalate to the use of deadly force. In all other instances it is recommended the firearm be holstered.

458.4.4 CONTAINMENT PERIMETERS

A perimeter is used to contain a suspect in a specific area, thus making apprehension more likely and when combined with discontinuing the foot pursuit, it removes the inherent risks associated with pursuing. When a suspect flees on foot, using a perimeter rather than chasing a suspect greatly decreases the likelihood of an ambush.

For further guidelines/tactical considerations for perimeters and requesting for other resources, see Patrol Operations Procedures Manual (OPM) Sections 46-Unusual Occurrences/Hot Calls and 51-Critical Incident Management.

458.5 FIELD SERGEANT RESPONSIBILITIES

As with any tactical field incident, the Sergeant should; but does not have to be physically present to assert control over the situation and may order the termination of the pursuit based upon information received. It will be the Sergeant's responsibility to monitor the event and to assist in requesting additional resources as needed (e.g. Air Support, K-9, and additional deputies).

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The Sergeant shall respond to the termination point of the foot pursuit and assert control as needed. The Sergeant will ensure compliance with all Department policies; specifically those relating to the use of force.

*The Department Commander (DC) can also terminate the foot pursuit at any time.

Memo from Lt. Moy to Capt. Griffin

ORANGE COUNTY SHERIFF'S DEPARTMENT
Santa Ana, California



TO: Captain Griffin
FROM: Lieutenant Moy
DATE: February 23, 2011
RE: 10-187211

During the evening of October 5, 2010, Deputy Michelle Rodriguez was dispatched to a disturbance call at Patsy's Bar in Laguna Niguel. By the time she arrived, other patrol units had handled the call and were clearing the scene. Deputy Rodriguez drove through the lot and parked her vehicle to catch up on some report writing.

Rodriguez observed a subject, later identified as Thomas Spence [REDACTED] in the greenbelt area behind a closed commercial center across the street from where she was parked. Deputy Rodriguez walked across the street and attempted to contact the subject, who appeared intoxicated and attempted to flee on foot. Rodriguez chased after the subject and the two became involved in a physical struggle. In attempt to overcome his resistance, Rodriguez deployed her Taser at Spence with no effect. She also used her baton, striking Spence twice but it also had no effect. At some point during the struggle, Spence was able to gain control of Deputy Rodriguez's flashlight. Fearing he may attempt to use the flashlight as a weapon against her, Dep. Rodriguez drew her handgun and pointed it at Spence. Spence ignored her commands and grabbed the firearm. During the struggle for the firearm, Deputy Rodriguez fired two rounds and attempted to fire a third time but the weapon malfunctioned. Spence attempted to flee, however, Deputy Rodriguez was successful in gaining control of him until additional units arrived and took Spence into custody.

Homicide Investigators responded to the scene and conducted the criminal investigation. Spence was arrested and transported to jail and the District Attorney's Office would later file numerous felony charges against him. The Homicide Detail also submitted the case to the District Attorney's Office to review the actions of Deputy Rodriguez. Upon completion of their legal review, the District Attorney's Office concluded that the evidence does not support a finding of any criminal culpability on the part of Deputy Michelle Rodriguez. Her actions were reasonable and justified under the circumstances. Accordingly, the Office of the District Attorney is closing its inquiry into this matter.

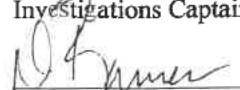
I recommend this case be turned over to the Professional Standards Division in order to complete the administrative investigation into this incident.

Command Staff

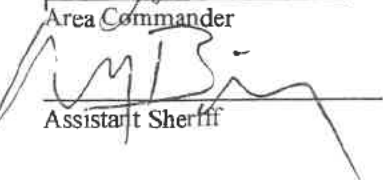
Remarks


Investigations Captain

Concur


Area Commander

Concur


Assistant Sheriff

Concur

CRIM SUMMARY