



## **Incident Summary**

On the date of this incident, Communications Division (CD) received multiple calls for service regarding a male, later identified as the Subject, who was pointing a handgun at passing motorists. According to several witnesses, the Subject stepped off a street curb, and began slowly walking south across the westbound lanes. As traffic stopped to allow him to cross, the Subject removed a handgun from his front waistband and pointed it at multiple individuals sitting in their vehicles. Upon reaching the center of the roadway, the Subject lowered his weapon and continued to the south side of the street.

The Subject then entered a local business. According to an employee of the business (Witness A), the Subject approached the front counter and angrily demanded coffee. The Subject removed what appeared to be a black handgun from his front waistband, pointed it at Witness A and repeated his demand. Witness A believed the Subject was going to shoot her and retreated to a back room, where she telephoned her manager, who called CD on her behalf. The Subject left the business after several minutes and walked east toward an adjacent gas station.

**Note:** This incident was captured on surveillance video located inside the business. It was later determined that the Subject took several credit card receipts from underneath the store's cash register, as well as a small amount of coffee creamer that he poured into a paper cup.

Meanwhile, CD created an emergency radio call for a man with a gun in front of a local hospital. The comments in the incident recall described the Subject as a male transient in his fifties, wearing a black or grey shirt and blue jeans. The comments also indicated that he was waving an unknown type handgun at passing vehicles. As this radio call was broadcast, uniformed Sergeants A and B, Police Officer A and plainclothes Detective A were traveling together in a black and white hybrid vehicle. They had just completed an unrelated probation search and were approaching the area as the Subject's description was broadcast. Sergeant A broadcast he had arrived at the location and that he did not see anyone matching the Subject's description.

**Note:** Due to their proximity to this radio call as it was broadcast, the officers did not discuss tactics prior to their arrival, but they had worked and trained together for several months.

CD acknowledged Sergeant A's broadcast and provided updated information from another 911 caller who indicated the Subject was dressed in a grey shirt and grey shorts, and was last seen at a nearby gas station. At the time this information was broadcast, the officers had just passed the south driveway of the gas station. Sergeant A immediately stopped their vehicle, backed up several feet, and slowly drove into the gas station.

The officers observed the Subject in the gas station looking into trashcans and appearing to talk to himself. Sergeant A commented that the Subject was wearing a grey shirt and grey pants, which was different from the clothing description provided by

CD. Sergeant A and Detective A also noticed the Subject was holding a plastic soda bottle and paper coffee cup. None of the officers were convinced at that point that the Subject was the individual they were looking for and drove past him. Upon reaching the north end of the gas station and not seeing anyone else who matched the Subject's description, Sergeant B mentioned that the Subject could possibly have been the individual they were looking for. Unbeknownst to them, the Subject had already left the gas station and had begun to walk south.

As the officers were about to exit their vehicle to look for the Subject, they were flagged down by an unknown male, who stated there was a distraught female in the nearby business who was asking for the police. Sergeants A and B made a tactical decision to split up in pairs. Sergeant B and Detective A partnered together and began walking toward the business to investigate what had occurred, while Sergeant A and Officer A walked through the gas station to look for the Subject.

Just prior to entering the business, Sergeant B and Detective A were approached by another unknown male, who told them the person they had just passed, (referring to the Subject), was seen pointing a black handgun at passing motorists prior to their arrival. Sergeant B then yelled across the parking lot to Sergeant A and stated that the transient they had first seen was the Subject they were looking for.

As they quickly walked through the gas station, Sergeant A told Officer A he would assume the role of cover officer. Officer A unholstered his weapon because he believed the Subject was armed and possibly nearby. Upon reaching the west sidewalk, Sergeant A observed an unknown male standing at the rear of a parked vehicle in a driveway immediately south of the gas station. This individual pointed south and stated, "He's going that way and he has a gun." Sergeant A observed the Subject walking south on the west sidewalk and immediately communicated that to Officer A, who was a few feet behind him.

The Subject was approximately 100 yards in front of them and was approaching an intersection. As Sergeant A and Officer A began walking south after the Subject, they observed a black and white Sports Utility Vehicle (SUV) in the distance traveling north. This vehicle was driven by uniformed Sergeant C, who was responding to the initial radio call and broadcast that he had arrived at the location as he neared the intersection. In an effort to alert Sergeant C that he was approaching the Subject's location, Officer A utilized his handheld radio and broadcast the Subject's location.

According to Officer A, a female motorist traveling north alerted them that the Subject was armed by yelling, "He's got a gun. He's got a gun." Officer A attempted to communicate with the Subject and ordered him several times to stop. The Subject responded by looking over his left shoulder, while simultaneously holding his front waistband area with his right hand. Officer A believed the Subject was armed and pointed his weapon at him with his finger on the trigger, while momentarily taking cover behind a telephone pole.

**Note:** The female motorist was later identified and interviewed. She indicated that the Subject pointed a gun at her as he walked by and then placed it into one of his front pants pockets as the officers ordered him to stop.

At the time of this incident, vehicular traffic was very congested. The line of cars traveling north was bumper to bumper. There were also numerous pedestrians in the area. Sergeant A believed that based on the nature of the radio call, and the fact the Subject was probably armed and possibly mentally ill, it was imperative to contain the Subject and began slowly jogging after him. The officers moved together down the sidewalk with Sergeant A slightly in front and to the left of Officer A.

Meanwhile, Sergeant C continued driving north. As he approached the intersection, he observed Sergeant A and Officer A at the north end of the block, about 100 yards behind the Subject. According to Sergeant C, the Subject appeared agitated and yelled incoherently as he walked. Sergeant C also noted that the Subject turned at his waist several times to look back at Sergeant A, while raising his right hand in the air. Sergeant C believed the Subject was mentally impaired and that he appeared aggressive.

Due to the number of vehicles stopped in the roadway, Sergeant C felt it was imperative to contain the Subject and prevent him from entering the street. In an effort to keep that from occurring, he drove into the southbound lanes of traffic and partially up a driveway north of the intersection. Sergeant C stopped approximately 150 feet in front of the Subject and angled the front of his vehicle toward his direction. Sergeant C positioned his vehicle in such a way so as to avoid placing himself in a potential crossfire situation with Sergeant A and Officer A.

Sergeant C immediately exited his vehicle, utilized his ballistic-paneled driver side door for cover, and unholstered his weapon. As the Subject approached within approximately 25 feet, Sergeant C observed the butt of a blue steel semiautomatic handgun on the right side of the Subject's front waistband.

**Note:** Sergeant C did not communicate his observations to Sergeant A or Officer A, because he believed they were already aware that the Subject was armed.

Sergeant C also noticed the Subject was holding a Styrofoam cup in his left hand. Sergeant C pointed his weapon at the Subject, verbally identified himself as a police officer, and ordered him to place his hands on top of his head. The Subject responded by stating something to the effect of, "I can't" or "I am not," and continued walking toward him.

Sergeant C ordered the Subject several more times to place his hands on his head, which he again ignored. As the Subject was about to cross in front of Sergeant C's police vehicle, he quickly reached down with his right hand toward the firearm in his

waistband. Fearing that the Subject was going to draw his weapon, Sergeant C yelled at him to put his hands up, raised his pistol and began slowly depressing the trigger. The Subject appeared startled by this command and momentarily raised his hands to shoulder height, while stating that he did not do anything. As the Subject continued to walk south past the police vehicle, Sergeant C removed his index finger from the trigger and placed it back on the frame of his pistol. Sergeant C then lowered his weapon to avoid creating a crossfire situation with Sergeant A and Officer A, who were walking approximately 10 to 20 feet behind the Subject.

**Note:** Sergeant A indicated he unholstered his weapon when he observed Sergeant C's reaction to the Subject reaching toward his front waistband.

Upon reaching Sergeant C's location, Sergeant A stepped into the street as a tactical maneuver to create space between himself and Officer A. As Sergeant A moved around the rear of the police vehicle, he and Sergeant C had a very brief discussion regarding the need to contain the Subject. According to Sergeant C, he agreed to handle radio communications and Sergeant A was to focus on tactics. Sergeant C left the door of his police vehicle and followed behind Sergeant A and Officer A. The officers maintained a distance of approximately 15 to 20 feet behind the Subject as he continued to walk south. Officer A followed on the sidewalk, while Sergeants A and C remained in the street.

As the Subject approached, Sergeant A ordered him several times to stop and put his hands up. Each time a command was given, the Subject turned back to look at the officers and yelled incoherently. The Subject also turned his head from left to right as he walked and randomly raised his arms in the air. Because of the Subject's strange behavior and transient appearance, Sergeant A believed he was either mentally ill or under the influence of narcotics. In an attempt to bring less-lethal resources to his location, Sergeant A utilized his police radio and broadcast a request for a Taser. During one of the times the Subject turned back to look at the officers, Sergeant A observed the butt of a firearm protruding from his right front pants pocket and immediately communicated that to Officer A.

**Note:** Sergeants A and C both commented on the lack of cover and/or concealment available to them while following the Subject. Given the Subject's perceived mental state, they were concerned he might step into the street and begin shooting individuals who were seated in their vehicles. Rather than fall back and create more distance between themselves and the Subject, they felt it was imperative to remain within several feet of him to better protect the community.

According to Sergeant C, as the Subject continued south, he yelled something and then defiantly threw his coffee cup to the ground. Sergeant C took over radio communications at that point and broadcast to CD, "Officer needs help. Subject has a gun. He is walking southbound."

The Subject continued south on the west sidewalk and eventually reached the crowded overpass of the Interstate 10 (I-10) Freeway. According to Officer A, he yelled at the Subject again to put his hands up. The Subject responded by looking over his left shoulder, while appearing to reach into his front waistband with his right hand. Officer A was concerned that the Subject was trying to determine his location in order to shoot him or a civilian bystander. Anticipating an attack, he pointed his weapon directly at the Subject.

**Note:** Witnesses B, C, D and E observed what they believed to be a firearm protruding from the Subject's waistband and/or front pants pocket. Some of these witnesses indicated the Subject held the weapon by the grip with his right hand.

A cell phone video of the incident obtained by Force Investigation Division (FID) depicted that the Subject turned to his left, faced the officers, and extended his left arm out in front of him. Officer A immediately reacted by firing a several rounds at the Subject. When Officer A began to fire, the Subject appeared to turn back to his right (south) and momentarily face away from the officers while continuing to walk south. As Officer A fired his last two rounds, the Subject appeared to turn slightly to his right in a southwesterly direction and drop what appeared to be a handgun from his right hand.

**Note:** The Subject's weapon was later determined to be a replica BB gun.

**Note:** Witness F, G, H, and I believed multiple officers fired during the OIS. Witness J claimed the Subject did not turn his body to face the officers prior to the OIS. Witness J indicated the officers shot the Subject while his back was turned to them.

Due to the distance from which the video was recorded, the exact position of the Subject's right arm and whether he was holding anything in his hands as he initially turned to face Officer A was not clear. The video appears to show that the Subject's right arm was bent and was on or near his waistband area at the time Officer A fired his first round.

**Note:** Witnesses E and K stated that the Subject turned to face the officers and pointed a handgun at them. Witness K indicated the Subject had the gun in his right hand, with his arm bent 90 degrees. Witness E believed the Subject extended both arms out in front of him and fired at the officers.

According to Officer A, as he observed the Subject from behind, he noticed the Subject's right elbow move in an upward direction, and that he was beginning to turn his body to the right. Based on the Subject's movements, Officer A formed the opinion he was removing a gun from his waistband. As the Subject was in the process of turning, Officer A observed him gripping the handle of what appeared to be a black

semiautomatic pistol, which had already cleared his waistband. The Subject's right elbow was in a bent position with his forearm parallel to the ground. The Subject slowly raised the weapon up and away from his body, as if he were intending to face Officer A, and point his weapon at him. Believing he was about to be shot, Officer A fired several rounds at the Subject.

Officer A estimated that the Subject had already turned approximately three quarters of the way toward him at the time he fired his initial rounds. Officer A believed he then moved forward two to three steps and immediately fired additional rounds at the Subject, who by that time was pointing his weapon directly at him.

**Note:** The cell phone video appears to show that Officer A was not stationary when he fired his last few rounds and was slowly walking forward toward the Subject.

Reflecting on his decision to utilize deadly force, Officer A stated he thought that the Subject was going to shoot him and/or his partner. Officer A was also concerned that the Subject could shoot at citizens who were in the area.

As Officer A fired his last round, the Subject dropped his weapon and collapsed to the sidewalk. The Subject then rolled off the west curb and partially into the roadway, ultimately ending up in a facedown position in the southbound number two lane of traffic. Immediately following the OIS, Sergeant C initiated a broadcast of "shots fired."

At Sergeant A's direction, he and Officer A approached the Subject to take him into custody, while Sergeant C provided cover. Sergeant A placed his knee on the Subject's lower back and holstered his weapon, while Officer A de-cocked and holstered his weapon and placed his left knee on the Subject's left shoulder. Officer A then pulled the Subject's arms behind his back, which allowed Sergeant A to secure them with handcuffs.

At the time of the shooting, Sergeant B was on foot, attempting to make his way toward Sergeant A and Officer A. As Sergeant B moved forward, his view of the OIS was momentarily blocked by a power pole and light standard he attempted to use for cover. When he arrived at their location, the Subject was in the process of being handcuffed. Sergeant B could tell the Subject had been shot and requested a rescue ambulance (RA) on his behalf. Detective A also did not observe the OIS. When the shooting occurred, he was a block away in the gas station parking lot speaking to witnesses.

The next unit to arrive at scene was uniformed Police Officers B and C. They arrived within the first minute after the "shots fired" broadcast and observed Officer A and Sergeant A holding the Subject's upper and lower body stationary with their hands, as he lay handcuffed in the street. Officer C walked over to them and assumed custody of the Subject, while Officer B stood guard next to the Subject's weapon.

Immediately following this incident, Sergeants A, B and C took control of the scene and began coordinating the response of responding units, which involved securing the crime scene, establishing an inner and outer perimeter and identifying potential witnesses to the incident. As additional supervision arrived, they relinquished those roles and identified themselves as percipient witnesses.

Los Angeles City Fire Department (LAFD) personnel arrived and evaluated the Subject. The Subject was conscious and breathing and was determined to have sustained several gunshot wounds. He was subsequently transported to a nearby hospital, where he was admitted and treated for his injuries.

### **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 of a firearm 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, made the following findings:

#### **A. Tactics**

The BOPC found Sergeants A, B and C, along with Detective A and Officer A's tactics to warrant a Tactical Debrief.

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

The BOPC found Sergeants A and C, along with Officer A's drawing and exhibiting of a firearm to be in policy.

#### **C. Lethal Use of Force**

The BOPC found Officer A's lethal use of force to be in policy.

### **Basis for Findings**

#### **A. Tactics**

- In its analysis of this incident, the BOPC identified the following tactical considerations:
  1. Situational Awareness

Sergeants A and B, Detective A and Officer A drove past the Subject who was looking in the trashcans at the gas station and appeared to be talking to himself.

Communications Division broadcast a radio call of a "415 Man with a Gun," and described the Subject as a transient, wearing a black or grey shirt and blue jeans. A subsequent broadcast by CD reported the Subject was last seen in the gas station, wearing a grey shirt and grey shorts. The officers drove into the gas station lot, observed the Subject, who was wearing a grey shirt and grey pants, and proceeded past him.

Officer A recalled that Sergeant A placed them at the location, and while waiting for additional information, he observed a male transient, similar to the Subject that was described by CD walking around the gas station. Officer A believed that Sergeant A drove towards the gas station to check for the Subject, but that they lost sight of him.

Sergeant A recalled hearing Sergeant B say that there was a male, but that he was wearing's a gray shirt and gray pants, so he didn't really match the description, but this was the only person they observed in the area of the gas station.

Sergeant B recalled seeing a male transient digging in a trash can and was wearing a gray shirt and gray pants. Sergeant B recalled that they continued to drive around the gas station to see if they could spot anybody with blue jeans. As they reached the north side of the gas station near the south curb, he told Sergeant A that he thought that the individual that was in the trash can was possibly the Subject.

Detective A recalled that as they were just about to enter that gas station, CD broadcast that the Subject was wearing a gray shirt, blue jeans, and was carrying a gun, or had a gun. Detective A recalled seeing a transient walking through the gas station, wearing all gray, gray top and gray pants. Detective A knew he didn't have a gun at the time, but was holding a soda bottle and appeared to talking to himself. Detective A believed the Subject was merely a local transient and passed him by, not knowing if this was the Subject of the radio call.

All of the officers observed the Subject in the gas station lot, and each articulated in their individual statements that they did not entirely discount him as the armed Subject. However, since the Subject did not appear to be alarmed by their presence and his clothing slightly differed from both clothing descriptions broadcast by CD, it was reasonable the officers did not immediately initiate contact.

Once Sergeant A and Officer A received additional information that the individual they had seen in the gas station parking lot was in fact the Subject, they immediately went in search of him. Upon locating the Subject, they began to monitor his actions, devised a tactical plan and performed well, given the rapidly unfolding nature of this incident.

In evaluating the officers' actions, the BOPC determined that based on the totality of the circumstances, although improvements could be made, the decision to drive past the Subject did not represent a substantial deviation from approved Department tactical training. However, in an effort to enhance future tactical performance, this topic will be discussed during the Tactical Debrief.

## 2. Back-up Request

Sergeant A and Officer A observed the Subject walking southbound from the gas station. Believing that this individual was, in fact, the source of the radio call, they began to walk southbound after him. Neither officer broadcast a back-up request. The BOPC recognizes the situation was fluid and that Sergeant A and Officer A were faced with a multitude of tasks, including seeking cover and safeguarding the welfare of the public, all while simultaneously monitoring the actions of a possibly armed Subject. The BOPC also noted that Sergeant A and Officer A were continuously receiving information from citizens.

Although officers are given discretion regarding the appropriate time to request additional resources during an incident, in this instance, Sergeant A observed the Subject and then communicated his observations to Officer A. Based on the radio call, both believed that the Subject was possibly armed. Therefore, it would have been tactically prudent for these officers to request a back-up unit.

The BOPC also took into consideration that Sergeant A and Officer A both knew that there were additional units responding to the call. Based on the totality of the circumstances, the BOPC determined that their actions did not substantially deviate from approved Department tactical training. This topic will be discussed during the Tactical Debrief.

## 3. Vehicle Deployment (Cross Fire Situation)

As Sergeant C drove northbound, he observed Sergeant A and Officer A walking southbound, following the Subject. With the two northbound lanes of traffic stopped, Sergeant C drove northbound in the southbound lanes of traffic and deployed at an angle on the west sidewalk, south of the approaching Subject. Upon exiting his vehicle, Sergeant C assumed a position behind his open driver's side door with his service pistol drawn. This created a circumstance, wherein there was a potential for a cross fire in the event a use of lethal force became necessary.

Regarding why Sergeant C tactically deployed his vehicle in the above manner, Sergeant C stated that he realized there were a lot of people in the street that were potentially going to be in danger. Sergeant C knew that he had to set up some kind of containment on the Subject to prevent him from entering onto the street. Sergeant C was aware of the other officers approaching and mindful of his muzzle direction as the situation unfolded. Additionally, Officer A was cognizant of Sergeant C's position.

Officer A recalled broadcasting that the Subject was at that location, and knew that Sergeant C had stopped his vehicle. Officer A's focus was still on the Subject, and he knew that Sergeant C was not in his direct line of fire.

Confronted with a Subject potentially armed with a handgun walking southbound away from Sergeant A and Officer A, Sergeant C's options were limited. The Subject posed an imminent danger to the officers as well as a threat to the community at large. As Sergeant C was clearly conscious of his background when deploying behind his open driver's side door, the BOPC determined that Sergeant C's vehicle deployment did not substantially deviate from approved tactical training. This topic will be discussed during the Tactical Debrief.

#### 4. Tactical Communications

As Sergeant C stood behind his open driver's side door, he observed the Subject walking southbound toward him, armed with a handgun in his waistband. Sergeant C did not communicate his observations to Sergeant A and/or Officer A.

Sergeant C recalled that there was not enough time to communicate with other officers, but based on the commands that he was giving, he believed that the other officers on scene knew what the situation entailed and were aware that the Subject had a gun in his waistband.

The importance of effective communication is important and the exchange of information plays a critical role in the development and execution of any tactical situation. It is the BOPC's expectation that all pertinent information obtained in a critical incident, when feasible, should be shared with other involved officers. However, the BOPC noted that Sergeant C did not immediately observe the handgun in the Subject's waistband. The BOPC also took into consideration that when Sergeant C did observe the weapon, the Subject had already closed the distance, at which time Sergeant C immediately began to verbalize with the Subject, prompting Sergeant A to draw his service pistol. This topic will be discussed during the Tactical Debrief.

- The BOPC additionally considered the following:

##### 1. Situational Awareness

A cellular telephone video captured Sergeant C turning around and looking away from the Subject. At the time Sergeant C turned around, he was in a formation with Sergeant A and Officer A, with Sergeant C assuming a rear guard position. According to Sergeant C, he turned around to look at a street sign, preparing to broadcast a request for help. Sergeant C stated that he was thinking it was going to be an active shooter, and there were a lot of lives at stake. Sergeant C knew that he could draw his weapon and point, so the reason he turned around was for situational awareness, believing that he was going to have to broadcast locations, directions,

resources and how they were we're going to contain the situation. Although the BOPC noted that Sergeant C and Officer A were providing cover when the above transpired, Sergeant C will be reminded of the importance of monitoring the actions of a non-compliant armed Subject.

## 2. Less-Lethal Force Options (Beanbag Shotgun)

As they followed the Subject southbound, Sergeant A broadcast a request for a Taser. Although the BOPC noted Sergeant A had the foresight to request a less-lethal force tool, Sergeant A will be reminded that a beanbag shotgun would have afforded the officers a force option that could be deployed from a greater distance.

## 3. Initiating Physical Contact with a Service Pistol Drawn (Handcuffing)

After the OIS, Sergeant A and Officer A approached the Subject. According to Sergeant A, he placed his knee on the lower back of the Subject, holstered his service pistol as he and Officer A handcuffed the Subject without further incident. Sergeant A was reminded to holster his service pistol prior to initiating physical contact with a Subject. This would minimize the potential for a negligent discharge as well as reduce the likelihood of losing control of the weapon to a Subject.

## 4. Equipment (Baton/HRD)

Sergeant A and Officer A did not have a baton in their possession when the CUOF incident occurred. Additionally, Sergeants A and C, along with Officer A did not have a Hobble Restraint Device on them. The aforementioned personnel will be reminded to have all required equipment on their person while performing field patrol duties. These topics were discussed at the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Each tactical incident merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to review and discuss the incident and individual actions that took place during this incident.

In conclusion, the BOPC found Sergeants A, B and C, along with Detective A and Officer A's tactics to warrant a Tactical Debrief.

## **B. Drawing/Exhibiting**

- In this instance, Sergeants A and C, along with Officer A responded to a radio call of a 415 Man with a Gun, wherein a male was described pointing a handgun at passing

motorists. As Officer A proceeded through the gas station lot in search of the Subject, he drew his service pistol.

Officer A recalled that as he was going through the gas station, he unholstered his weapon, believing there was a man with a gun there. Officer A recalled that it was a tactical situation that could escalate to the use of deadly force and was concerned for his safety, as well the nearby citizens.

Sergeant A and Officer D observed the Subject walking southbound and followed behind him on foot. Sergeant C approached northbound and positioned his vehicle south of the Subject. As he exited his police vehicle and assumed a position behind his open driver's side door, Sergeant C drew his service pistol. Sergeant C recalled that the vehicle was at a 45 degree angle towards the Subject's approach and he unholstered his weapon because he believed that the Subject was armed and the situation could escalate to the use of lethal force.

According to Sergeant A, he and Officer A were back approximately four to five houses trying to catch up, when Sergeant C confronted the Subject. It was at this time that the Subject's hands went to his front waistband area. In response, Sergeant A slowed his gait and drew his service pistol. Sergeant A recalled that he observed Sergeant C unholster his weapon and could see the Subject's hands in his waist area. This is when Sergeant A unholstered his weapon.

Based on the totality of the circumstances, the BOPC determined that a Sergeant or officer with similar training and experience as Sergeants A and C, along with Officer A, while faced with similar circumstances, would reasonably believe there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

Therefore, the BOPC found that Sergeants A and C, along with Officer A's drawing and exhibiting of a firearm to be in policy.

### **C. Lethal Use of Force**

- Prior to the OIS, Officer A was presented with the following information and observations:
  - The original radio call was a "415 Man with a Gun" who was described waving an unknown type handgun at passing vehicles.
  - Just south of the gas station, three males pointed in a southerly direction and stated, "The guy you guys are looking for is that way."
  - Upon observing the Subject on the sidewalk, Officer A ordered him to stop. In response, the Subject looked over his left shoulder while holding his front waistband area with his right hand.
  - A female motorist stopped in a northbound lane of traffic yelled out, "He's got a gun. He's got a gun."

- After the motorist alerted the officers as to her observations, the Subject again looked over his left shoulder, causing Officer A to believe the Subject was trying to determine their position to shoot at them.

According to Officer A, the Subject then reached toward the front area of his waist band with his right hand and removed a handgun while simultaneously turning toward his direction.

Officer A recalled that he ordered the Subject to get his hands up. Officer A said that as the Subject turned around and lifted his shirt and arm, he observed the handle of a gun. Officer A knew that the weapon was going to point in his direction and at that point, he fired multiple rounds at the Subject. Officer A reiterated that the Subject was going into his front waistband, his elbow moving up a little bit, and as he did that and slightly turned, that's when he observed the butt of a handgun. Officer A recalled that the Subject didn't completely turn, but maybe about three quarters. When the Subject was turning, Officer A could see his right shoulder, his hand, and all he was focused on was the gun, so he made the decision to fire.

Officer A believed that the Subject was going to shoot him/and his partner. Officer A also believed because of all that traffic that the Subject might cross over lanes and shoot at one of the citizens while they sat in their vehicles.

There were a total of 21 civilian witnesses interviewed during the FID investigation that were positioned at various locations when the OIS occurred. Seven witnesses indicated that they observed what they believed to be a firearm protruding from the Subject's front waistband and/or front pants pocket. Of the seven witnesses, two reported the Subject turned to face the officers and pointed a handgun at them. One witness observed what he believed to be a handgun in the Subject's rear waistband area. Of the remaining 13 witnesses who did not observe the Subject in possession of a handgun, six reported observing the Subject's hand or hands in the area of his waistband.

**Note:** A cellular telephone video obtained by FID pursuant to their investigation depicts the Subject turning to his left, facing the officers and extending his left arm out in front of him. It further reflects the Subject's right arm was bent and near his waistband area at the time Officer A fired his first round.

In reviewing this incident, the BOPC was fully aware that there were discrepancies in the accounts and recollections of both witnesses and officers, as well as the cellular phone video recording. However, the facts support that the Subject possessed what was later determined to be a replica handgun. The Subject removed it from his waistband area and ultimately discarded the handgun onto the sidewalk. Additionally, the BOPC is aware that the memory and recall of officers and others can be impacted under the stress of a lethal force encounter and that officers may not recall details of an incident or remember them in order.

In this case, the BOPC acknowledges the discrepancies in the statements of witnesses and have given them due consideration. The BOPC further understands that witness accounts will often vary based on various environmental and or human factors. The BOPC has reviewed Officer A's decision to utilize lethal force and have determined that the totality of the circumstances in this case supports that an officer with similar training and experience as Officer A would believe that the Subject's actions posed an imminent threat of serious bodily injury or death and that the lethal use of force would be reasonable.

In conclusion, the BOPC found Officer A's lethal use of force to be objectively reasonable and in policy.