



KING COUNTY SHERIFF'S OFFICE  
516 Third Avenue, W-116  
Seattle, WA 98104

Mitzi G. Johanknecht  
Sheriff

December 29, 2021

Patrick S. McCurdy

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RE: Loudermill, Final Decision, IIU2021-132

Dear Patrick,

Thank you for meeting with me on October 28, 2021 for a Loudermill hearing to discuss the above investigation and recommended discipline. Also participating in our meeting were your representatives Mike Mansanarez and Corbett Ford, Sergeant Przygocki, Captain Park, Major Mendel, Undersheriff Cole-Tindall and Legal Advisor Diane Taylor.

I have reviewed this investigation and related memos. This letter will not repeat all of that detail, but I hereby incorporate by reference the factual summary outlined in the Findings Memo and Notice of Loudermill.

### ALLEGATIONS

#### ALLEGATION 1 - GOM 3.00.030 BIAS BASED POLICING

The King County Sheriff's Office reaffirms its commitment that police services and enforcement of the law will be performed in a fair and lawful manner. Discrimination in the performance of these duties is prohibited by GOM 3.00.015. This prohibition includes but is not limited to harassment or bias based policing on the basis of race, color, age (if over 40), gender, sexual orientation, religion, national origin, or the presence of any sensory, mental or physical disability.

*EXONERATED*

#### ALLEGATION 2 - GOM 3.00.020(1)(d) PERFORMANCE STANDARDS

1. All members must perform their assigned duties in a satisfactory and efficient manner. Unsatisfactory performance of duty shall be grounds for non-disciplinary action or

disciplinary action up to and including discharge. "Unsatisfactory Performance" may be established when a member:

d. Acts in violation of Sheriff's Office directives, rules, policies or procedures as set out in this manual, or elsewhere.

*SUSTAINED*

ALLEGATION 3 - GOM 3.00.020(1)(c) PERFORMANCE STANDARDS

1. All members must perform their assigned duties in a satisfactory and efficient manner. Unsatisfactory performance of duty shall be grounds for non-disciplinary action or disciplinary action up to and including discharge. "Unsatisfactory Performance" may be established when a member:

c. Performs at a level significantly below the standard achieved by others in the work unit.

*SUSTAINED*

ALLEGATION 4 - GOM 3.00.015(2)(k) RULES OF CONDUCT: MISCONDUCT

(causes for discipline): Any sustained misconduct charges in the following categories will be considered serious violations of the core values of the King County Sheriff's Office.

Violations of these rules may result in discipline up to and including termination.

k. Conduct Unbecoming: means behavior that generally tends to:

- Diminish respect for the Sheriff's Office or member.
- Diminish confidence in the operation of the Sheriff's Office.
- Adversely affect or impair the efficiency of a member.
- Adversely affect the morale or discipline of the Sheriff's Office.

*SUSTAINED*

ALLEGATION 5 - GOM 3.00.020(4)(a) PERFORMANCE STANDARDS - SUPERVISION:

a. Within every rank level of the KCSO, supervisory members, both commissioned and professional, have the authority necessary to carry out their duties and responsibilities and are accountable for the use of such authority. Supervisors shall:

- Have a thorough working knowledge of the rules and performance standards of the Sheriff's Office.
- Communicate the rules, policies and procedures to subordinates.
- Be held accountable for their subordinate employee's actions.
- Recognize exemplary behavior as well as negative behavior.

*SUSTAINED*

ALLEGATION 6 - GOM 3.00.015(1)(b) RULES OF CONDUCT: SERIOUS MISCONDUCT (Bowthorpe)

b. Conduct that is criminal in nature. (Reckless Driving)

Not applicable as to you

ALLEGATION 7 - GOM 3.00.015 (2)(f) RULES OF CONDUCT: MISCONDUCT

(causes for discipline): Any sustained misconduct charges in the following categories will be considered serious violations of the core values of the King County Sheriff's Office.

Violations of these rules may result in discipline up to and including termination.

f. Failure to report a member's possible misconduct as required in GOM 3.03.015.

*EXONERATED*

ALLEGATION 8 - GOM 3.00.015(2)(a) RULES OF CONDUCT: MISCONDUCT

(causes for discipline): Any sustained misconduct charges in the following categories will be considered serious violations of the core values of the King County Sheriff's Office.

Violations of these rules may result in discipline up to and including termination.

a. Insubordination or failure to follow orders. Members shall be respectful towards their supervisors.

*SUSTAINED*

BACKGROUND

This investigation stems from your activity with your subordinate, Det. Bowthorpe, when working during a protest in downtown Seattle on Saturday, March 13, 2021. This date was significant as it was the one year anniversary of the death of Breonna Taylor, a woman of color, which occurred during law enforcement activities in another state. You both were assigned to King County Sheriff's Office (KCSO) contract entity, Sound Transit, on March 13, 2021. Sound Transit has transit stations, light rail, heavy rail and bus routes across King County and a transit tunnel in downtown Seattle. Sound Transit Police and Metro Transit Police cooperatively developed an Incident Action Plan (IAP) in order to respond to, and protect, transit-related infrastructure for likely protests (permitted or not) on this date. During the mission briefing, the scope of the mission and roles and responsibilities were discussed. Quoting from the IAP: "Our plan for the day is to respond to any situations on transit property and temporarily secure them if needed to prevent any vandalism or destruction to continue safe operations of Metro and Sound Transit." I also provided ongoing directives to KCSO personnel not to deploy into, or around, hot zones during protest activity due to lack of Personal Protective Equipment (PPE) required for such activity. Seattle Police Department (SPD) was handling activity that was in their jurisdiction. Note de-confliction was not required in the IAP, because the scope of your assignment was limited to protecting transit property.

Late in the evening, you both observed a black Nissan Rogue, that you believed was associated with the protest, and might be delivering weapons and supplies to protestors. You had seen this vehicle earlier and you remembered the driver of a black Rogue being arrested by SPD at a different protest.

Both of you were in plain clothes, driving an unmarked truck without emergency lights or siren. You had approved removal of the license plates from this vehicle on this day and authorized Detective Bowthorpe to operate the vehicle without plates on the public roadways in the City of Seattle. There was no operational reason for this vehicle to operate without plates on this assignment. Detective Bowthorpe was driving, and followed the Nissan, using maneuvers you both identified as a "tactic" of 'overt aggressive driving,' which included following closely on the Nissan's bumper, in an effort to force the vehicle out of the area. You later learned this car was driven by SPD Detective **1F**

1F [REDACTED] who was actively engaged in monitoring the protest. Your aggressive driving created so much concern for Detective 1F [REDACTED] she called for assistance from uniformed SPD officers. Detective 1F [REDACTED] reasonably speculated that you both may have been associated with the right wing group "Proud Boys." Detective 1F [REDACTED] was advised to go through a red light to confirm she was being followed. You followed through the red light, and at least one more, increasing the alarm on the part of SPD. Seattle Police conducted a vehicle traffic stop on your vehicle using multiple bicycle officers and vehicles to block you in. The vehicles had engaged their lights. You complied with the instruction to step out of the vehicle, and while your hands were controlled by SPD, they frisked you for weapons. After identifying yourself as law enforcement, and the SPD officers were satisfied with the identification, you were both released.

The seriousness of your conduct should have been obvious at this point, and an immediate report to command level staff should have been made. While you advised Detective Bowthorpe that you would notify the captain, you failed to make such notification. At the debriefing afterward at the precinct, you both discussed the incident with colleagues, noting that a Lieutenant with SPD had been upset with your conduct. SPD notified KCSO's sergeant in the Intelligence Unit, giving rise to this investigation.

At the Loudermill, you acknowledged that you attended the briefing conducted by acting sergeants. You said that your assigned mission was to protect transit facilities and if at risk, extract Sound Transit employees if necessary. In the summer of 2020 some Sound Transit employees had been overcome with pepper spray. You emphasized that you did not go into the crowd, but drove down the street to determine the route of the protest. You noted that you were able to see the Occidental Park protest staging area from where you were driving.

You said that you spotted on the incident date a Nissan Rogue, and that the same vehicle had been used in the past by protestors in support of protesters. You continued to say that based on your observations of the Nissan Rogue this date you had solid reasonable suspicion that this was the same Rogue from previous protests. You went on to say that you had no intent to stop the vehicle because there was no probable cause to do so. At some point while continuously following the Nissan it appeared to you that the driver of Nissan Rogue realized you were following them. Having been identified by the driver of the Nissan, you made a decision to be more overt, so that when the Nissan ran a red light, you agreed to have Detective Bowthorpe run the red light as well. Within 15 seconds of initiating these maneuvers, Detective Bowthorpe and you were pulled over by the Seattle Police Department members on a traffic/suspicious vehicle stop.

You also told me that insubordination is not in your nature, you did not knowingly or intentionally violate the directions. You pointed out that the hot zone was not clearly understood, and you did not interact with protesters. You said that in other assignments you have been in those areas. You also said that you are operating under the mistaken premise that the plan had been sent to Seattle. You said had you known that Seattle had not been alerted, you would've completed de-confliction yourself. You downplayed the potential risk of blue on blue, saying that you would not have drawn your weapons. You would not have initiated anything.

You also acknowledge that you should have called the captain to alert him that you were detained by SPD.

## ANALYSIS

You miss the point when you say it was an unintended error that you failed to de-conflict in this incident. There was no need to de-conflict within the scope of the mission you were given. In fact, the act of engaging in de-confliction did not provide you with authority for you to deviate from the scope of the IAP. Further, you specifically stated that acting sergeants briefed this IAP. Through my analysis and review of the investigative record believe you had a higher level of authority than acting sergeants. Given your work history and observance of the chain of command, I find this potential lack of respect for assignment briefers (acting sergeants or full-time) concerning.

I am alarmed about your activities and decision making in this incident. I believe that you decided to conduct the mission that you preferred over the mission you had been assigned. You both deviated from the planned mission to protect Sound Transit infrastructure. By deviating from the action plan, you placed your team in danger, as well as other law enforcement and civilians in the area. You also placed Sound Transit infrastructure at risk and compromised the primary mission by your actions.

I concur with the Undersheriff's recommendations as to findings, with my analysis below.

### ALLEGATION 1 –Bias-Based Policing

To determine whether bias-based policing occurred, two elements must be satisfied: (1) That law enforcement action took place and, (2) That the action was based on one of the protected classes noted in KCSO policy. I find neither prong is met for the reasons outlined in your prior memo, and this allegation is EXONERATED.

Later in this memo, I find that the driving maneuvers used here were not approved, trained, or understood to be "tactics" used in the Department. That is the basis for another sustained finding (Performance Standards). Consistent with those findings, I find that the activity here did not constitute law enforcement activity.

### ALLEGATION 2 – Acts in Violation

For "Acts in Violation," OLEO recommends sustained violations for 1) failure to follow the IAP, 2) failure to de-conflict, and 3) failure to report the "criminal traffic stop."

The IAP included this language: "Our plan for the day is to respond to any situations on transit property and temporarily secure them if needed to prevent any vandalism or destruction to continue safe operations of Metro and Sound transit."

Task specifically outlined for Sound Transit SET:

Sound SET

- Task: Be able to respond to any area to get up to date intel.
- Purpose: Gather intel and provide photos/crowd size and demeanor.

I agree that failure to follow the specific written IAP constitutes a violation under this section, though the facts overlap with the sustained allegation for Insubordination in Allegation 8. I do not find that the traffic stop was a criminal matter that required reporting for that reason.

With regard to the failure to de-conflict, I find that if you had followed the IAP there was no need for de-confliction. To have requested de-confliction so you could engage in these types of maneuvers with another vehicle, would have remained problematic. Conducting de-confliction would not have made this conduct, outside the scope of the IAP, permissible. Therefore, I do not find failure to de-conflict a violation under this section. Rather, your actions taken with the knowledge that no de-confliction had occurred, factors into the violations under Allegation 3.

A clear IAP was developed for this operation, and you both were given a specific mission of reconnaissance and covert surveillance around Metro and Sound Transit properties. You went outside the scope of your assignment when you engaged with the Nissan Rogue and used aggressive driving tactics, in an effort to physically force it out of the area. These actions were contrary to not only the IAP, but your specific assignment.

I find by clear and convincing evidence this allegation is SUSTAINED.

### ALLEGATION 3- Performance Standards: Performs at a Level Significantly Below Others

First, the aggressive tactics used by both of you to push or encourage a vehicle to leave the area was not only a departure from the IAP, this “tactic” is not trained, used or sanctioned by KCSO. Your aggressive driving created fear in SPD Detective 1F [REDACTED] and caused her to call for backup. Your actions put Detective 1F [REDACTED] safety at risk and potentially compromised the safety of other motorists and pedestrians in the area as well.

Second, you knowingly exceeded the scope of the IAP, while operating with the knowledge that no de-confliction had occurred, and that SPD was the active law enforcement presence for protest activity. Despite that understanding, you engaged in behavior that made you a focus for both protestors and SPD. You did this while in a leased, unmarked, vehicle with no license plates. You created substantial risk of a blue on blue encounter. This risk was foreseeable. Someone with your level of experience should have clearly understood this. Asserting after the fact that you would not have drawn your weapons does not mitigate the risk you created here for all involved.

Third, you operated in a leased vehicle from which the license plates had been removed when there was no operational need to do so. This heightened suspicion by SPD when you acted aggressively in the way you did. It also put you at risk for being misidentified (in this case by Detective 1F [REDACTED] as “Proud Boys”). You should not have approved or permitted the continuation of the use of this license plate.

Based on clear and convincing evidence, I find this allegation SUSTAINED for the specific actions outlined above.

#### ALLEGATION 4 –Misconduct: Conduct Unbecoming

Your conduct clearly diminished respect and confidence in the operation of the department as a whole, and as to both of you as law enforcement personnel. Our SPD partners testified that they had not experienced this type of lapse in their history in law enforcement.

The result of your actions towards an undercover SPD officer, created a serious danger that was obvious and foreseeable. These mistakes could have been deadly, as some of the SPD law enforcement personnel state in their interviews, if anyone had felt cornered, pulled a weapon, or perceived a risk, the ending could have been disastrous.

The Lieutenant conveyed to you her disapproval of your actions that led to multiple vehicles and bicycle officers surrounding your car, lights flashing, directing you from the car and placing you up against the car. To any citizen this would have looked like a high risk felony stop, and fell short of that only because weapons were not drawn.

I find this allegation SUSTAINED by clear and convincing evidence.

#### ALLEGATION 5 – Performance Standards: Failure to Supervise

Our policy clearly states that supervisors should have a working knowledge of rules and performance standards of the KCSO and communicate the rules, policies and procedures to subordinates. As the supervisor, you should have been more attentive to the contents of the IAP, including the scope of the mission and primary goal of your mission – to protect Sound Transit infrastructure. You also are fully responsible for the fact that no de-confliction had occurred - as laid out in the IAP. You are equally responsible for ensuring your subordinates comply with KCSO policy and the IAP, and you failed here.

You chose to operate outside of the IAP and permitted, and encouraged tactics (aggressive following of Detective 1F [REDACTED] vehicle) that are not trained or used by the KCSO. Further, you authorized the removal of license plates from the vehicle used that evening, despite having no operational need to do so. These choices resulted in dangerous confusion over your identity in a tense interaction with an undercover SPD officer. Your conduct created a substantial risks already discussed above.

By clear and convincing evidence, I find this allegation SUSTAINED.

#### ALLEGATION 6 – (Bowthorpe) Rules of Conduct: Serious Misconduct (Conduct Criminal in Nature) – Reckless Driving RCW 46.61.500

Not applicable as to you.

#### ALLEGATION 7 – Rules of Conduct: Misconduct (Failure to report misconduct)

Misconduct under GOM 3.00.015(2)(f) means “failure to report a member’s possible misconduct as required in GOM 3.03.015(4),” which reads, “Whenever a member believes that misconduct has occurred, the member shall notify their supervisor in a timely manner.”

This policy violation is not normally applied when members fail to report their own misconduct. If that were the case, there would be numerous examples of such violations. Most complaints do not originate from the subjects of those complaints. Both of you worked in concert, and however misguided, may have felt your actions were justified. For the above reasons, I find this policy does not apply to the facts here, and agree with the recommendation of EXONERATED.

#### ALLEGATION 8 – Rules of Conduct: Misconduct (Insubordination)

The two of you were provided the Incident Action Plan, and an in-person briefing took place prior to the operation, which included a Power Point presentation outlining the scope, mission and specific responsibilities of all personnel.

The scope for the Sound Transit SET unit was spelled out in writing. The evidence from witnesses support that the expectations in the IAP were clear, and neither of you expressed confusion or requested permission to go beyond the bounds of the IAP. KCSO personnel stated that the mission on this night was consistent with “numerous” previous operations, and there was an “up staffing” to prepare in the event that protest activity spilled over into transit assets. Further, the IAP was consistent with ongoing direction that KCSO personnel not engage directly with protest activity because the Department of Labor and Industries had found that the KCSO did not have appropriate PPE to participate in crowd control activity.

You both willingly operated outside the scope of the mission of the operations plan when engaging with Detective 1F [REDACTED] vehicle. There is no indication you objected to the course of action taken by Detective Bowthorpe. Both of you were active and willing participants in operating beyond your mission.

I find by clear and convincing evidence this allegation is SUSTAINED.

#### DISCIPLINE

This discipline recommendation is based on the seriousness of the misconduct, your complaint history and the likelihood that you will repeat similar misconduct. You have a history of sustained allegations that includes performance standards violations and 1 and 2-day suspensions, along with Performance Improvement Plans.

The seriousness of these allegations and your history warrant substantial discipline in this case. The most serious violations are the Performances Standards, Conduct Unbecoming, and Failure to Supervise. You were leading a subordinate in a number of policy violations, and it is incumbent



upon you to know and follow policy, and lead by example. Your serious lapses of judgment in this case demonstrate that you cannot remain in the position of Sergeant.

The discipline I am imposing is DEMOTION from the position of Sergeant to that of Deputy, as well as removal from the SET. This level of discipline applies to each of the Performance Standards violations and the Conduct Unbecoming Violation; each warrants this level of discipline on its own. However, I acknowledge that there is overlap in the facts so no additional discipline is recommended.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitzi G. Johanknecht". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mitzi G. Johanknecht

SHERIFF

cc: File IIU2021-132  
Undersheriff Cole-Tindall  
Major Mendel  
Diane Taylor, Legal Advisor  
Mike Mansanarez, KCPOG  
OLEO