



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

Mitzi G. Johanknecht
Sheriff

December 29, 2021

Cyrus Bowthorpe

1F

RE: Loudermill, Final Decision, IIU2021-132

Dear Cyrus,

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 representative Mike Mansanarez, 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.

Below are the Undersheriff's recommendations:

ALLEGATIONS

ALLEGATION 1 - GOM 3.00.030 BIAS BASED POLICING

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

b. Conduct that is criminal in nature.

- Any felony conviction automatically disqualifies an employee from holding any position within the King County Sheriff's Office.

NON-SUSTAINED

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

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

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

SUSTAINED

BACKGROUND

This investigation stems from your activity with your supervisor, Sergeant McCurdy, 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 activity 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 stations, light rail, heavy rail, and bus routes throughout 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 Sergeant McCurdy 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. Sergeant McCurdy had previously approved removal of the license plates from this vehicle, and the use of the vehicle without plates. There was no operational reason for this vehicle to operate without plates on this assignment. You were 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 [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. You satisfied your obligation by expressing this to Sergeant McCurdy, and Sergeant McCurdy responded to you that he would do so.

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. Sergeant McCurdy failed to contact command about the contact, but SPD notified KCSO's sergeant in the Intelligence Unit.

At the Loudermill, you expressed genuine remorse for your conduct and took responsibility for what occurred that day. You pointed out that you were cooperative and offered explanations for your actions during the IIU investigative process. You wanted me to know that in your almost 15 years of service that you had been nominated for deputy of the year, detective of the year, and that you received a life-saving award. You said your job assignment that evening was to gather intelligence, and that there may have been confusion over what constituted “the hot zone” with respect to my ongoing directives concerning protest activity. You explained that you were looking for people who were dropping items or replenishing supplies for unruly protesters. You decided to follow the vehicle at issue because you thought it would cause more concern if you had called for backup. You now fully understand that without de-confliction you created conditions that were very unsafe.

You also said the JTAT planned the mission and you had assumed they had de-conflicted. Chief Mendel did review the standard procedures for de-confliction and learned that sometimes the confliction with SPD had been accomplished via a phone call. De-confliction processes are being updated to ensure there is written documentation with regard to when de-confliction is required and whether it has occurred.

ANALYSIS

My primary concern about your activities that night is that both you and your sergeant decided to conduct the mission that you preferred over the mission you had been assigned. You both deviated from the plan, and also the mission to protect Sound Transit infrastructure. By deviating from the action plan, you placed your team in danger, as well as other law enforcement in the area. You also placed yourself in a position where you could not effectively protect Sound Transit infrastructure. You compromised the primary mission through your actions.

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 this allegation SUSTAINED by clear and convincing evidence for the acts outlined above.

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.

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”).

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.

Members of the public would have diminished respect for our agency if they were to learn of the facts surrounding this incident. I find this allegation SUSTAINED by clear and convincing evidence.

ALLEGATION 5 – (McCurdy) Performance Standards: Failure to Supervise

Not applicable as to you.

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

It is clear that your driving tactics were aggressive, not trained by KCSO. Driving over the speed limit, following closely, tailgating and driving through more than one red light fall in the category of inappropriate driving activity that creates some risk to others. However, your actions in this case do not meet the legal standard for reckless driving: “willful and wanton disregard for the safety of a person or property.” There is no evidence that you went through red lights without checking for cross traffic and pedestrians, or that you went through such lights at a high rate of speed.

We agree with OLEO that an administrative finding on this allegation does not require evidence beyond a reasonable doubt, but it does require clear and convincing evidence. While I am deeply disappointed in the aggressive driving conduct here, it does not meet the legal standard for reckless driving and therefore I find this allegation NON-SUSTAINED.

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 the 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 or expressed that to your supervisor, Sergeant McCurdy. Both of you were active and willing participants in operating beyond your mission. I find by clear and convincing evidence that this allegation is SUSTAINED.

DISCIPLINE

I am imposing this discipline based on the seriousness of the conduct here, your work record and mitigating factors. You pointed out your good work record during your Loudermill, and that is confirmed by your chain of command. I also find credible your assertion that you have learned from this experience and will not repeat the policy violations involved here. I also find mitigation in the fact that you were with your supervising sergeant who went along with, if not led, the series of actions that resulted in a number of policy violations here. I also note and take into consideration that there is overlap in the sustained violations.

I will impose a Written Reprimand (a reduction from a 1-day suspension) and removal from the SET Unit. I would have mandated additional training for you, but you are resigning from KCSO effective January 10, 2022.

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