



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

Mitzi G. Johanknecht
Sheriff

February 10, 2021

Michael Brown

Pursuant to RCW 42.56.250(4), the
residential address has been redacted.

Re: Loudermill, Final Decision, IIU2020-276

Dear Deputy Brown,

Thank you for meeting with me on November 19, 2020, for a Loudermill hearing to discuss the proposed termination resulting from this investigation of your Facebook postings between June and July last summer. We were able to accommodate social distancing in the PAO Situation room in the courthouse so we were able to meet in person despite the current pandemic. Also present were your representative Guild President Mike Mansanarez, Sergeant Sampson, Captain Park, Chief Olmsted, Undersheriff Cole-Tindall, and Legal Advisor Diane Taylor.

FACTUAL BACKGROUND

Below is a summary of the Facebook posts at issue in this investigation. I have approached and addressed each post by date and list them here for reference.

Item 1: June 1, 2020, "Knock Out" Comment

You reposted a video from Baltimore showing a black female striking an officer, after which the officer's partner punches the woman, knocking her to the ground and where she appears to be unconscious. The comment above the post, written by you reads, "*When in doubt... Knock em out*". (sic)

Item 2: June 3, 2020, Anti-War Protesters, Spitting Out Their Teeth Comment

You posted a photo of protesters blocking I-5 from the late 1960's or early 1970's. The caption above the post and written by you reads, "*I think a few anti-war protesters were spitting out their teeth back then. The Black Hats had arrived*".

Item 3: June 13, 2020, Colonel Sanders Post and Comment

You posted a photo of a large cardboard cutout of Colonel Sanders being moved by a couple of KFC employees. The caption above the post and written by you reads, *"The Colonel falls at the KFC in the CHAZ"*.

Item 4: June 20, or 21, 2020, Lorenzo Anderson's Last Stand at Cal Anderson Park Post and Comment

You posted a comment referencing an incident involving the murder of Lorenzo Anderson that occurred in the CHOP zone on June 20, 2020. You wrote, *"Say what? The CHAZ/CHOP have renamed Cal Anderson Park the Lil Renz's Last Stand Park"*.

Item 5: June 22, 2020, Clip From a Movie Scene from "Tombstone" Post and Comment

You posted this movie clip and wrote this comment above the post, *"Here they come CHOP CHAZ"*. The caption below the clip reads, *"Tombstone... 'You Tell Em I'm Commin, And Hell's Commin With Me'"*. (sic)

Item 6: July 1, 2020, 'SPD "Poppin' Smoke" FINNALLY!!!' Comment

You posted a comment referencing Seattle Police moving into the CHOP.

Item 7: July 4, 2020, "All Lives Splatter" Post and Comment

You utilized a social media site to share a post of an image often referred to as a meme. This image depicted a vehicle striking a person. The captions incorporated within the meme read, *"ALL LIVES SPLATTER,"* and *"KEEP YOUR ASS OFF THE ROAD"*. You commented on this post with the word, *"GEE,"* which appeared at the top of the post.

Item 8: July 4, 2020, or Shortly Thereafter, Covid-19 Comment

Shortly after posting of the "All Lives Splatter" image above, you posted a comment associated with that image: *"I see a couple of people got infected with Covid-19 from the hood of a car on I-5 last night"*.

LOUDERMILL HEARING

The Guild argued the case was not "complete" because other subjects in the investigation had not yet been notified of the results of the investigation. The Guild also argued that termination was too severe, and not consistent with progressive discipline given your history and because this recommendation is harsher than other comparable discipline. Mr. Mansanarez noted that you have had a 41-year career with countless accommodations and that the discipline in this case was driven by public pressure. As an example, the Guild pointed out that the actual event (accident on I-5 resulting in the death of a protester) received less air time than your Facebook posts.

During the hearing you told me you had your Facebook settings limited to private for friends only and that you posted or made comments on posts during off duty time only. You also told me that you now regretted making the postings and understood that others might perceive them in an entirely different light. You also expressed that sometimes your biggest enemies are wearing the same uniform.

ANALYSIS

I have reviewed the investigative file and recommendations for findings and discipline. I will not include all details here, but concur with the factual summary prepared in the Findings and Notice of Loudermill memoranda and incorporate them by reference.

I will first address and provide analysis related to points made by Mr. Mansanarez during the Loudermill hearing. The investigation started by your posts and all subject members under investigation were listed under one IIU number for ease of investigation. Each individual subject was investigated and the result of those investigations had a separate findings process for their response to your postings. These responses included one case where a subject made a comment and most incidents had subjects reacting to the posts through an emoji response. The investigation concerning you was thorough and complete. I reject the argument that your case can't proceed in process because other accused subject's independent actions and investigations are not completed. There is an opportunity for you to raise any additional facts regarding comparable discipline through the grievance process. I believe you're deferring blame to others who had access to your postings and may have shared them for a variety of reasons. Your presentation was brief and fell short of accepting responsibility, or demonstrating that you understood what was wrong with your conduct.

When looking at your comments and postings, a First Amendment analysis is required that assesses whether the content of the posts address matters of public concern. I concur that all posts met this criteria because these issues were front and center to our community and the entire country. The analysis also requires a balancing of an employee's interest in expressing their views on matters of public concern, against potential disruption to the operations of the government – in this case the King County Sheriff's Office and other branches of King County government in general. I concur that in every post but one, the public interest in discourse on these topics was outweighed by the disruption and harm to the King County Sheriff's Office, and its ability to effectively carry out its law enforcement mission. The prior memoranda outlines in detail the context of these posts, which include national events beginning with the killing of George Floyd in May 2020, public protests, a climate that demanded examination of inequity in the criminal justice system and a calling for change in how law enforcement is carried out. The climate during the summer was highly charged surrounding at least two issues of use of force by law enforcement and racial injustice across our nation.

Confidence and trust in the integrity of this Sheriff's Office is critical if it is to command and deserve the respect and support of the public it serves. For many years you held the highly public position of serving in the Criminal Intelligence Unit Executive Protection Detail (EPD). While assigned EPD duty you were a primary detail detective for the County Executive, Dow Constantine. The public easily identified you with the Sheriff's Office whether because of this assignment or for other reasons. The volume of complaints concerning your series of posts caused a significant slowdown in the work of the Internal Investigations Unit in order for them to review, document, process and investigate hundreds of complaints. These complaints came through the Executive's Office, the Office of Law Enforcement Oversight, IIU, and direct emails to me. The overwhelming negative response made clear that confidence and trust in the Sheriff's Office was badly damaged by your actions and social media posts.

I will now address specific analysis for each post or comment.

Item 1: June 1, 2020, "Knock Out" Comment

Analysis: The information available in the video shows excessive, unnecessary use of force by the officer punching the black female. There were a number of officers present who could have controlled the suspect without knocking her out. Your comment, "When in doubt...knock em out," advocates the use of force potentially in retaliation, and when not warranted and unlawful. The Baltimore officer involved was disciplined. While you said this was not your original statement, you borrowed this motto from the Hells Angels and I do not find this mitigating.

Item 2: June 3, 2020, Anti-War Protesters, Spitting Out Their Teeth Comment

Analysis: You acknowledge the "black hats" are a reference to KCSO deputies in the distant past coming to address the protests, as told to you by a long retired deputy. The reference to protestors having their teeth knocked out is most reasonably interpreted as endorsing law enforcement using force against protestors who were blocking a freeway. The photo shows the protestors are not a threat to police. This was posted June 3, when there were active protests in the Seattle area, including blocked roads and the freeway. Knocking out teeth would be excessive and unnecessary force based on what's happening in the photo, and a violation of the law.

Item 3: June 13, 2020, Colonel Sanders Post and Comment

The First Amendment to the US Constitution and the balancing test applied weighs in favor of your speech. I concur.

Item 4: June 20, or 21, 2020, Lorenzo Anderson's Last Stand at Cal Anderson Park Post and Comment

Analysis: This post minimizes the violent death of a young black man connected to the controversial Chaz/CHOP zone on Capitol Hill in Seattle. The focus of this protest, though controversial in its methods, was racial inequality and particularly with regard to use of force against people of color.

Item 5: June 22, 2020, Clip From a Movie Scene from "Tombstone" Post and Comment

Analysis: The graphic video clip associated with this post shows a law enforcement officer gunning down and threatening suspects/others in the vicinity. Your comment endorses the use of lethal force in a situation where such force is clearly not justified and the suggestion is that such force should be used against protestors.

Item 6: July 1, 2020, 'SPD "Poppin' Smoke" FINNALLY!!!' Comment

Analysis: You posted this comment about popping smoke the same day city workers and the Seattle Police Department (SPD) were brought in to clear protestors out of the CHOP/CHAZ zone. You said you were referencing smoke used in the Vietnam era by the military for identifying locations and for providing concealment. You said you also intended to convey that SPD was finally moving in and

doing something. The obvious and most reasonable interpretation is that you are advocating the use of tear gas or other chemical irritants by law enforcement against protesters, whether reasonable or not under the circumstances. During this time Seattle's mayor had banned the use of tear gas because its use had become a controversial issue in the community, and there had been complaints about its misuse.

Item 7: July 4, 2020, "All Lives Splatter" Post and Comment

Analysis: This is the post (and the one below, a follow up to this post) that drew the most criticism from complainants who emailed and called the Sheriff's Office and other County officials. Your explanation was that you had located this meme on a government website and you adding of the word "GEE," was an expression of your surprise that a government agency would post something like this. That explanation shows you understood the negative impact of the post. You explained that your stated intention regarded concerns about the risks for pedestrians on freeways. The obvious objective impact of the post was quite different. You posted this the same day two female protesters were hit by a car on a Seattle freeway. A freeway that had been closed for the protest. The driver was arrested and the collision appeared to be intentional. The victims were alive at the time you posted this, one was in critical condition and passed away shortly thereafter. The second victim had serious injuries but survived. You said you did not equate "All Lives Splatter," with the ongoing protests supported by the movement "Black Lives Matter." The play on the phrases is so obvious I do not find you to be credible on this point. This post exhibits callous disregard for life and the racial inequity message of the Black Lives Matter movement in particular.

The "Keep your ass off the road," statements on the lower part of this same meme also infers blame on those engaged in the protest (rather than the driver).

Item 8: July 4, 2020, or Shortly Thereafter, Covid-19 Comment

Analysis: You explained that the intent of your comment here was to express your opinion that there had been over-reporting of Covid-19 deaths, including your experience with your father's recent death. This post compounded the insensitivity of the prior post by adding a second callous comment in a situation where it had appeared someone intentionally drove into pedestrians, causing serious bodily harm and death. Your words were extremely insensitive to the victims of a suspected serious vehicular assault/homicide. On July 5, the day after this last post, you took down your Facebook account due to the number of complaints and outrage expressed in those complaints you received about your postings.

The current cultural and political climate should have been more obvious to you than even other Office members. Based upon your assignment you viewed some of the protests and riot activity in real time. Clearly this is a challenging time to be in law enforcement with the scrutiny focused on this profession. That challenge does not diminish our obligation to conduct ourselves in a manner that preserves and deserves the public's trust in the Sheriff's Office.

The preamble to our General Orders Manual (GOM) and the Law Enforcement Code of Ethics clearly outline the requirement that members conduct themselves in a manner that brings credit to the

Sheriff's Office, maintaining a level of conduct in their personal and official affairs consistent with the highest standards of the law enforcement profession.

Excerpt from the GOM Preamble:

The King County Sheriff's Office must maintain a high level of personal and official conduct if it is to command and deserve the respect and confidence of the public it serves. . . . The purpose of the Sheriff's Office General Orders Manual is to provide guidelines and instructions concerning employee conduct and responsibility for all Sheriff's Office members in all of their activities, whether official or personal.

Excerpt from Law Enforcement Code of Ethics:

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others.

The media policy violation was reviewed in the context of criminal conduct, against the standard of our use of force policy, and the Washington criminal code. Our Use of Force policy permits physical use of force when other options would be ineffective or impractical. (GOM 6.00.040). The use of force must be objectively reasonable considering all the circumstances. (GOM 6.00.010). These standards were applied to the clips or photos available in your posting. As outlined in RCW 9A.16.010, the force "necessary" means that no reasonably effective alternative to the use of force appeared to exist. RCW 9A.16.020 outlines when the use of force is lawful, which is limited by its language to the force that is necessary.

ALLEGATIONS AND FINDINGS

I concur with the recommendations and sustain the allegations as outlined below:

ALLEGATION 1 – GOM 3.00.015 (1)(g): SERIOUS MISCONDUCT: Discrimination, Harassment, Incivility, and Bigotry

Members must always conduct themselves in a manner that brings credit to the Sheriff's Office, maintaining a level of conduct in their personal and official affairs consistent with the highest standards of the law enforcement profession. Any sustained charges that a member has engaged in conduct unbecoming and/or misconduct will result in corrective action or discipline up to and including dismissal from the Sheriff's Office.

Members while on-duty shall not engage in discussion or conduct that belittles others or discriminates against others on the basis of: Race, Color, Age, Sex, Sexual orientation, Religion, National origin; or the presence of any sensory, mental or physical disability. Gender identity or expression.

EXONERATED

This policy applies to "on duty" conduct, and this conduct occurred off duty.

ALLEGATION 2 – GOM 3.00.015 (2)(k): MISCONDUCT: Conduct Unbecoming – 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.

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

The following posts constitute Conduct Unbecoming:

- Item 1: June 1, 2020, post, "When in doubt, knock 'em out"
- Item 2: June 3, 2020, post, "I think a few anti-war protesters were spitting out their teeth back then. The Black Hats had arrived."
- Item 4: June 20 or 21, 2020, "Lorenzo Anderson Last Stand Park"
- Item 5: June 22, 2020, Clip from movie scene from Tombstone
- Item 6: July 1, 2020, "SPD 'Poppin Smoke' Finally!!!"
- Item 7: July 4, 2020, "All Lives Splatter"
- Item 8: July 4, 2020 (on or about), "I see a couple people got infected with the Covid-19 from the hood of a car on I-5 last night"

ALLEGATION 3 – GOM 3.00.020 (1) (d): PERFORMANCE STANDARDS –

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

Specific Policy:

GOM 14.00.075 USE OF SOCIAL MEDIA: 03/13

For the purpose of this policy:

Social Media means: A category of internet-based resources that integrate user-generated content and user participation. This includes, but is not limited to, social networking sites, microblogging sites, photo and video sharing sites, wikis, blogs, and news sites.

- 1.) When using any social media department members shall not:
 - h. Post content containing excessive name calling, profanity, fighting words, discriminatory epithets, sexual harassment, bullying, or gruesome language.
 - i. Post content that amounts to advocating criminal activity or law violations.
- 2.) When using any social media department members should be reminded that:
 - a. Third-parties, including criminal defense investigators or attorneys may locate text and graphic postings and use the content to impeach the credibility of KCSO witnesses in a court case.

- b. Even if you think your posting is "private" you may not own that content and the owner may change its status in the future or there may be a data breach.
- c. Content that you post may be available long after you have forgotten about it.
- d. Even if you think your posting can be viewed only by a limited group of "friends", those friends might share your content with third parties without your knowledge.
- e. Posting personal information about yourself or your family may present a personal safety risk.

SUSTAINED

The Social media policy prohibits communication that "amount to advocating criminal activity or law violations." GOM 14.00.075(1)(i).

The following posts violate this section:

- Item 1: June 1, 2020, post, "When in doubt, knock 'em out"
- Item 2: June 3, 2020, post, "I think a few anti-war protesters were spitting out their teeth back then. The Black Hats had arrived."
- Item 5: June 22, 2020, Clip from movie scene from Tombstone clip showing a law enforcement officer gunning down and threatening suspects/citizens

DISCIPLINE/CORRECTIVE ACTION RECOMMENDATION

I will review the comparable discipline and address issues raised by the Guild on that issue. Other employee conduct was reviewed as part of this investigation where they commented (in one case) or reacted by posting an emoji smiley face, heart, thumbs up or down, or something similar. The employee (commissioned deputy) that posted a comment did so because of the "Covid 19" comment incorporated in the "All Lives Splatter" meme. That member's comment was: *"Poor SOB (suspect) just threw his life away over people not worth the time of day. I have no sympathy for the dumbass victims though. Stop provoking people who have nothing to do with your grievance or they will strike back. Dude is going to need a great team of attorneys."* The Notice of Loudermill recommends a 1-day suspension for this employee; final discipline is pending. While offensive and deserving of a suspension, this conduct involved in one post compared to your seven. The other employees who "reacted" to one of your posts via emoji's provided a range of statements as to why. The use of a symbol rather than words made it difficult to establish enough endorsement of the affected post(s) to constitute a violation of policy. These cases without comments resulted in no sustained findings.

The most similar comparable dates back to 2017 (IIU2017-260) involving an AFIS employee, who is a non-commissioned/civilian, identified herself as associated with KCSO on her Facebook page. She posted the "All Lives Splatter" meme in 2017 shortly after the incident in Charlottesville, VA. She received a 10-day suspension for Conduct Unbecoming, Willful Violation of KCSO policy and Insubordination. Her conduct was extremely concerning, but I distinguish it from your case with regard to the level of discipline because it involved a single post. Further, she was non-commissioned/civilian member of KCSO and not in a position to use force. The context (social climate) was not as charged and focused on scrutinizing the deadly use of force by law enforcement

officers and social inequity as the timeframe during in which you posted a series of volatile posts in a one-month period.

Recently, a captain received a recommendation of a 1-day suspension for posting a widely circulating video of a gang of black people attacking and robbing a 15-year old black girl stealing the shoes off her feet. The captain wrote: "Animals. This is what the inner city gives us these days." Several other instances of improper Facebook posts resulted in written reprimands. This was because there was not the outrage and extremely harmful, negative and damaging effect to the Sheriff's Office that your posts and comments created locally and nationwide.

Your history includes sustained violations for Conduct Criminal in nature and Conduct Unbecoming for a series of incidents in 2013 that occurred in Chelan County. Local law enforcement approached you when they suspected that you had driven while under the influence of intoxicants. You were suspected of hit and run with property damage to a rockery. When contacted by Chelan law enforcement you appeared impaired and your communications were extremely unprofessional, reflecting poorly on the agency (IIU2013-159). You received a 1-day suspension.

I have considered your work history and the seriousness of your conduct. Several of your posts endorsed and advocated unnecessary/excessive use of force and violence. They demonstrated extreme indifference to life and racial equity. These seven posts occurred in the short timeframe of one month. You have a prior sustained violation for Conduct Unbecoming, as noted above. I also weigh the discipline imposed in other cases involving social media postings. It is necessary that I also consider your ability to be effective as a law enforcement officer, given the ample material now available to discredit and undermine you and your work for this Office. The damage to your integrity and ability to continue to serve as a law enforcement officer cannot be repaired.

Therefore, I will **terminate your employment effective February 11, 2021**. I find that each sustained violation, Conduct Unbecoming and Acts in Violation, separately and independently warrant termination.

Sincerely,



Mitzi G. Johanknecht
SHERIFF

cc: IIU Case file: IIU2020-276
Undersheriff Cole-Tindall
Chief Olmsted
Diane Taylor, Legal Advisor – KCSO
Mike Mansanarez, KCPOG
Adrienne Wat, Director - OLEO