



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

Mitzi G. Johanknecht  
Sheriff

March 25, 2021

George Alvarez  
RCW 42.56.250(4)  
Residential Address

RE: WAIVED LOUDERMILL, FINAL DECISION, IIU2020-015

On January 27, 2021, you were served with Undersheriff Cole-Tindall's "Notice of Loudermill" memorandum. This notified you of your right to a *Loudermill* hearing where you would have an opportunity to present additional information, or mitigating circumstances on the Undersheriff's recommendation that a violation for Performance Standards be sustained, and transfers from your SET and TAC-30 assignments be imposed as discipline.

The recommendation at issue for this *Loudermill* was for a sustained violation of Performance Standards, ("Performance substantially below that of others...") and recommends your transfers out of your TAC-30 and SET team assignments.

My initial review of the case led me to believe more serious discipline might be warranted for this violation; therefore, I directed my legal advisor and the Undersheriff to notify your labor representative that this was possible, so that you could consider that in making your determination as to whether to request a *Loudermill* meeting. I wanted to make sure you were fully aware of the consequences of choosing not to meet with me before a final decision.

Although I did not hear from you or your union by the deadline provided to seek a *Loudermill* meeting, I was glad to hear that you contacted my office after the deadline and asked my Executive Assistant to schedule a meeting, which she did. I was expecting to meet with you for a *Loudermill* on March 23, 2021. However, on March 19, the KCPOG canceled this meeting on your behalf and waived your right to meet with me prior to me making my final decision on this investigation. Therefore, I am issuing my final decision on discipline in this case based on my review of the investigation without input from you.

#### SUMMARY OF RECOMMENDATIONS

I will outline all the recommendations related to this investigation, however discussion in this letter focuses on a review of the allegation subject to *Loudermill*, and that is Allegation 3. Allegation 1 was

recommended as **EXONERATED**; I concur with that determination, and it is consistent with the Critical Incident Review Board finding. In addition, the King County Prosecutor reviewed the investigation materials and declined to file criminal charges at that time.

I also concur with a **SUSTAINED** finding with regard to Allegation 2. The Undersheriff imposed a Written Reprimand for "Acts in Violation" related to your failure to have ready or don your marked protective vest before effecting an arrest. I concur and incorporate by reference her discussion on these two allegations.

**ALLEGATION 1** – GOM 3.00.015 (2)(d): RULES OF CONDUCT:

(2) 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.

- Excessive or unnecessary use of force against a person.

**EXONERATED**

In reviewing this finding, I focused my attention on the point in time when you utilized deadly force based on the facts and circumstances as you understood them at that point in time. I think that you reasonably concluded you and your partner were at risk of serious bodily injury or death.

**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.

**Specifically:** Special Investigations SOP Appearance/Uniforms

*Detectives shall have ready access to KCSO approved Sheriff or Police raid jackets or hidden agenda jackets. When detectives make arrests or assist in an investigation, they should display appropriate uniform with Sheriff/Police marked clothing.*

GOM 7.03.015(1)(2), version in effect (effective 4/19): Plain Clothes Assignments: To be worn during any known or potentially dangerous assignment and to be kept immediately available for use at all times when not being worn.

This violation is sustained for not having your marked ballistic vest readily available, and failing to don your marked ballistic vest when you took a series of steps, in an effort to make an arrest.

**SUSTAINED**

*Written Reprimand issued 1/31/21*

**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**

## **BACKGROUND**

I have reviewed the investigation, the Findings memos prepared by Major Butschli and Chief Howard, and the Notice of Loudermill prepared by Undersheriff Cole-Tindall. These allegations were forwarded to the Internal Investigations Unit (IIU) by the Administrative Review Team (ART) in connection with your involvement in an officer involved shooting that resulted in the death of suspect Anthony Chilcott.

A BOLO (Be on the lookout) had been issued for suspect Chilcott for auto theft, theft of a dog, and stalking, which was confirmed to be misdemeanor stalking. *The BOLO advisory included the warning that the suspect was hostile to law enforcement, likely to use force against law enforcement, and likely to attempt to evade.* The car driven by the suspect was described by you as a high performance vehicle, with very dark tinted windows. You were driving an unmarked leased SUV, a white GMC Yukon, with no lights or siren, which you acknowledged was not suitable for engaging in a pursuit. Detective Lerum was in the front passenger seat while you drove. Your plan that day was to locate the suspect if possible, and call in the "calvary" to apprehend him. While in the area, you learned from a postman on the street that the suspect was driving recklessly (speed in excess of 100 mph). Via police radio, you learned that during a pursuit that involved the WSP and one of our deputies, the suspect hit Deputy Lein's patrol car. This was described initially by Deputy Lein as being "hit" by the suspect and that he was "out" [of the pursuit]. Deputy Lein clarified within minutes that the suspect made incidental contact with his push bar while driving around the patrol car to escape being blocked in, likely resulting in no damage. Radio communication was imperfect and Det. Lerum held the radio. You said you did not hear all of these communications.

You located the suspect driving in the opposite direction, and continued to drive as he passed you, until you could discretely turn around. Detective Lerum noted on the radio at 1150 hrs that you were passing him and were going to turn around on him. You unexpectedly came upon him to find he had pulled over and stopped on the side of the road next to a power station. Rather than continue to surveil and wait for the "calvary," you made a sudden decision, without any planning, discussion, or communication with Detective Lerum, to pull up next to the vehicle.

Your decision to pull up next to the suspect vehicle resulted in the passenger side of your vehicle (where Detective Lerum sat) stopping very close to Chilcott, in the driver's seat of a car was described by Detective Lerum as a "rolling tank." The dark tinted windows made it impossible to see what the suspect was up to before you drove up next to him. The suspect was known to be hostile to law enforcement. I do not consider any of these actions to be a pursuit. Detective Lerum was unaware of this sudden change in strategy. Your primary rationale was the potential risk to the people at the bus stop nearby, and yet, you took actions that likely increased the risk of harm to nearby civilians. You also failed to follow basic officer safety practices and your extensive training, creating

extreme risk for your partner and yourself. It would have been better to drive past the suspect and surveil him from a distance, as you had originally planned.

According to your statement, you also took into account that the suspect posed a general danger to the public because of his recent reckless driving, and the fact that he was driving a high-performance vehicle.

You observed the suspect smoking, with his driver side window cracked about 4 inches. The suspect did not comply with commands. At 1153 hrs Detective Lerum broadcast, "He just rammed us . . . ." This was two minutes after Detective Lerum's radio call that you had spotted him passing you in the opposite direction. You responded by turning into, and pushing, the suspect vehicle across the road and onto some rocks. Some civilian witnesses at the bus stop thought you had rammed the suspect vehicle first, but there are no witnesses who report seeing the entire sequence of events, beginning at the location where the suspect parked at the power station and ending with the collision that pushed the suspect up onto the rocks. Given that the focus of such witnesses was not likely on this incident until they heard the collision, and given Detective Lerum's sudden and excited utterance via radio, I find that the totality of the evidence supports your description of this event. I do not consider any of these actions to be a pursuit.

After the vehicles crossed the road, the suspect's vehicle was stuck for a time, accelerating, spinning his wheels, and attempting to shift into gear. At one point he moved the vehicle about 20 feet in reverse at a high rate of speed. Both of you were at risk of being struck by the vehicle during this maneuver, and throughout, as the suspect tried to dislodge his vehicle. During this time, you approached both the driver's and passenger windows, and tried to break out the driver's side window using a sledgehammer obtained from your vehicle. The glass was difficult to break and remove, but eventually you were able to do so. You reached into the cab at various points, attempting to shut the vehicle off, and prevent the suspect from shifting into gear. The suspect was not compliant with commands, fought with you, and at one point grabbed your firearm, and at another point pinned your arm, trapping your upper body in the cab. Both you and Detective Lerum discharged your duty weapons at close range because the suspect's actions put you at risk. You explained your thoughts as he attempted to move the Raptor, "I'm dead. It's going to run me over and drag me down the street. Or, he's going to turn... if he goes any way but straight back? He's going to scrap, Lerum and pin him and kill him."

## **DISCUSSION**

In reviewing this investigation, the tactical decisions you made stood out to me as inconsistent with my decades of experience as a law enforcement officer. I was concerned about a number of decisions, the series of actions you took beginning with the decision to pull over next to the suspect vehicle. In sharp contrast, your assignments on a number of SET teams and fifteen years on the TAC-30 team, currently a squad leader, have provided you with substantial opportunities for tactical training on a regular basis.



I was not alone in my concerns. I find it compelling that a chief and major with substantial law enforcement experience also found problems with your tactical decision making, and think it is important to include what each of them stated in their memos on this investigation.

Here is what Chief Howard said:

"I believe this initial plan [to observe and call for uniformed officers] was appropriate and consistent with the mission routinely performed by plainclothes detectives. I have serious concerns with the decision made by Detective Alvarez to switch to an offensive strategy by pulling in front of the suspect vehicle which led to the suspect ramming the unmarked Detective vehicle and ultimately to the use of deadly force. I'm unconvinced by the rationale the suspect *may* have posed immediate danger to nearby children which required immediate actions by detectives who were not readily identifiable or wearing required personal protective equipment. Furthermore this decision was made without consultation or even a warning to his partner Detective Lerum, who was placed in a compromised position as they pulled alongside and then in front of the suspect vehicle. Rather, the choice to confront the suspect and the suspect's subsequent reaction is what actually place nearby pedestrians and motorists in danger."

Here is what Major Butschli wrote:

"Chilcott was parked at the time this decision was made. While Chilcott certainly presented a potential threat based on his behavior that morning, he was parked at the time of the encounter. There is no evidence of immediate exigency to life safety in that moment that would justify engaging without appropriate preparation and planning. Detective Alvarez's decision to block the Ford Raptor with his vehicle was tactically questionable. The maneuver served to potentially impede the forward movement of the Raptor, but it also placed Detective Lerum in an exposed position. Detective Alvarez is exceptionally trained in tactics, making his vehicle placement decision difficult to understand. This tactical choice runs counter to most conventional tactical training and is not well justified during statements made by Detective Alvarez . . . The evidence does not, however support that he was an imminent threat to life safety at the time Detective Alvarez chose to intervene. Chilcott had been parked smoking. Chilcott needed to be arrested but there was not sufficient justification to settle for an abrupt and unplanned attempt to do so."

In assessing whether your performance related to tactical decision making was "substantially below" others in similar assignments I look to the expectations and guidance outlined in training provided by the department, the known expectations in the unit, and your experience level. Supervisory guidance and known institutional lessons learned are reasonable guides for evaluating performance under this subsection.

I reject the restrictive position that we are required to identify a specific policy to review a member's exercise of judgment under this performance standard. While the agency has been culturally reluctant to evaluate poor tactical decision making in the context of policy violations, the exercise of bad judgment is the type of issue that is best addressed under the "Performs at a level substantially below that of others" section of the policy.

## De-escalation

The Use of Force policy in effect at the time of this event included a section on De-escalation (6.00.020; effective 1/17), that reads: When safe under the totality of the circumstances and time and circumstances permit, deputies shall use de-escalation tactics in order to reduce the need for force. 6.00.020(1). Further, that “When time and circumstances reasonably permit, deputies shall attempt to de-escalate use of force situations by (a) Moving from a position that that exposes deputies to potential threats to a safer position; (b) Decreasing exposure to the threat by Distance, Cover and Concealment. 6.00.020(3)(a) and (b).

Your training records include a 3-day “In-service Training,” that was held in 2017-2018. You attended this 3-day training February 21, 22 and 23, 2018. De-escalation was the primary focus during the 2018 three-day in-service training. This agency, consistent with the changes in approach to policing all across the country, have intentionally focused messaging and training on de-escalation, making reduction of risk a high priority. To that end, former Sheriff Urquhart approved and directed a training plan: *this course strives to create a shift in mindset from previously learned arrest techniques that encourage deputies to get subjects in handcuffs as quickly as possible . . . . The techniques in this course rely heavily on slowing down the situation from a position of control and maintaining control for as long as necessary in order to effectively de-escalate and utilize restraints. Skills are taught as both an individual Deputy as well as multiple deputy arrest procedures . . . .*

The topic of De-escalation filled 1.5 days, or half of the training. The de-escalation training included a series of scenario-based videos and discussion. The following inquiry was covered at least eight times in the PowerPoint presentation to evaluate actions depicted in videos:

- 1) do you have legal authority?;
- 2) was immediate action necessary?; and
- 3) was de-escalation safe and feasible?

De-escalation was described as mandatory, that it “shall be used when safe and feasible given the totality of the circumstances.” It was also stressed that de-escalation must be addressed during every law enforcement encounter. One slide noted that if you had time to consider whether de-escalation was safe and feasible, that meant you had time to use de-escalation tactics. The course evaluated threat assessment and what was exigent.

## Unit Expectations

When interviewed, Sgt. Calabrese (supervisor of Precinct 3 SET team) said the primary goal is to observe and stand back until marked police officers arrive. He noted that “If we need to take more of an active role, *at a minimum*, what we're doing is we're going to throw on our vest that has the markings on the front and back. “The Sergeant described how new members to the unit are trained in policy, and that ensuring people know they are the police when they engage is paramount. *We are a plain clothed unit. People don't expect us to be the police, so it's super important that we have our gear on. It needs to be readily available all the time. As a unit, when I first got here, everybody that was already here was part of that incident that happened in Des Moines. They had firsthand knowledge how important that stuff is. Even then, we talked about it and discussed it. Anybody that*



*goes into a unit like this knows how important it is that we are visible as the police. We go out of our way to make sure people know that we're the police."*

### Analysis

When you made the decision to contact the suspect, there was no imminent risk. The vehicle was at rest and parked at the side of the road at the power station. While pedestrians were nearby, the risk to them was speculative. It turned out that the suspect was smoking. What was not speculative, but certain, was that the suspect was hostile to law enforcement, likely to attempt to evade, was willing to drive recklessly to do so, and was driving a high performance vehicle that would outperform your leased SUV. It was foreseeable that approaching him was more likely to cause him to drive recklessly and endanger others.

In addition, you knew that backup had been summoned. Detective Lerum called for WSP backup shortly after 1151 hours.

*1151 hours:* Detective Lerum broadcast, "We got that black Raptor and going to turn around on it" When asked where he was at by radio he stated, "Southbound on Cumberland Kanasket **can you advise State** we are coming up on the Cumberland Saloon." Approximately a minute later Detective Lerum broadcast, "Paul Thirty Two still Southbound at speed about fifty."

You also knew WSP was in the vicinity, as you noted they were "just south" and "we just saw him." In fact, WSP backup arrived just after shots were fired at 1155 hours.

Up until about 1152 hours your plan was to locate, observe, maintain surveillance, and call in the "calvary" to effect the arrest. You did not use the opportunity you had to slow things down, create distance, observe, or take time to confer with your partner about a plan. The initial phases of de-escalation, create time and distance, were overlooked by you. One of the questions stressed repeatedly in the training, included "was immediate action necessary?" The answer here is no.

You had acknowledged that the suspect had already demonstrated "he's going to do everything he can to get away." And while you describe this as a unique advantage, both of you described the capabilities of the suspect's vehicle as substantially outmatching the capabilities of the one you were driving.

Below I list the factors that weigh against the tactical decisions made by you.

#### *Tactical decisions of concern:*

- *Decision to make contact with suspect, pulling up next to suspect vehicle*
  - *Without taking time to formulate plan, discuss with partner, alert partner, or don protective identifying gear*
  - *When suspect known to be hostile to law enforcement, with history of assaulting police officers (BOLO alert)*
  - *When suspect known to have history of evading police*
  - *While in unmarked vehicle with no emergency equipment*

- *While not wearing marked identifiable clothing/vests (initial contact and later contacts)*
- *Without consulting or notifying Detective Lerum*
- *Placing Detective Lerum next to suspect driver's side (without identifying protective vest on)*
- *When darkly tinted windows prevented observation of suspect to assess whether suspect armed*
- *When suspect driving a high performance vehicle that could outmatch the KCSO leased vehicle*

Your abrupt action to drive up next to the superior suspect vehicle without the ability to see or know what the suspect was up to or whether he was armed, created an extremely unsafe situation for you, but particularly for your partner. Detective Lerum had no protective gear on, or nearby. This suspect was known to be hostile to law enforcement, and known to flee (meaning he was unlikely to follow commands). It was also troubling that the speculative concern about the pedestrians was not addressed by your actions – the suspect's response to your actions likely put them more at risk.

I understand that care should be taken when evaluating decisions made in the heat of the moment, but that does not insulate all such decisions from review. And the urgency here was created by your actions, not the actions of the suspect.

In addition, I find your continued efforts to engage the suspect when he was spinning his wheels, driving backwards at high speed, unsupportable as well. You knew backup was nearby. Reaching into a vehicle that is capable and likely to move is not warranted under the facts here and admittedly put you at risk. Continuing to break and pull out windows resulted in a series of bad tactical decisions.

The policy and training described in detail earlier, require de-escalation when time and circumstances permit. The initial phase of de-escalation is creating distance between law enforcement and the potential threat, and slowing things down to avoid and reduce the need for using force. Here there was no exigency requiring you to approach the suspect vehicle when not in a marked car wearing marked protective gear. This bad decision was exacerbated by the fact that the suspect was known to be hostile and assaultive towards law enforcement, the windows were so darkly tinted you could not observe the extent of a potential threat, then you placed Detective Lerum in an exposed position next to the unseen suspect, when the suspect also had a tendency to evade police and was driving a high performance vehicle that outmatched yours. You also failed to take into account that the suspect may have misidentified you as another criminal element trying to harm him.

## **CONCLUSION**

The facts in this case support a finding by clear and convincing evidence that the tactics used here were substantially below what is required in our de-escalation policy, expectations based on your training, experience level, and organizational knowledge gained from lessons learned from prior events.



I concur with the recommendation and **SUSTAINED** violation for Performance Standards, "Performs at a level substantailly below that of others in the unit." I interpret "unit" as other detectives and units that do similar work. I take into account the substantial tactical training you received on a regular basis as a leader of a TAC-30 team, and extensive experience in detective assignments.

Below I summarize the final determinations with regard to the violations:

**Allegation 1** – GOM 3.00.015 (2)(d): RULES OF CONDUCT: MISCONDUCT - Excessive or unnecessary use of force against a person.

**EXONERATED**

**Allegation 2** – 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.

**SUSTAINED**

**Allegation 3** – GOM 3.00.020 (1)(c): PERFORMANCE STANDARDS – Performs at a level significantly below the standard achieved by others in the work unit.

**SUSTAINED**

## **DISCIPLINE**

This discipline is based on the seriousness of the misconduct, the employee's complaint history and the likelihood that the employee will repeat these actions.

You had a serious incident of misconduct in 2003, when found to have physically assaulted a confidential informant in the course of your work. Though termination was recommended, former Sheriff Reichert reached agreement with the Guild for a 20-day suspension.

Your specific history includes sustained violations as follows:

2003-097: Appropriate use of Authority, Conduct Unbecoming, Excessive/Unnecessary Use of Force. Facts are outlined above. 20-day suspension.

2014-060: Conduct Criminal in Nature; for accepting a prescription medication from a former co-worker without a prescription. Oral Reprimand.

While I consider the disciplinary history dating back to 2014 and 2003, which demonstrates extremely poor judgment, this is tempered by the staleness of the 2003 violations, and the low level of discipline imposed in the 2014 Conduct Criminal in Nature case.

Your extensive training and experience in plain clothes assignments, which includes 15 years on the TAC-30 team, and current position as a TAC-30 leader where you are responsible for developing and approving tactics, are relevant to my assessment of appropriate discipline. You have served in critical and challenging assignments at the KCSO during your 21-year plus tenure, which includes K-9

experience, Gang Unit detective, and SET teams at Muckleshoot/Precinct 3, Precinct 4, and Precinct 5, along with the extensive TAC-30 ancillary experience and training. You also serve as a Taser and firearms instructor. I acknowledge that you have received numerous accommodations, and enjoy the support of many of your colleagues.

I find your actions here extremely serious. You made a series of decisions that were not tactically sound, were inconsistent with training and policy, placed your partner and you at severe risk. Your exercise of bad judgment was not limited to a single decision, but involved a series of bad decisions. While there has been significant recent focus on de-escalation in the last few years, it has always been the training and expectation in this agency to engage with suspects in a thoughtful way, always considering the risks of harm, and escalating situations only when necessary. Our goal should always be to do our jobs with minimal physical harm to ourselves and others. Your actions demonstrated a disregard for the public, your partner and yourself.

For the reasons outlined in this letter, I find that TERMINATION of your employment is warranted. Your ability to serve the public is irrevocably impaired. Therefore effective April 2<sup>nd</sup> I am imposing **termination** of your employment. It is with a heavy heart that I reach this conclusion, but feel is it my responsibility to uphold the standards of the agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitzi Johanknecht", written in a cursive style.

Mitzi G. Johanknecht  
SHERIFF

cc: IIU File 2020-015  
Undersheriff Cole-Tindall  
Chief Anderson  
Diane Taylor, Legal Advisor  
Mike Mansanarez, KCPOG  
OLEO