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

Mitzi G. Johanknecht
Sheriff

August 24, 2021

Adrienne Wat, Interim Director
Office of Law Enforcement Oversight
710 Second Avenue, Suite 790
Seattle, WA 98104

Re: King County Sheriff's Office Response: OLEO Systemic Review of November 25, 2019 Officer-Involved Shooting of Anthony Chilcott

Dear Interim Director Wat,

The King County Sheriff's Office (KCSO) appreciates the opportunity to provide a response to your report. This Office shares your concern about poor tactical decision-making, by one former detective in particular, and the failure to follow the training, policies and procedures of the Sheriff's Office.

As the Council and community are likely aware, I made the decision to terminate the employment of Detective 1 after an internal investigation and review determined his tactical choices fell below KCSO performance standards. Detective 1 and 2 had made a plan to simply surveil Mr. Chilcott if they located the stolen Raptor until marked patrol units could arrive. Detective 1's abrupt shift to an offensive strategy, without warning to Detective 2, escalated the situation unnecessarily and increased the danger to civilians standing nearby, Mr. Chilcott, and the detectives themselves.

Our members train in de-escalation techniques, and practice them almost daily. KCSO's expectation is that our commissioned personnel will use time, distance, and cover whenever possible to slow down a situation and affect a positive outcome that avoids the use of force. That did not happen here.

Although KCSO may disagree with some of the policy recommendations made by OLEO, we are in general alignment with your assessment of the incident.

I address each of OLEO's 24 recommendations as follows:

Recommendation 1: KCSO should revise the language in GOM 4.00.010(1) to include a definition for unplanned/unforeseen and planned/foreseen events to clarify expectations on when detectives can take law enforcement action.

Recommendation 2: KCSO should make explicit in its policy that plain clothes detectives are prohibited from taking law enforcement action unless there is a specific imminent threat to serious bodily harm or acting in a support role alongside uniformed personnel during a pre-planned event.

Since the fatal shooting of Mi'Chance Dunlap-Gittens in 2017, the Sheriff's Office has made a number of procedural and policy changes, based on lessons learned, to clarify the required attire and identification when plain clothes detectives take law enforcement action.

In August 2019, and again in April 2021, KCSO revised the Standard Operating Procedure (SOP) for all plain clothes detectives. Major Investigations/Special Investigations *SOP, Section 6, b. states: 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.* The SOP also addresses the accessibility of body armor, as follows: *Section 7, b. Detectives shall have body armor accessible at all times in accordance with GOM Section 7.03.015 (2). They shall also have an identifying piece of outerwear available at all times.*

KCSO's General Orders Manual (GOM) Sections 4.00.010 and 7.03.015, revised in October 2020, have specific requirements for plain clothes detectives to wear identifying clothing and body armor when taking law enforcement action. The purpose of these revisions is to remind our members that it is important for the public to be able to identify them as law enforcement when they are taking law enforcement action.

KCSO believes our existing policies and their requirements are abundantly clear to all plain clothes members. This fact was noted in Undersheriff Cole-Tindall's Loudermill Notification memo, regarding Detective 1 & 2, dated January 26, 2021. ***"Both of you demonstrate a solid understanding of the role of plain clothes members, and the risks associated with engaging in operations or arrests without adequate identifying clothing/badge visible, and equipment (ballistic vest). Your sergeant noted he trained new members on these issues, and that the team was very familiar with the lessons learned from KCSO incidents where involved officers were not wearing marked identifying clothing."*** In short, Detectives 1 and 2 knew better and still failed to don the appropriate gear (although Detective 2 was wearing his badge around his neck) before initiating contact with Mr. Chilcott.

KCSO does not believe adding "unplanned/unforeseen" and "planned/forseen" scenarios to our policies is necessary to clarify expectations for our plain clothes detectives. The issue at hand here is that Detective 1 clearly deviated from the plan that he and his partner made and conveyed to their supervisors: to surveil Mr. Chilcott if they located him and to call in marked units for backup and to effect an arrest.

Recommendation 3: KCSO should clearly communicate to its members leadership's expectations for taking law enforcement action in leased, unmarked, and/or unequipped vehicles during planned/foreseen events.

Recommendation 4: KCSO should review and revise its policies to ensure that members in a leased, unmarked, and/or unequipped vehicle shall not take law enforcement action unless there is a specific imminent threat to serious bodily harm.

KCSO leadership has set forth clear expectations about leased unmarked vehicles. I have prohibited in GOM 9.01.020 (3)(5), plain clothes detectives and non-identifiable leased vehicles from initiating or engaging in pursuits.

GOM 9.01.020:
3.) Deputies shall not engage in a pursuit while operating a non-Sheriff's Office vehicle, leased vehicle or an unmarked vehicle that does not have emergency equipment (radio, lights and siren); RCW Title 46, and GOM 9.00.015 require use of lights and siren.

5.) Deputies shall not initiate or engage in a pursuit as a primary if they are not in uniform or not wearing a fully marked vest to supplement plain clothes or Bananola style shirt.

It is worth noting the change in state law since these events transpired. Both pursuits and the use of force are more specifically limited by legislation and KCSO policies have changed to align with the new state laws.

KCSO is currently working on policy prohibiting traffic stops by leased or unmarked vehicles that are not equipped with lights, siren and a mobile police radio.

Recommendation 5: KCSO should change its policy to ensure that all personnel be required to don ballistic vests when taking law enforcement action unless there is a specific imminent threat to serious bodily harm that prevents personnel from donning the vest or acting in a support role alongside uniformed personnel during a pre-planned event.

As referenced in our response to OLEO recommendations 1 and 2, KCSO policy and Standard Operating Procedure (SOP) for plain clothes units are very specific. Plain clothes members should wear marked clothing and don ballistic vests/soft armor when taking law enforcement action. Identifying jackets and/or ballistic vests are required to be readily available and should be donned before an arrest or other law enforcement action.

These policies were in effect at the time of the Cumberland incident and both Detective 1 and 2 were found to have violated them.

Recommendation 6: KCSO should hold regular, comprehensive trainings for plain clothes detectives that include mock scenarios involving decisions on whether to remain covert or take law enforcement action.

OLEO may not be aware that KCSO's Emergency Vehicle Operations Course (EVOC) training staff are currently working on a curriculum for plain clothes members, in part as a result of the lessons

learned from this incident. The training will include mock decision-making scenarios on when to take law enforcement action and how to quickly and efficiently don/doff identifying clothing and protective gear, such as external vests.

Recommendation 7: KCSO should hold regular, comprehensive trainings for plain clothes detectives that include mock scenarios where personnel are required to don and doff vests depending on whether they take law enforcement action.

OLEO may not be aware that KCSO's Emergency Vehicle Operations Course (EVOC) training staff are currently working on a curriculum for plain clothes members, in part as a result of the lessons learned from this incident. The training will include mock decision-making scenarios on when to take law enforcement action and how to quickly and efficiently don/doff identifying clothing and protective gear, such as external vests.

Recommendation 8: KCSO should train its members that speculative, generalized concerns about a subject harming innocent third parties is an insufficient basis to use force.

KCSO leadership shares the concern about the speculative basis used by Detective 1 to justify engaging with the suspect prior to the use of deadly force. Detective 1's speculation was not a sufficient justification to support the conduct by Detective 1 and this played a part in the ultimate decision to terminate Detective 1's employment.

Additionally, KCSO policy was recently updated to comply with changes in State law regarding when law enforcement officers may use physical force, including deadly force. The standard required to use physical force is one of "imminent" harm to the deputy or another. Speculative harm is not an acceptable basis for use of physical force under revised KCSO policy or Washington state law. Updated training on the appropriate standards for use of force is already under way. In conclusion, the speculative harm described by Detective 1 was not acceptable under the former or current force policy at KCSO.

Recommendation 9: KCSO should consider training deputies on when and how to effectively and safely contact suspects who are inside vehicles with tinted windows.

KCSO currently trains commissioned members, as well as our tactical teams, on how to safely approach vehicles, and to do a "risk-hazard" analysis, in a variety of scenarios: routine traffic stop, high risk vehicle stops, and pursuits. When it comes to modern automotive technology, and specifically tinted windows, there are few tools that make it easy to breach and "rake" down these tinted windows. This is a challenge presented by current manufacturing, not by a lack of training.

Recommendation 10: KCSO should prohibit deputies from extracting suspects from vehicles that are higher off the ground unless their apprehension is part of a pre-planned TAC-30/SWAT arrest operation.

I do not believe this is a realistic expectation. It is very common for our commissioned personnel to encounter lifted vehicles and trucks, particularly in our more rural precinct areas. It is impractical to train on every type, and height, of vehicle our personnel may encounter in the field.

There are incidents where an occupant's life has been in danger from a burning vehicle after a crash, but due to impairment, injury, or other factors the person has resisted a deputy's attempts to extract them. To expressly prohibit extraction from higher vehicles simply isn't good public safety policy because it supposes there is no scenario where the occupant's life is at risk with only moments to spare. Waiting for TAC 30 would not be practical.

Since 2019, KCSO has trained its commissioned personnel how to safely extract persons from vehicles. Our training includes how to loosen a person's grip on the steering wheel, how to safely unlatch seatbelts, and how to use physics to leverage and extract people from vehicles safely. The issue in the Cumberland case was not the height of the involved vehicle (Ford Raptor truck), but rather the poor decision making of Detective 1.

Recommendation 11: Implement and mandate regular defensive tactics training, which is provided multiple times a year, that teaches deputies arrest, control hold, and pain compliance techniques to eliminate perceived threats posed by suspects inside vehicles.

I do not agree with the premise that threats posed by suspects inside vehicles are "perceived." This recommendation supposes that people facing potential arrest, seated behind the wheel of a vehicle weighing between 2,000 to 6,000 pounds, are not inherently dangerous in their zeal to escape. This is quite contrary to law enforcement experience.

Even House Bill 1054, part of recent police reform legislation passed in Olympia, acknowledges vehicles can be used as deadly weapons. In the case of Mr. Chilcott, who had a history of reckless driving to evade law enforcement, it would not be wise to write this off as a "perceived" threat. Again, at issue is the poor decision making and tactics used by Detective 1.

All of our commissioned personnel are trained, during each in-service training cycle, in defensive tactics which includes arrest, control hold and pain compliance techniques.

I agree that more training in defensive tactics, and more often, would be useful. In addition to their training, we encourage our members to practice these techniques frequently as it is important to maintaining the skill and muscle memory required.

Recommendation 12: KCSO should revise its investigative protocols so that investigators require involved personnel to sign compelled statements before officially adding them to the investigative file.

I agree that all statements should be signed and dated. I don't believe there has been a prior case where statements from involved personnel were not signed. KCSO agrees to reinforce to the Administrative Review Commander that statements should be reviewed for signatures and dates.

Recommendation 13: KCSO should revise its investigative protocols so that personnel involved in critical incidents are required to participate in in-person audio recorded interviews.

See recommendation 15 for answer.

Recommendation 14: KCSO should revise its investigative protocols so that personnel involved in critical incidents are required to participate in in-person video recorded interviews.

See recommendation 15 for answer.

Recommendation 15: KCSO should revise its investigative protocols so that an interview is conducted of personnel involved in critical incidents before the end of shift.

In early 2020, after the Dunlap-Gittens officer-involved shooting and subsequent meetings with his parents, I committed to approaching labor unions about audio/video recording administrative interviews with involved personnel and reducing the time period in which their initial written statements are required, from 48 hours to 24 hours. Months later, in November 2020, King County voters approved new charter amendments which shifted collective bargaining from the Sheriff to the County Executive. I support these changes but the impetus for them would have to come from the Executive.

Recommendation 16: KCSO should adopt protocols so that the CIRB does not review or opine on specific issues that are part of ongoing internal investigations.

I understand the conflict here, and the potential challenges presented by reviewing or discussing matters still under investigation. We are exploring possible remedies, including when CIRB hearings can occur and the process for them.

Recommendation 17: KCSO should create a memorandum of understanding to clarify the protocols of the I-940 team during a critical incident.

The issues that created procedural confusion during the Cumberland incident can be attributed to the Seattle Police Department having unique force investigation procedures dictated by their ongoing consent decree.

KCSO no longer relies on the Seattle Police Department for independent investigations required by Washington's Law Enforcement Training and Community Safety Act (LETCSA). KCSO is now part of the newly formed King County Independent Force Investigation Team (KCIFIT). This process will likely change when the Washington State Attorney General's Office begins conducting all independent investigations, per state law.

Recommendation 18: KCSO's investigative and review protocols should be revised so sufficient time is spent discussing whether alternative tactical options existed to reduce any threats presented to the involved personnel.

After the Cumberland Incident, two Division Chiefs examined the tactical decisions made by Detectives 1 & 2 and the various alternative tactical options that existed. This analysis, and substantial review, is outlined in the disciplinary documents for this case.

There are no time constraints for KCSO's Administrative Review Team, which also examines potential procedural and policy violations, including tactical choices stemming from a critical incident.

Recommendation 19: KCSO should create policies and procedures to ensure that when an operation unnecessarily endangers its personnel, direction and guidance to prevent future similar scenarios from occurring is disseminated in a timely manner.

See recommendation 20 for answer.

Recommendation 20: KCSO should revise its protocols to ensure that formal mechanisms for communicating expectations and revising training are established and reinforced by supervisors to quickly address lessons learned from critical incidents.

Processes for quick corrective action based on lessons learned, and their communication to staff, must occur. However, this process can be inhibited or delayed based on the pace of the independent force investigation. Consideration must be given when developing these formal mechanisms to avoid any appearance of drawing conclusions before an independent criminal investigation or internal administrative investigation is complete.

Recommendation 21: KCSO should develop protocols to ensure that the CIRB analyzes all uses of force that were used during an incident.

Our policy, which is bargained with labor groups, outlines what can be considered at the Critical Incident Review Board. The scope that we have outlined for the CIRB is already broad and it will not enhance the process to expand it further.

OLEO is present in the CIRB meetings and should use that opportunity to voice concerns or raise issues. That way the board can respond and address the issues at the time of the hearing.

Recommendation 22: KCSO and the County should consider having an individual assigned to serve as a family liaison in the aftermath of an officer-involved critical incident.

See recommendation 23 for answer.

Recommendation 23: KCSO should devise protocols to advise personnel on when and how to communicate with family members in a trauma-informed manner.

Timely and factual communication with families after a critical incident, especially one that results in death, is important. Current state law (LETCSA) requires independent investigation of these incidents.

WAC 139-12-030 3(b) Communication sets forth standards for communicating during an independent investigation. Section 3(b) states • A member of the IIT will be assigned as a family liaison within the first twenty-four hours and keep the family, or a representative of the family's choice, apprised of all significant developments in the independent investigation and will give the family and the involved agency advance notice of all scheduled press releases.

KCSO believes the IIT should take the primary role in contacting family members in order to keep the criminal investigation into their loved one's death truly independent. We will emphasize more efficient communications with families, once the true identity of the deceased is known and verified, with the KCIFIT.

For more information please review enclosed Loudermill results letter for this incident (IIU2020-015)

Sincerely,

Mitzi G. Johanknecht
SHERIFF

Enclosure

SHERIFF
KING COUNTY

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 opportuntiy to present additional information, or mitigating circumstance,s 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
Detec*tives 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 2nd 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,

Mitzi G. Johanknecht
SHERIFF

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