
M E M O R A N D U M



DATE: December 28, 2021
To: Deputy Calvin Walker #1721
FROM: Sheriff Adam Fortney #1282
RE: IA 21-004 Results

The purpose of this memorandum is to provide my determination as to discipline with respect to IA 21-004. In sum, it is alleged that, prior to being hired by the SCSO, you engaged in behavior as a private citizen that was not reflective of this office's values, potentially calling into question your commitment to non-discrimination, equality and diversity.

These allegations are serious. If true, they call into question this office's hiring practices and, ultimately, its commitment to inclusion and fair policing. But if not true, they also have the potential to put an end to your career with the SCSO before it even starts. For both of these reasons, I consider it a solemn responsibility to carefully consider the actual evidence in this case, and to make an objective decision based on the facts, not rush to judgment based on a fear of how this matter might be perceived (or misperceived) publicly.

Because I find that the evidence does not support any inference that you have engaged in discriminatory behavior, endorsed discriminatory behavior, or actively associated with any groups known to exhibit discriminatory behavior, I have decided not to render discipline in this matter. Were it otherwise, you simply would not be an SCSO employee. However, my decision does not mean that you are now free and clear. You remain in probationary status and the SCSO will watch carefully through the rest of your probationary period to ensure your continued employment comports with the values of this office, specifically including values regarding non-discrimination and inclusion. My decision is explained in greater detail below.

The allegations at-issue. You are alleged to have committed certain actions immediately prior to your employment as a probationary deputy that suggest you endorse discriminatory viewpoints and/or have associated with people belonging to

discriminatory groups. This would be in violation of SCSO policy related to Affirmatively Promoting a Positive Public Image.

More specifically, it is alleged that you went down to First Street in Snohomish on or about May 31, 2021 armed with a rifle with the stated intention to protect local businesses from vandalism, theft and looting from a rumored Antifa "riot". There, you gave an interview for the "Dori Monson" radio show, in which you stated you did not want to shoot anyone, but would do so if you were forced to and if it was legally justified. You indicated that if there was not a threat to you or someone's life, but you were only confronted with someone damaging property, you and those around you "knew how to fight," as opposed to resorting using firearms. Additionally, photos and video of you on May 31 show you wearing a tactical vest with a "Betsy Ross" flag patch sewn onto it. It has been suggested that such flags are used symbolically by certain extremist and discriminatory groups.

When this information came to light, SCSO supervisors looked to determine if you were actively involved with, or associated with, any extremist groups like the "Proud Boys," which had been present on First Street that day. They checked your social media postings and found a photograph you had posted of yourself wearing short cutoff jeans, a USA t-shirt, cowboy boots and a thigh-holstered pistol. A friend of yours commented on your photo, stating "I'm trying to figure out of this picture is racist or misogynistic? It's 2020, Please internet tell me??" You responded to his post by stating, "It's honestly a lot of both."

After the incident on First Street, members of the public began posting on social media that you were a "Proud Boy." Such posts also appeared on the SCSO's social media, which had posted photos of you at you CJTC Academy graduation. Finally, in the course of this investigation, supervisors became aware of an incident involving a Latina co-worker of yours. This person alleged that she congratulated you at your academy graduation ceremony, only for you to ignore her. She wondered whether this slight had been intentional and specifically because she was a person of color.

My determination. For the reasons detailed below, I find that the evidence simply does not support a finding that you engaged in, endorsed, or associated with anyone engaging in discriminatory conduct or views. Nor do I believe the evidence shows you harbor discriminatory animus, or otherwise are likely to exhibit questionable decision-making as a deputy in the future. I will discuss each aspect of the evidence at-issue here.

As a threshold matter, it must be noted that every one of the events relied upon in this investigation occurred before you were hired by the SCSO. For me to rely on pre-employment conduct to justify your discipline now, the misconduct at-issue had better be well-established. As I will discuss in a moment, that just is not the case here. On top of that though, evidence of how you think, act and behave while in our employ as a probationary deputy is going to be far more determinative of whether you are ultimately retained as an SCSO deputy. Judging your pre-employment conduct as though you were an existing deputy seems to me to be an unfair standard. Prior to joining the SCSO, you would not have had knowledge of our policies, including the policy on Affirmatively Promoting a Positive Public Image (which necessarily requires deputies to be mindful of how their behavior reflects on our office). While pre-employment conduct can certainly disqualify a candidate from employment with our office, we must be careful here to use the correct lens when evaluating some of the choices you made before you were ever hired. Now I will address the evidence at-issue here.

Presence at the rally on First Street and subsequent interview on the Dori Monson show. I find that you did not engage in any SCSO policy violation by going to First Street in Snohomish (prior to becoming an SCSO probationary deputy) for the stated purpose of defending businesses there from anticipated looting. While it is always preferable for law enforcement, not private citizens, to protect property, it is not unlawful for citizens to seek to protect their communities. How they go about that, however, is the critical issue. Simply claiming to “protect property,” does not give one license to threaten others or to incite violence and disorderly conduct. But it is not against the law to open carry a firearm in Snohomish city limits. It is also not against the law to attempt to intervene where someone is engaged in vandalism, mischief or stealing. Again, how one intervenes is what matter. Here though, nothing actually happened. There is no allegation you ever actually did anything but be present on First Street. That, in itself, is simply not enough—either for civil/criminal liability or for discipline.

Of course, the allegations here also address other aspects of your decision to go down to First Street that night. One was the interview you gave that was aired on the “Dori Monson” radio show. In sum, you indicated in your interview that you were there on First Street to protect the local businesses from damage or looting, and that you had a firearm to protect yourself and others. You indicated you did not want to use the firearm, but that you would not hesitate to shoot (i.e. use deadly force) if it was necessary—in other words, to defend someone from physical violence that might result in serious bodily harm or death. In actuality, that is an accurate, albeit generalized, recitation of the law. A private citizen can indeed use deadly force to protect themselves or others in their presence from an imminent threat of death or

serious bodily harm. Although your interview definitely came off as “tough guy” posturing, there was nothing inherently inappropriate or offensive about your comments. Had your comments been otherwise, I would reach a different decision here. But I can hardly hand out discipline for inarguably correct recitations of the law made by a private citizen before he ever even became a deputy.

Affiliation with hate groups, or wearing a “Betsy Ross” flag as evidence of such affiliation. Other aspects of these allegations attempt to paint you as either a member of, or a close acquaintance with, groups with known racist and discriminatory tendencies, including organizations like the “Proud Boys.” Let me be clear. If there were evidence of your affiliation with any of these groups, this would be an easy decision: you would no longer be an SCSO employee.

There is, however, absolutely no evidence presented here to conclude you were a member of such an organization, or that any of your friends were (and certainly there is no evidence indicating you knew or otherwise believed they were members of such racist or extremist organizations). In this regard, you credibly deny any ties, remote or otherwise, to such organizations. You also deny any knowledge of any of your friends or acquaintances belonging to such groups.

Instead, to support this allegation, much is made in this investigation about a patch that you wore on your tactical vest that evening down on First Street. The patch was a “Betsy Ross” U.S. flag—a dated flag with stars arranged in a circle that was used around the time of the country’s formation. There is an assertion from internet research that this flag is meant to convey a longing for the “old days” of the union, when slavery was legal and gender-equality and other laws mandating non-discrimination did not exist. However, as was also noted in the investigation, this is far from an established meaning of the symbol. In fact, there is countervailing evidence indicating this suggested interpretation derives from one misleading internet source that is continually parroted in internet searches. In contrast, the flag has also been used by 2nd Amendment rights groups without any ties to racist ideologies or extremism, and has even appeared in displays during presidential inaugurations (including for President Obama). For your part, you deny any knowledge of the alleged discriminatory symbolism of the Betsy Ross flag. Instead, you state you wore the patch because you appreciated history and celebrated the history of our country.

Given the (at best) unsettled nature of the symbolic meaning of the “Betsy Ross” flag, as well as your unequivocal denial that you had any intended discriminatory meaning in wearing it, I am not inclined to infer any inappropriate conduct here. While those that wish to disagree with my decision will say I am being naïve, or even disingenuous, in giving so much credit to what you say you meant by wearing the patch, my decision

is only bolstered by the fact that there is no other evidence of you engaging in discriminatory conduct or speech in other aspects of your life.

In fact, Deputy Fred Ulowetz, who has known you for a few years and was listed as a reference in your employment application, states that he has never observed you engage in any kind of racist or misogynistic behavior. Quite the opposite, he said that when he has seen you interact with people of color (at the time, it was when you worked at the YMCA), you were always very friendly and helpful, regardless of race. Your Facebook posts. Of course, those wishing to support an inference that you do harbor such discriminatory feelings will point to the next piece of evidence—your social media posts. However, a closer look at what you actually wrote on social media reveals such posts are not nearly as damning as they appear.

You posted a picture of yourself—presumably in jest—wearing cutoff jeans, boots, a red USA t-shirt, and a thigh-holstered firearm while standing next to a barbeque. On its face, I really cannot tell what it is you are making fun of in the photo, other than yourself for wearing a fairly ridiculous outfit. After you posted the picture, a friend replied to you on your Facebook feed attempting to make a joke about how everything on the internet offends someone nowadays, commenting that “I’m trying to figure out if this picture is racist or misogynistic? It’s 2020, Please internet tell me??” You responded to his post by stating, “It’s honestly a lot of both.”

I do not take this comment to mean there is anything in your picture that is actually racist or misogynist at all. In fact, your friend’s joke is that there is not anything racist or misogynist about it, just that someone will invariably attach that meaning to it somehow because that’s the state of the world we live in nowadays. Perhaps some will disagree with even the crux of this joke—that making fun of a heightened sensitivity to discrimination should also not be mocked. But making light of perceived hyper-sensitivity in the modern world is a very far cry from actually supporting racism or misogyny. I believe your comment in response to your friend (i.e. that your photo is a “little bit of both” racism and misogyny) was intended to be affirming your friend’s joke about people’s hyper-sensitivity—not an admission that you actually had any racist or misogynistic intent in posting the photo (or otherwise harbor such feelings). Indeed, such an admission would make absolutely no sense because there is literally nothing in the photo that speaks to issues of race or women’s rights at all. I believe that those that wish to treat your response as evidence of your discriminatory feelings are, unfortunately, simply not digging very deep.

Trust me, were it otherwise, and there actually was evidence of racist, misogynist, or otherwise discriminatory social media posts from you (at any point in time, even pre-hire), this would again be a different case. I have absolutely no tolerance for

employing anyone in my office that exhibits discriminatory behavior. But I also am not going to throw away reason and common sense in interpreting evidence presented to me in the course of a disciplinary investigation. Such nuances likely will never make it into the headlines of the newspapers, but they are not something I can ignore when someone's career is also on the line. In sum, I do not believe the evidence of your social media posts here show inappropriate conduct meriting discipline.

Slighting a co-worker at graduation. Lastly, I must also address the allegations regarding how you are alleged to have ignored a Latina co-worker's offer of congratulations after your academy graduation ceremony. In your interview, you claimed you did not mean to slight her—you presume you just did not see or hear her when she came to congratulate you. When your co-worker was interviewed, she admitted it was possible you simply did not see her at the time. That this "slight" was perceived as latent racism appears to derive from the fact that she later heard from others in the office that you had posted discriminatory things on social media. As noted above, I do not believe your social media posts evidence discrimination. Instead, this appears to be a twisted version of the children's "telephone game," passing along not necessarily accurate information as fact. Accordingly, it does not seem likely to me that you purposefully ignored your co-worker, but instead just did not hear or see her in the array of people following the ceremony.

Conclusion. While I have concluded that discipline is not merited here, you should understand that your probationary period is not over. Your interactions with your fellow officers, your supervisors, and the members of the community you serve will all be examined carefully before you can become a full deputy. If there is any evidence of discriminatory conduct, you will not pass probation. But in addition to that, we will also pay close attention to whether you have displayed continued good judgment, both in your work and in your public interactions with the community. In this regard, we will look at whether you have learned from this incident. While you may not have done anything inherently wrong here, your inattention to how the public can nevertheless perceive your words and actions should serve as a stark lesson moving forward. The work of every officer in this organization is dependent upon the public's continued trust in us to police our community fairly and without discrimination. My hope and expectation is that you will use this experience to motivate you. That you will prove to both this community and your co-workers that you are truly not the person suggested by these allegations, but are instead the kind of officer they can put their wholehearted trust in.