

2020-017.1



San Diego County SHERIFF'S DEPARTMENT

NOTICE OF PROPOSED DISCIPLINARY ACTION

TO: William D. Gore, Sheriff		DATE: 11/05/2020	
It is recommended that the following disciplinary action be administered to the below named employee:			
EMPLOYEE'S NAME:	Andrew Phillips	TITLE:	Deputy Sheriff
DEPARTMENT POLICY AND / OR PROCEDURE SECTION(S) VIOLATED:	2.6 Conformance to Laws (x3)	2.14 Use of Alcohol	
	2.34 Carry of firearms	2.50 Use of lethal / less lethal weapons	
	2.18 Abuse of power // 2.53 Discrimination	2.38 Intervention / 2.4 unbecoming conduct	
RECOMMENDED DISCIPLINE:	TERMINATION		
SECOND LEVEL SUPERVISOR:	Michael Knobbe, Lieutenant	DATE:	11/05/2020
LIST PRIOR FORMAL DISCIPLINE WITHIN LAST FIVE YEARS WITH DATE			
I have been advised of the above charges and recommended discipline:			
EMPLOYEE'S SIGNATURE:	<i>[Signature]</i>	DATE:	12/10/20
2 nd LEVEL SUPERVISOR SIGNATURE:	<i>[Signature]</i>	DATE:	12/16/20
3 rd LEVEL SUPERVISOR SIGNATURE:	<i>[Signature]</i>	DATE:	12.10.20
COMMENTS:			
REVIEWED BY INTERNAL AFFAIRS:	<i>[Signature]</i>	DATE:	12/17/2020
4 th LEVEL SUPERVISOR SIGNATURE:	Dave Brown, Commander <i>[Signature]</i>	DATE:	03/01/21
COMMENTS:	<i>[Signature]</i>		
ADDITIONAL REVIEW:	Kelly Martinez, Assistant Sheriff	DATE:	3/2/21
ADDITIONAL REVIEW:		DATE:	
ADDITIONAL REVIEW:	William D. Gore, Sheriff <i>[Signature]</i>	DATE:	3/5/21
INTERNAL AFFAIRS SECTION			
<input type="checkbox"/>	WRITTEN REPRIMAND BY:	DATE:	
<input checked="" type="checkbox"/>	NOTICE OF INTENT AND CHARGES: M. Hernandez #2782	DATE:	1/4/21
<input type="checkbox"/>	ORDER SERVED:	DATE:	
<input type="checkbox"/>	CIVIL SERVICE NOTIFIED:	DATE:	
<input type="checkbox"/>	PAYROLL NOTIFIED:	DATE:	
<input type="checkbox"/>	FINAL ACTION TAKEN:	DATE:	

RELEASED FROM
I.A. FILES
TO AP



San Diego County Sheriff's Department



Michael R. Barnett
Undersheriff

William D. Gore, Sheriff

March 2, 2021

Andrew Phillips

(b)(6)(B)

Dear Deputy Andrew Phillips:

ORDER OF TERMINATION AND CHARGES, CASE #2020-017.1

I hereby order that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes:

CAUSE I

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – **Conformance to Laws**, as it pertains to **Nevada Revised Statute § 206.310**; in that: On January 28, 2020, you damaged a door and wall to the Rio Hotel & Casino in Las Vegas, Nevada. You were arrested by the Las Vegas Metropolitan Police Department for the vandalism and subsequently paid \$1000 in restitution to the hotel for the damages. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE II

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – **Conformance to Laws**, as it pertains to **Nevada Revised Statute § 202.257**; in that: On January 28, 2020, while intoxicated in Las Vegas, Nevada, you were in physical possession of a firearm in violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

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CAUSE III

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.6 – Conformance to Laws**, as it pertains to **Nevada Revised Statute § 200.471**; in that: On January 28, 2020, you placed **(b)(6)(B)** a German citizen, in reasonable apprehension of immediate bodily harm by pointing a firearm at him in violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE IV

You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.4 – Unbecoming Conduct**; in that: On January 28, 2020, you were arrested by the Las Vegas Metropolitan Police Department for vandalism. While intoxicated, you vandalized private property, recklessly pointed a gun at another individual, used profanity, made derogatory comments about another nationality, impeded with the criminal investigation, and did not conduct yourself in a professional manner. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department.

CAUSE V

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.14 – Use of Alcohol/off Duty**; in that: On January 28, 2020, you consumed alcohol to the point where you were unable to recall certain events and were unable to care for anyone else. Employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in unlawful impairment (such as driving under the influence or being unable to care for their own safety or the safety of others), public intoxication, or obnoxious or offensive behavior in public which would tend to discredit them or this Department.

CAUSE VI

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.34 Carrying of Firearms**; in that: On January 28, 2020, you were carrying a firearm and consumed alcohol to the point where you were unable to recall certain events and were unable to care for anyone else. Employees who are authorized to carry a firearm, may (optional) carry a firearm, when off duty, except when consuming an amount of alcohol that would tend to adversely affect a reasonable person's senses or judgement.

CAUSE VII

You are guilty of incompetency, as set forth under Section 7.2(a) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.50 Use of Lethal/less Lethal Weapons**; in that: On January 28, 2020, you were carrying a firearm while off duty. While intoxicated, and for no specified legitimate purpose, you pointed the firearm at **(b)(6)(B)** a German citizen. Employees shall not use or handle lethal or less lethal weapons (including chemical agents, saps, batons, taser guns, etc.,) in a careless or imprudent manner. Employees shall use these weapons in accordance with the law and established Departmental procedures.

CAUSE VIII

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.18 Abuse of Position - Use of Official Position or Identification**; in that: On January 28, 2020, when contacted by the Las Vegas Metropolitan Police Department, you spontaneously identified yourself as a Deputy Sheriff with the San Diego Sheriff's Department. While being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees are prohibited from using their official position, official identification cards or badges for avoiding consequences of illegal acts.

CAUSE IX

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.38 Intervention**; in that: On January 28, 2020, while being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees shall not use their position, or knowledge gained by employment with this Department, to intervene in, or interfere with any case, or investigation being handled by this Department, or any other agency.

CAUSE X

You are guilty of discourteous treatment of the public, as set forth under Section 7.2(h) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.53 Discrimination**; in that: On January 28, 2020, after an altercation with German nationals, you were captured on body worn camera making comments to Las Vegas Metropolitan Police Officers such as; "Fuckin Russians." "[T]hese freakin' German idiots...Russian, German, whatever the hell they are. They were speaking some other damn language." "Russians come to our country, cause shit, I'm the one who gets in trouble." Employees shall not express any prejudice or harassment concerning race or national origin. Discriminatory acts which will not be tolerated include the use of verbal derogatory comments.

CAUSE XI

You are guilty of acts that are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is set forth under Cause I through X above.

Order of Termination and Charges, IA Case #2020-017.1
Sheriff's Deputy Andrew Phillips
March 2, 2021

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Your attention is directed to Sections 904.1, 904.2, 909, 909.1, 910.1(k), and 910 (k)(l) of the Charter of the County of San Diego and Rule VII of the Civil Services Rules. If you wish to appeal this order to the Civil Service Commission of the County of San Diego, **you must file such an appeal and an answer in writing with the Commission within ten (10) calendar days after this order is presented to you.**

Such an appeal and answer must be in writing and delivered to the Civil Service Commission at its offices at 1600 Pacific Highway, Room 458, San Diego, California 92101, within such ten (10) calendar day period. An appeal is not valid unless it is actually received by the Commission within such ten (10) calendar day period. **A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the undersigned within the same ten (10) calendar day period.**

Sincerely,



William D. Gore, Sheriff

WDG:jb



COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

February 18, 2021

TO: William D. Gore, Sheriff
FROM: Dan Brislin, Captain
Narcotics and Gangs Division
VIA: Chain of Command

SKELLY CONFERENCE DEPUTY ANDREW PHILLIPS I.A. CASE #2020-0017.1

SYNOPSIS

On January 28, 2020 Deputy Andrew Phillips and his girlfriend (b)(6)(B) were in the Rio Hotel in Las Vegas when they encountered a German male (b)(6)(B). They all drank alcohol together, however the amount is disputed. At some point, an agreement was made to go up to (b)(6)(B) room to consume more alcohol and talk about the flooring business. Deputy Phillips also believed there was an alluded group sexual encounter with other females based on the flirtation that occurred at the bar.

Once upstairs, an additional drink(s) was consumed with an unknown number of people. Deputy Phillips believes the drink was drugged because he lost memory after he consumed it. (b)(6)(B) believed she was drugged as well. It is alleged that at some point during the encounter, (b)(6)(B) left the room and Deputy Phillips became angry to the point where he pointed his off-duty firearm at (b)(6)(B). Based on BWC statements by Deputy Phillips, it appears the conflict involved someone in the room wanting to have a sexual encounter with (b)(6)(B) allegedly convinced Deputy Phillips to disassemble his weapon and leave the room. (b)(6)(B) is the only witness to Deputy Phillips pointing his weapon.

Deputy Phillips then went to the 15th floor and started pounding and kicking on the door of a room he believed was his. Deputy Phillips room was actually on the 25th floor. Two calls to the front desk from patrons reported a man pounding on walls and threatening to shoot through the door of a room. Casino Security responded to the scene and found an intoxicated Deputy Phillips with a partially assembled handgun in his hand. The wall and door were damaged from Deputy Phillips kicking it.

Deputy Phillips was later contacted by police, at which time he attempted to curry favor using his position as a deputy sheriff. He appeared heavily intoxicated by alcohol or other substances on

body worn camera footage. Deputy Phillips was ultimately arrested for vandalism. The case was later settled by restitution paid.

COMMAND RECOMMENDATION

The investigation resulted in sustained findings against Deputy Phillips for Sheriff's Department Policy Sections 2.6 Conformance to Laws (x3), 2.14-Use of Alcohol, 2.34 Carrying a Firearm, 2.50-Use of Lethal/less Lethal Weapons, 2.18 Abuse of Position – Use of Official Position or Identification, 2.38 Intervention and 2.53 Discrimination.

The discipline recommended by Lieutenant Michael Knobbe is termination.

CONDUCT OF SKELLY CONFERENCE

By mutual agreement, the Skelly Conference was scheduled for February 12, 2021 at 1300 hours, at the Law Offices of Bobbitt, Pinckard and Fields.

In preparation for the Skelly Conference and prior to reaching a decision, I reviewed the following documents related to Internal Affairs Case #2020-0017.1:

- Notice of Proposed Disciplinary Action
- Notice of Intent to Terminate and Charges
- Discipline Recommendation and Rationale
- Skelly Conference Letter
- Internal Affairs Case #2020-0017.1

RESPONSE TO CHARGES

On February 12, 2021 (1306 Hours), I met with Deputy Phillips and his Attorney Rick Pinckard at the Law Offices of Bobbitt, Pinckard and Fields. Deputy Phillips verbally confirmed he received all appropriate documents, understood the purpose of a Skelly Conference, and had no objection to me being the Skelly Hearing Officer.

Mr. Pinckard spoke on behalf of Deputy Phillips at the onset of the meeting. He opened asking that the entire chain of command consider several factors in this case. Mr. Pinckard said he noticed this investigation has a disapproval of lifestyle tone attached. This concerned him because it is not the role of the Sheriff's Department to determine discipline based on perceived ancillary lifestyle. He urged that the investigation be judged solely on its four corners. Lifestyle should not be a consideration.

Mr. Pinckard indicated there is another Internal Affairs case trailing this one. He then described details and common behaviors of both cases, which I appreciated for mitigation but cannot use in this investigation's disciplinary decision. The trailing case is still in the Disciplinary Recommendation and Rationale process.

Mr. Pinckard pointed out that perceived alcohol use is a consideration in this case.

RP: It's apparent that if alcohol was not, uh, being consumed, when this event in Las Vegas occurred, well the outcome may have been completely different. But if what occurred is what Andrew thinks occurred, is what Andrew believes occurred, alcohol really wasn't an issue. I mean he could have been drinking orange juice all night, and if he gets drugged by somebody he meets in a bar.....well then alcohol really wasn't a factor.

Mr. Pinckard believes the Department views this incident as "gross alcohol related misconduct." He conceded, the Sheriff's Department has the right to hold an employee accountable for alcohol related misconduct but should not punish an employee because of the perception he/she is an alcoholic. This is potentially an ADA violation because alcoholism is widely accepted in the United States as a disease, not a choice.

Mr. Pinckard believes Internal Affairs and Sheriff's Command view Deputy Phillips as a risk for future misconduct because of the perception he abuses alcohol. The inertia of this belief has resulted in a collective desire to terminate Deputy Phillips. Mr. Pinckard indicated that this motivation, if acted on, is a violation of State and Federal law.

There is an appearance that lifestyle was used to draw conclusions and judgement in this investigation. For example, the disapproving comments in Sergeant Buckley's investigation describing group sexual encounters. According to Mr. Pinckard, Internal Affairs had opportunities to adopt more reasonable perspectives but at every crossroad deemed Deputy Phillips a deviant. They never chose an option that favored the employee. He stressed that discipline must be for the right reasons.

Mr. Pinckard then addressed each charge in order.

CAUSE I

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – Conformance to Laws, as it pertains to Nevada Revised Statute § 206.310; in that: On January 28, 2020, you damaged a door and wall to the Rio Hotel & Casino in Las Vegas, Nevada. You were arrested by the Las Vegas Metropolitan Police Department for the vandalism and subsequently paid \$1000 in restitution to the hotel for the damages. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

Mr. Pinckard did not dispute this charge. Deputy Phillips paid restitution and the case was dismissed.

RP: Andrew looks at an allegation and says, yeah, I'm, I'm guilty, I did that. He steps up and he accepts responsibility, and he made it right.... Andrew believed that he was in front of his own door and was trying to get into his own room and as it turns out, he was ten floors off.

Mr. Pinckard ask that this show Deputy Phillips' willingness to take responsibility for his actions.

CAUSE II

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – Conformance to Laws, as it pertains to Nevada Revised Statute § 202.257; in that: On January 28, 2020, while intoxicated in Las Vegas, Nevada, you were in physical possession of a firearm in violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

Mr. Pinckard stated the elements of this statute were not satisfied because it requires a Blood Alcohol Content (BAC) of 0.08 or higher. No tests were given by officers as required by law. Deputy Phillips asked repeatedly to be tested but Las Vegas Metro never complied with this request. There is no blood, breath, or urine evidence to support the charge.

RP: Las Vegas Metro didn't do what they were supposed to do. The law requires them to collect evidence, in this particular charge, the same way you would collect evidence in a DUI, and they didn't do it.

Mr. Pinckard stressed that if there is no violation of the underlying criminal statute, there cannot be an administrative violation of conformance to laws.

CAUSE III

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – Conformance to Laws, as it pertains to Nevada Revised Statute § 200.471; in that: On January 28, 2020, you placed (b)(6)(B) a German citizen, in reasonable apprehension of immediate bodily harm by pointing a firearm at him in violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

Mr. Pinckard stressed that NRS 200.471 is a Class B felony, punishable by state prison. The sentence ranges from 2-10 years, coupled with a \$10,000 fine. Las Vegas Metro Police did not charge Deputy Phillips with this statute because they did not have probable cause to arrest him. Mr. Pinckard disputes Internal Affairs' ability to sustain on the administrative charge if there was not probable cause to arrest Deputy Phillips.

Mr. Pinckard said he has debated with Undersheriff Barnett over the years regarding the threshold for sustained findings related to criminal charges. Undersheriff Barnett's perspective has remained staunch in that just because an employee is not convicted of a crime, does not mean he/she cannot be found guilty administratively. Mr. Pinckard then pointed out that this case is very different. Deputy Phillips was not even charged with the crime. A probable cause determination is not satisfied by establishing conclusions beyond a reasonable doubt. The probable cause threshold mirrors an administrative preponderance of evidence. This is the same gauge used in a preliminary court hearing to determine if a crime is going to be bound over for trial. Las Vegas Metro did not establish a preponderance of evidence showing Deputy Phillips committed the crime.

Mr. Pinckard then pointed out that the victim, (b)(6)(B) is unreliable because his statements conflict (b)(6)(B) initial statements to Officer McClain indicated Deputy Phillips pointed a gun at

him. Six minutes later he told Sergeant Conk that Deputy Phillips was just waving the gun around carelessly.

Mr. Pinckard surmised that (b)(6)(B) conflicting statements was likely the reason Deputy Phillips was not arrested for the felony offense. If he were arrested for 200.471 NV, Deputy Phillips would not have been released so quickly. This charge is disputed.

CAUSE IV

You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.4 – Unbecoming Conduct; in that: On January 28, 2020, you were arrested by the Las Vegas Metropolitan Police Department for vandalism. While intoxicated, you vandalized private property, recklessly pointed a gun at another individual, used profanity, made derogatory comments about another nationality, impeded with the criminal investigation, and did not conduct yourself in a professional manner. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department.

Mr. Pinckard conceded that Deputy Phillips "didn't take care of himself in a way that could have prevented this." Sergeant Buckley conveyed a flavor in his written tone that Deputy Phillips and (b)(6)(B) are swingers. Mr. Pinckard said (b)(6)(B) has a business and was in Las Vegas because of a flooring tradeshow. (b)(6)(B) and his partner were also participating in the tradeshow (b)(6)(B) was simply trying close a deal. Prior to the alleged incident and at the bar, Deputy Phillips had no issue and was conducting himself appropriately.

In hindsight, Deputy Phillips should not have carried his weapon. Mr. Pinckard conceded the entire incident was distasteful and reflected poorly on the department. The conduct unbecoming charge is undisputed.

CAUSE V

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.14 – Use of Alcohol/off Duty; in that: On January 28, 2020, you consumed alcohol to the point where you were unable recall certain events and were unable to care for anyone else. Employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in unlawful impairment (such as driving under the influence or being unable to care for their own safety or the safety of others), public intoxication, or obnoxious or offensive behavior in public which would tend to discredit them or this Department.

Mr. Pinckard stressed that Deputy Phillips was not intoxicated. Deputy Phillips believes he was drugged. This makes him a victim rather than a suspect. Mr. Pickard does not believe alcohol was the dominant factor in this case and the alleged drugging is a consideration. This charge is disputed.

CAUSE VI

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.34 Carrying of Firearms; in that: On January 28, 2020, you were carrying a firearm and consumed alcohol to the point where you were unable

recall certain events and were unable to care for anyone else. Employees who are authorized to carry a firearm, may (optional) carry a firearm, when off duty, except when consuming an amount of alcohol that would tend to adversely affect a reasonable person's senses or judgement.

Mr. Pinckard disputed this charge because there is no quantified evidence of intoxication. Deputy Phillips was detained for over four hours and no tests were given. Intoxication must be quantified by at least a PAS device or other preliminary determination. Deputy Phillips asked several times to be tested.

Mr. Pinckard reiterated that Deputy Phillips believes he was drugged, which erases this entire charge. The reported amount of drinking prior to the incident was nominal at best. There is no evidence Deputy Phillips was impaired prior to being drugged. Additionally, when he was contacted, he was not in possession of functioning weapon. Las Vegas Metro discounted the fact the firearm was dismantled and in several pieces. This charge is disputed.

CAUSE VII

You are guilty of incompetency, as set forth under Section 7.2(a) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.50 Use of Lethal/Less Lethal Weapons; in that: On January 28, 2020, you were carrying a firearm while off duty. While intoxicated, and for no specified legitimate purpose, you pointed the firearm at (b)(6)(B) a German citizen. Employees shall not use or handle lethal or less lethal weapons (including chemical agents, saps, batons, taser guns, etc.) in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures.

Mr. Pinckard reiterated that (b)(6)(B) is an unreliable witness/victim. In one statement, (b)(6)(B) claimed Deputy Phillips pointed his weapon at him and six minutes later he said Deputy Phillips was just waving it around carelessly. Mr. Pinckard contends that the lack of evidence Deputy Phillips pointed the weapon at (b)(6)(B) nulls this sustained finding. This charge is disputed.

CAUSE VIII

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.18 Abuse of Position - Use of Official Position or Identification; in that: On January 28, 2020, when contacted by the Las Vegas Metropolitan Police Department, you spontaneously identified yourself as a Deputy Sheriff with the San Diego Sheriff's Department. While being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees are prohibited from using their official position, official identification cards or badges for avoiding consequences of illegal acts.

Mr. Pinckard looked at every video and each statement by Deputy Phillips. He did not perceive Deputy Phillips attempting to dissuade officers based on his position. Rather, he heard Deputy Phillips lamenting about the bad position he was in. Deputy Phillips' main focus was on the tight handcuffs.

RP: I am not a threat to you. I am not going to hurt you. Can we just take the handcuffs off?

He simply explained that he would not treat the officers the same way if they were in San Diego Sheriff's jurisdiction. The essence of Deputy Phillips' message was that he should not have been

handcuffed because he did not pose a threat. He did not abuse his position or demand preferential treatment.

Mr. Pinckard contends that Sergeant Buckley "cherry picked" through several hours of video and keyed in on the statement, "I wouldn't blue falcon you." Sergeant Buckley makes this one statement the characterization of the entire interaction. At one point, Deputy Phillips told an officer he would love to have him as a partner, which the officer appreciated.

The only other portion of the interaction where Deputy Phillips seems agitated was when he was asking about the location and well-being of (b)(6)(B). He had no idea where she was or if she was safe. He also became agitated when asking if he could use the restroom, which is also not unreasonable because he was waiting an inordinate amount of time.

Sergeant Buckley also made it negative that Deputy Phillips asked to speak to a supervisor. Mr. Pinckard stressed that it was well within Deputy Phillips' rights to ask for a supervisor if he had met an impasse with officers. Deputy Phillips was not rude in any regard. This charge is disputed.

CAUSE IX

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.38 Intervention; in that: On January 28, 2020, while being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees shall not use their position, or knowledge gained by employment with this Department, to intervene in, or interfere with any case, or investigation being handled by this Department, or any other agency.

Mr. Pinckard contended that intervention did not occur. If Deputy Phillips did attempt to intervene in the investigation, he did a poor job because he was arrested. This charge is disputed.

CAUSE X

You are guilty of discourteous treatment of the public, as set forth under Section 7.2(h) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.53 Discrimination; in that: On January 28, 2020, after an altercation with German nationals, you were captured on body worn camera making comments to Las Vegas Metropolitan Police Officers such as; "Fuckin Russians." "[T]hese freakin' German idiots...Russian, German, whatever the hell they are. They were speaking some other damn language." "Russians come to our country, cause shit, I'm the one who gets in trouble." Employees shall not express any prejudice or harassment concerning race or national origin. Discriminatory acts which will not be tolerated include the use of verbal derogatory comments.

Mr. Pinckard stated he agreed that Deputy Phillips referred to the people who drugged him disparagingly. They stated they wanted to "fuck" his girlfriend. Under the circumstances, making less than favorable comments was completely reasonable. Additionally, his statements were not so appalling they rose to the level of discrimination. Deputy Phillips' statements fall more in line more with conduct unbecoming. This charge is disputed.

CAUSE XI

You are guilty of acts that are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the San Diego County Sheriff's Department Executive Order and the Mission, Vision, Values and Goals. Your conduct constituting such acts inimical to the public service is set forth under Cause I through X above.

Mr. Pinckard did not address **CAUSE XI** but rather transitioned into a summation. He contended that the incident was a simple vandalism and a conduct unbecoming inflated into eleven charges. This means Sergeant Buckley did not have a strong case and was hoping certain charges would stick. Sergeant Buckley's strategy was to "beat the reader into submission." Mr. Pinckard believes the Department is "gunning for" Deputy Phillips. He asked the Department to take a "step back" and evaluate whether the motivations and methodology of discipline are reasonable. Just because the Department does not like Deputy Phillips' lifestyle should not have a bearing on discipline.

Deputy Phillips has 10 years on the Department with no issues. He was a traffic investigator and performing well. Recently, he suffered marital problems. His wife kicked him out of his house and took his children away.

RP: Was he drinking more than he should have been drinking? Yeah probably.

Deputy Phillips is a former Marine and suffers from issues related to his deployments. Mr. Pinckard asked to look at the issues Deputy Phillips was facing and use compassion rather than blind judgement. He also asked that measures be put in place, like random alcohol testing or counseling, to hold Deputy Phillips accountable. The Department has far too much invested to just cast Deputy Phillips aside.

Deputy Phillips then spoke on his own behalf. He stated that prior to this incident his wife told him she wanted a divorce, was kicking him out and taking away his children. Deputy Phillips was dealing with military PTSD issues at the same time. He also "bombed" a recent interview for a specialized position. As a coping mechanism, he turned to alcohol. He takes responsibility for his actions but does not believe he should be fired. Deputy Phillips said he is willing to do whatever it takes to rehabilitate himself and his career. He enrolled in Alcoholics Anonymous classes and is delving into his undiagnosed PTSD with the VA. His family issues have since resolved and are going well. Deputy Phillips asked for a second chance.

Mr. Pinckard ended the conference with a plea for a reasonable assessment of Deputy Phillips' situation.

The conference ended at 1410 hours.

RECOMMENDATION

With any recommendation of termination, it is important to consider if a lesser level of discipline could correct the behavior and protect the department and community from future harm.

Unfortunately, this incident is fraught with misconduct not easily overlooked. A peace officer is held to a higher standard and afforded little forgiveness when his/her actions become criminal. Sergeant Buckley and Lieutenant Knobbe were highly effective in dissecting this tangled event and addressing mitigation. The entire incident is very disturbing when applying it to a peace officer. The actions and events that occurred will never be known in their entirety because everyone involved appears to have been intoxicated and untruthful to a measure.

I will agree the investigation contains undertones of disapproval of Deputy Phillips' lifestyle, but it is not overt, and I believe serves a purpose. Deputy Phillips was living with his wife and children at the time of this incident and went to Las Vegas with his (b)(6)(B) on vacation. When judged through the lens of social norms this is clearly distasteful behavior but cannot be a consideration for discipline. Deputy Phillips' marital problems are no business of the Department.

While at the Rio Hotel Casino, Deputy Phillips said he and (b)(6)(B) met a man (b)(6)(B) and two women (unknown) at a bar. Deputy Phillips said he consumed minimal alcohol. After flirtations, they agreed to go upstairs to drink, talk about the flooring business and explore what Deputy Phillips perceived as a potential sexual encounter. The details of the bar conversation are vague and disputed. Again, when viewed through the lens of social norms, this cliché Las Vegas bar scenario is without question distasteful but cannot be used for discipline.

The entire encounter is very suspect because of the obvious differences in statements of all involved. There is no clear indication of how many people were at the bar and what agreements were made. This is undoubtedly the point where decision making eroded. Sergeant Buckley's inclusion of Deputy Phillips' behavior prior to the alleged misconduct is reasonable because it demonstrates situational decision-making leading to the end result.

During the Skelly Conference Mr. Pinckard addressed each charge in order and provided either agreement or dispute of the findings.

CHARGES:

CAUSE I

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – Conformance to Laws, as it pertains to Nevada Revised Statute § 206.310; in that: On January 28, 2020, you damaged a door and wall to the Rio Hotel & Casino in Las Vegas, Nevada. You were arrested by the Las Vegas Metropolitan Police Department for the vandalism and subsequently paid \$1000 in restitution to the hotel for the damages. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

Deputy Phillips does not dispute this charge and asked that it demonstrate his willingness to take responsibility for the vandalism. There are considerable problems with this request. This incident was not remotely a simple vandalism. Deputy Phillips had just left a room where he allegedly pointed a gun at (b)(6)(B). He was so intoxicated he went to the wrong floor and proceeded to kick doors and walls, while threatening to shoot his way into a room. It is very clear Deputy Phillips was angry with (b)(6)(B) for whatever occurred in the room with (b)(6)(B) and others.

The events that follow provide an independent account of Deputy Phillips' actions. Two separate calls were made to the front desk of a man pounding on doors and threatening to shoot through the door. Security Officer (b)(6)(B) responded to the call and encountered Deputy Phillips. The following is Officer (b)(6)(B) statement to IA Sergeant Buckley in part:

(b)(6)(B) We had originally gotten a complaint of someone kicking uh doors and threatening people up on uh one of our hotel floors. I was responding to the first call, got a second call in saying the same thing. When I had arrived, uh, saw him with a partially assembled weapon outside of another guest's door. He had thought it was his room and thought? that his uh, I believe his fiancée was in the room refusing to let him in, and he was attempting to gain entry.....At first I wanted to make sure he wasn't going to try to finish assembling the gun. That's last thing you need in any situation. When he saw me, he immediately started disassembling the gun completely and pocketed all the pieces.

Officer (b)(6)(B) is an independent and objective witness, with no motivation to lie about what occurred. I am confident this encounter with Deputy Phillips was frightening for Officer (b)(6)(B). I am also confident Deputy Phillips' behavior was terrifying to anyone who witnessed it or heard it. I know I would be very alarmed if I observed or heard something similar.

While angry and intoxicated, Deputy Phillips stood in the hallway of a hotel with a gun in his hand. These actions alone far eclipse simple misconduct. The fact that his weapon was partially disassembled is completely irrelevant. The relevant facts are that Deputy Phillips attempted to forcibly gain entry into what he thought was (b)(6)(B) room. The kicking of the door was accompanied by verbal threats and the ability to carry out those threats. This was clearly a domestic violence incident. If Deputy Phillips made entry into the wrong room or (b)(6)(B) room, the results could have been tragic. **CAUSE I is Sustained.**

CAUSE II

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – Conformance to Laws, as it pertains to Nevada Revised Statute § 202.257; in that: On January 28, 2020, while intoxicated in Las Vegas, Nevada, you were in physical possession of a firearm in violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE VI

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.34 Carrying of Firearms; in that: On January 28, 2020, you were carrying a firearm and consumed alcohol to the point where you were unable

recall certain events and were unable to care for anyone else. Employees who are authorized to carry a firearm, may (optional) carry a firearm, when off duty, except when consuming an amount of alcohol that would tend to adversely affect a reasonable person's senses or judgement.

These two charges are related and can be addressed the same. Mr. Pinckard argued that this charge should not be included because the elements of the statute were not satisfied. He stated that no evidence existed proving Deputy Phillips' blood alcohol content (BAC) was 0.8 or higher. NRS 202.257:

NRS 202.257 Possession of firearm when under influence of alcohol, controlled substance or other intoxicating substance; administration of evidentiary test; penalty; forfeiture of firearm.

1. It is unlawful for a person who:
 - (a) Has a concentration of alcohol of 0.08 or more in his or her blood or breath, or
 - (b) Is under the influence of any controlled substance, or is under the combined influence of intoxicating liquor and a controlled substance, or any person who inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him or her incapable of safely exercising actual physical control of a firearm, **to have in his or her actual physical possession any firearm.** This prohibition does not apply to the actual physical possession of a firearm by a person who was within the person's personal residence and had the firearm in his or her possession solely for self-defense.
2. Any evidentiary test to determine whether a person has violated the provisions of subsection 1 must be administered in the same manner as an evidentiary test that is administered pursuant to **NRS 484C.160 to 484C.250**, inclusive, except that submission to the evidentiary test is required of any person who is requested by a police officer to submit to the test. If a person to be tested fails to submit to a required test as requested by a police officer, the officer may apply for a warrant or court order directing that reasonable force be used to the extent necessary to obtain the samples of blood from the person to be tested, if the officer has reasonable cause to believe that the person to be tested was in violation of this section.

Based on my training and experience, I am very confident the elements of this statute are satisfied. During my career, I have interacted with hundreds of people under the influence of drugs and alcohol. I am very familiar with behaviors and objective symptomology of intoxication. On body worn camera footage, Deputy Phillips is clearly inebriated, and in my opinion, his BAC far exceeds the .08 BAC threshold. Officer Rybacki indicated Deputy Phillips appeared to have "*something else on board as well.*" I concur because I noticed this immediately upon watching the video. Along with bloodshot eyes and slurred speech, Deputy Phillips incessantly smacks his lips/tongue (dry mouth) and displays unnecessary head and body movement **(b)(6)(B)** exhibits similar behavior. Based on my training and experience, I believe a central nervous system (CNS) stimulant could have played a role in this incident. Obviously, this cannot be proven and cannot be a consideration for discipline, but Deputy Phillips' behavior is very concerning. I do not believe physical evidence is needed to sustain administratively on the (a) section of this statute.

After section (a) of NRS 202.257, it transitions with the word "or" to the (b) section. This section addresses a person's ability to safely handle a firearm while intoxicated. Deputy Phillips' behavior during the entirety of this incident clearly demonstrates he was incapable of safely exercising physical control of a firearm. He allegedly pointed a firearm at **(b)(6)(B)** He was seen fumbling with his partly disassembled weapon in the hallway of a hotel. This is not safe handling of a firearm. **CAUSE II and VI are Sustained.**

CAUSE III

*You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – Conformance to Laws, as it pertains to Nevada Revised Statute § 200.471; in that: On January 28, 2020, you placed **(b)(6)(B)** a German citizen, in reasonable apprehension of immediate bodily harm by pointing a firearm at him in*

violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE VII

You are guilty of incompetency, as set forth under Section 7.2(a) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.50 Use of Lethal/Less Lethal Weapons; in that: On January 28, 2020, you were carrying a firearm while off duty. While intoxicated, and for no specified legitimate purpose, you pointed the firearm at (b)(6)(B) a German citizen. Employees shall not use or handle lethal or less lethal weapons (including chemical agents, saps, batons, taser guns, etc.) in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures.

The above two charges are related and can be addressed the same. Mr. Pinckard contends that the Department cannot sustain on these charges because probable cause did not exist to arrest Deputy Phillips at the time of the incident.

Deputy Phillips stated he and (b)(6)(B) went upstairs with the group and consumed one alcoholic beverage. (b)(6)(B) then left the room because someone spilled a drink on her. At this point Deputy Phillips claims his memory went void because someone drugged him. On body worn camera (BWC) with officers, Deputy Phillips states that a conflict occurred when the men in the room asked for sex with (b)(6)(B)

(b)(6)(B) briefly corroborated this on BWC to Officer McClain. At some point (b)(6)(B) allegedly said "I want to suck you" to Nuxoll's boss. This statement prompted Deputy Phillips to become angry and an argument ensued with (b)(6)(B)

(b)(6)(B) claimed Deputy Phillips became very angry without provocation. He then pulled his firearm out and pointed it at (b)(6)(B) Deputy Phillips has no memory of this or anything similar. (b)(6)(B) stated that he was able to talk Deputy Phillips into dismantling his weapon and attempted to calm him down. Deputy Phillips complied and dismantled his weapon (b)(6)(B) then took a piece of the weapon and put it in his pocket so the weapon could not be used.

Mr. Pinckard believes (b)(6)(B) is unreliable because his statements conflict as to whether Deputy Phillips pointed his weapon or not. I believe the language barrier prevented (b)(6)(B) from providing a clear statement to officers and the sergeant. I hesitate to criticize the diligence of Las Vegas Metro in this incident because I was not there, and I do not know their policies or procedures. That being said, Las Vegas Metro did not collect video surveillance from the casino. They did not collect blood, breath, or urine from Deputy Phillips. They did not obtain a clear statement from (b)(6)(B) via a translator. I believe far more could have been done to investigate the alleged crime.

(b)(6)(B) says several times on BWC that Deputy Phillips pointed the weapon at him. In other accounts, he physically demonstrates a careless waving of the weapon. He uses his finger several times simulating pointing a weapon. He said he felt threatened but told Sergeant Conk that Deputy Phillips never threatened to shoot him. In all accounts (b)(6)(B) conveys he was in fear. He grasps

his chest and put his hands up submissively several times while recounting the event. He also describes pleading with Deputy Phillips to dismantle the weapon. I am confident in assuming this was because (b)(6)(B) believed Deputy Phillips was agitated and intoxicated.

The dismantling of the weapon is a very unusual and key detail. It is so odd, it is believable. (b)(6)(B) would have no reason to make this up if he simply wanted to accuse Deputy Phillips of pointing a gun at him. (b)(6)(B) statement is further corroborated by the fact Deputy Phillips was later found in possession of a partially disassembled firearm. The totality of circumstances lends credence to (b)(6)(B) statement.

Deputy Phillips' made the follow statements (BWC) in part about what happened in the room:

AP: "A heated debate happened in the room and we go from there."... "wanted to fuck my girl and then shit happens" ... "What if two dudes want to fuck your girl in a room here, something is going to happen" ... "We're not gonna do the deal unless we get to fuck your girlfriend."

These quotes are just a sample of many that Deputy Phillips made regarding a dispute about sexual comments toward (b)(6)(B). The drawing of the weapon was not simply careless waving. It was done in response to what he believed was disrespect toward him and/or (b)(6)(B). He clearly drew the weapon to incite fear and it was effective.

NRS 200.471 Assault: Definitions; penalties. [Effective through December 31, 2019.]

1. As used in this section:

(a) "Assault" means:

- (1) Unlawfully attempting to use physical force against another person; or
- (2) Intentionally placing another person in reasonable apprehension of immediate bodily harm.

I believe a preponderance of evidence exists demonstrating Deputy Phillips used his firearm with the intent to place (b)(6)(B) in reasonable apprehension of immediate bodily harm. **CAUSE III and VII are Sustained.**

CAUSE IV

*You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.4 – **Unbecoming Conduct**; in that: On January 28, 2020, you were arrested by the Las Vegas Metropolitan Police Department for vandalism. While intoxicated, you vandalized private property, recklessly pointed a gun at another individual, used profanity, made derogatory comments about another nationality, impeded with the criminal investigation, and did not conduct yourself in a professional manner. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department.*

Mr. Pinckard stated this charge is not disputed. I will agree. Deputy Phillips' behavior during the entirety was disgraceful. His conduct represented the San Diego County Sheriff's Department and the law enforcement profession poorly. **CAUSE IV is Sustained.**

CAUSE V

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.14 – Use of Alcohol/off Duty; in that: On January 28, 2020, you consumed alcohol to the point where you were unable recall certain events and were unable to care for anyone else. Employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in unlawful impairment (such as driving under the influence or being unable to care for their own safety or the safety of others), public intoxication, or obnoxious or offensive behavior in public which would tend to discredit them or this Department.

Mr. Pinckard stressed that Deputy Phillips was not intoxicated. Deputy Phillips believes he was drugged. This makes him a victim rather than a suspect. Mr. Pinckard does not believe alcohol was the dominant factor in this case and the alleged drugging should be a consideration.

Deputy Phillips surmises he may have been robbed and assaulted after being drugged. He also concluded the entire event was a plan to drug him and (b)(6)(B). Unfortunately, there are considerable problems with this conclusion. Deputy Phillips was in possession of a firearm. It seems improbable (b)(6)(B) and his partner could have taken Deputy Phillips' money while he was armed and agitated.

It is also important to address typical human behavior in this case (b)(6)(B) behavior was not characteristic of a robber. Criminals who drug their victims do not generally seek out police to provide statements about the misconduct of their victims. Criminals who drug their victims generally administer sedatives, not violence inducing stimulants. Lastly, criminals who drug their victims would likely be apprehensive about providing a follow-up interview with Internal Affairs. (b)(6)(B) proactively contacted police on the night of this incident and provided a voluntary statement to Internal Affairs. His behavior does not align with Deputy Phillip's theory.

Deputy Phillips behavior was not representative of being drugged by a sedative. For example, the effects of Rohypnol (date rape drug) onset within 15-20 minutes. The effects peak within two hours and may persist for eight to twelve hours. A person can be so incapacitated (made unable to act) they collapse. When coupled with alcohol the effects are intensified. Deputy Phillips' behavior did not remotely resemble this.

Deputy Phillips and (b)(6)(B) have vastly different stories about how much alcohol was consumed. (b)(6)(B) stated it was a considerable amount. Deputy Phillips appeared heavily intoxicated on BWC footage. I also observed other concerning behaviors that presented like a CNS stimulant (i.e. Cocaine, Methamphetamine) intoxication. I cannot confirm my observations are correct but Officer Rybacki expressed similar concern.

The next problem is the convenient window in which Deputy Phillips claims to have lost memory. He said he lost memory right after taking the first drink and then regained cognition in the back of a patrol car. This window of memory loss conveniently voids all allegations of misconduct and nothing else.

The last and most glaring problem is that there is no level of intoxication that can forgive or explain Deputy Phillips' behavior. These were not the actions of a victim. He was deliberate in his attempts

to curry favor with police. Additionally, if alcohol or other substances provoke such violent and criminal behavior from Deputy Phillips, he can no longer be trusted as an employee of the Sheriff's Department. **CAUSE V is Sustained.**

CAUSE VIII

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.18 Abuse of Position - Use of Official Position or Identification; in that: On January 28, 2020, when contacted by the Las Vegas Metropolitan Police Department, you spontaneously identified yourself as a Deputy Sheriff with the San Diego Sheriff's Department. While being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees are prohibited from using their official position, official identification cards or badges for avoiding consequences of illegal acts.

CAUSE IX

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.38 Intervention; in that: On January 28, 2020, while being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees shall not use their position, or knowledge gained by employment with this Department, to intervene in, or interfere with any case, or investigation being handled by this Department, or any other agency.

The above two charges are related and can be addressed the same. Mr. Pinckard describes Deputy Phillips behavior as "lamenting" when he was in custody. He stated that Deputy Phillips did not try to dissuade officers from arresting him but rather expressed how upset he was with the situation. I do not agree.

I watched body worn camera footage and it is clear Deputy Phillips attempts to use his position as a peace officer to avoid arrest. His behavior was reprehensible.

AP: That's how it works on my Department...we don't blue falcon each other.

That is not how it works on the San Diego County Sheriff's Department. Enforcement is without bias, favoritism or discrimination. It is shameful Deputy Phillips would speak for our entire agency in this regard. Blue Falcon is a slang military term for a peer betraying another peer for their own benefit.

AP: I've been put in this situation like a hundred times. I don't ruin someone's career over one fuckin' mistake.

Deputy Phillips was asking to be released. I am confident in saying Deputy Phillips has probably never been put in this situation in Poway. Poway is not Las Vegas. That being said, he conveyed a willingness to give favoritism to law enforcement if put in a similar situation. This is unacceptable.

AP: You don't even have fuckin' body cams, come on man.

Deputy Phillips was suggesting the officers let him go because there was no recorded evidence of the event. The officers were equipped with BWC's. This shows Deputy Phillips willingness to conceal facts and information if given the opportunity. This is unacceptable. **CAUSE VIII and IX are Sustained.**

CAUSE X

You are guilty of discourteous treatment of the public, as set forth under Section 7.2(h) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.53 Discrimination; in that: On January 28, 2020, after an altercation with German nationals, you were captured on body worn camera making comments to Las Vegas Metropolitan Police Officers such as; "Fuckin Russians." "[T]hese freakin' German idiots...Russian, German, whatever the hell they are. They were speaking some other damn language." "Russians come to our country, cause shit, I'm the one who gets in trouble." Employees shall not express any prejudice or harassment concerning race or national origin. Discriminatory acts which will not be tolerated include the use of verbal derogatory comments.

Employees shall not express any prejudice or harassment concerning race or national origin. Discriminatory acts which will not be tolerated including the use of verbal derogatory comments. Deputy Phillips clearly expressed derogatory comments toward national origin.

AP: *"Fuckin Russians." "[T]hese freakin' German idiots...Russian, German, whatever the hell they are. They were speaking some other damn language." "Russians come to our country, cause shit, I'm the one who gets in trouble."*

The argument can be made Deputy Phillips was off duty and exercising his 1st Amendment right. I will argue he was representing the San Diego County Sheriff's Department the moment he identified himself, and as such was bound by our code of conduct. **CAUSE X is Sustained.**

CAUSE XI

You are guilty of acts that are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the San Diego County Sheriff's Department Executive Order and the Mission, Vision, Values and Goals. Your conduct constituting such acts inimical to the public service is set forth under Cause I through X above.

CAUSE XI is Sustained.

Deputy Phillips may have been going through a very difficult time in life just prior to this incident. I appreciate Deputy Phillips taking steps to address these issues in his life. It is truly unfortunate this one event defined him. Alcoholism or perceived alcoholism is not a consideration for discipline in this case. I hope he continues progress toward recovery. The discipline in this case is based solely on Deputy Phillips' misconduct.

Deputy Phillips' string of criminal behavior demonstrates he is either unwilling or unable to follow the law. His efforts to skirt protocol and law when he was detained by police revealed marked character flaws. His actions erode department credibility, public confidence, and expose the

department to liability. The public expects peace officers to be ethical and lawful in both words and actions. Unfortunately, Deputy Phillips patently fell outside those expectations. He has demonstrated he can no longer garner public or department trust when conducting himself on or off duty. Whether his actions were intentional or the result of extreme intoxication, Deputy Phillips extraordinarily uncontrollable behavior on the evening of this incident, necessitates removal from his position as a peace officer. The recommendation for discipline remains **TERMINATION**.

ATTACHMENTS

A. Audio Recording of Skelly Conference



Dan Brislin, Captain
Narcotics and Gangs Division

ENDORSEMENTS



Dave Brown, Commander
Law Enforcement Operations – Patrol

Approve Disapprove

Date 03-01-21

Comments: _____



Kelly Martinez, Assistant Sheriff
Law Enforcement Services Bureau

Approve Disapprove

Date 3/2/21

Comments: _____



~~not~~, Undersheriff
Kelly Martinez

Approve Disapprove

Date 3/2/21

Comments: _____



William D. Gore, Sheriff

Approve Disapprove

Date 3/5/21

Comments: _____

the 1990s, the number of people with a diagnosis of schizophrenia has increased in many countries (1).

There is a growing awareness of the need to improve the quality of life of people with schizophrenia, and the need to address the social and psychological consequences of the illness (2). The World Health Organization (WHO) has developed a number of instruments to assess the quality of life of people with schizophrenia (3).

The purpose of this study was to assess the quality of life of people with schizophrenia in a community setting.

The study was conducted in a community setting, and the participants were recruited through a number of sources.

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San Diego County Sheriff's Department



William D. Gore, Sheriff

*Michael R. Barnett
Undersheriff*

December 18, 2020

Andrew Phillips

(b)(6)(B)

Dear Deputy Andrew Phillips:

NOTICE OF INTENT OF TERMINATION AND CHARGES, CASE #2020-017.1

Please take notice that it is my intention to recommend to the Sheriff that you be terminated from your position as a Deputy Sheriff (Class #5746) in the Sheriff's Department and the Classified Service of the County of San Diego for each and all of the following causes:

CAUSE I

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.6 – Conformance to Laws**, as it pertains to **Nevada Revised Statute § 206.310**; in that: On January 28, 2020, you damaged a door and wall to the Rio Hotel & Casino in Las Vegas, Nevada. You were arrested by the Las Vegas Metropolitan Police Department for the vandalism and subsequently paid \$1000 in restitution to the hotel for the damages. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE II

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.6 – Conformance to Laws**, as it pertains to **Nevada Revised Statute § 202.257**; in that: On January 28, 2020, while intoxicated in Las Vegas, Nevada, you were in physical possession of a firearm in violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

Keeping the Peace Since 1850

Post Office Box 939062 • San Diego, California 92193-9062

RELEASED FROM
I.A. FILES
TO AP

CAUSE III

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.6 – **Conformance to Laws**, as it pertains to Nevada Revised Statute § 200.471; in that: On January 28, 2020, you placed placed **(b)(6)(B)** a German citizen, in reasonable apprehension of immediate bodily harm by pointing a firearm at him in violation of Nevada state law. Employees shall obey all laws of the United States, of this state, and of local jurisdictions.

CAUSE IV

You are guilty of conduct unbecoming an officer as set forth under Section 7.2(m) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.4 – **Unbecoming Conduct**; in that: On January 28, 2020, you were arrested by the Las Vegas Metropolitan Police Department for vandalism. While intoxicated, you vandalized private property, recklessly pointed a gun at another individual, used profanity, made derogatory comments about another nationality, impeded with the criminal investigation, and did not conduct yourself in a professional manner. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department.

CAUSE V

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section 2.14 – **Use of Alcohol/off Duty**; in that: On January 28, 2020, you consumed alcohol to the point where you were unable recall certain events and were unable to care for anyone else. Employees, while off duty, shall refrain from consuming intoxicating beverages to the extent that it results in unlawful impairment (such as driving under the influence or being unable to care for their own safety or the safety of others), public intoxication, or obnoxious or offensive behavior in public which would tend to discredit them or this Department.

RELEASED FROM
I.A. FILES
TO AP

CAUSE VI

You are guilty of intemperance as set forth under Section 7.2(e) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.34 Carrying of Firearms**; in that: On January 28, 2020, you were carrying a firearm and consumed alcohol to the point where you were unable recall certain events and were unable to care for anyone else. Employees who are authorized to carry a firearm, may (optional) carry a firearm, when off duty, except when consuming an amount of alcohol that would tend to adversely affect a reasonable person's senses or judgement.

CAUSE VII

You are guilty of incompetency, as set forth under Section 7.2(a) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.50 Use of Lethal/less Lethal Weapons**; in that: On January 28, 2020, you were carrying a firearm while off duty. While intoxicated, and for no specified legitimate purpose, you pointed the firearm at **(b)(6)(B)** a German citizen. Employees shall not use or handle lethal or less lethal weapons (including chemical agents, saps, batons, taser guns, etc.,) in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures.

CAUSE VIII

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.18 Abuse of Position - Use of Official Position or Identification**; in that: On January 28, 2020, when contacted by the Las Vegas Metropolitan Police Department, you spontaneously identified yourself as a Deputy Sheriff with the San Diego Sheriff's Department. While being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees are prohibited from using their official position, official identification cards or badges for avoiding consequences of illegal acts.

RELEASED FROM
I.A. FILES
TO AP

CAUSE IX

You are guilty of failure of good behavior, as set forth under Section 7.2(r) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.38 Intervention**; in that: On January 28, 2020, while being detained pending a criminal investigation, you used your position as law enforcement to influence the investigation and to be released. Employees shall not use their position, or knowledge gained by employment with this Department, to intervene in, or interfere with any case, or investigation being handled by this Department, or any other agency.

CAUSE X

You are guilty of discourteous treatment of the public, as set forth under Section 7.2(h) of Rule VII of the Rules of the Civil Service Commission as it relates to Sheriff's Policy and Procedure Section **2.53 Discrimination**; in that: On January 28, 2020, after an altercation with German nationals, you were captured on body worn camera making comments to Las Vegas Metropolitan Police Officers such as; "Fuckin Russians." "[T]hese freakin' German idiots...Russian, German, whatever the hell they are. They were speaking some other damn language." "Russians come to our country, cause shit, I'm the one who gets in trouble." Employees shall not express any prejudice or harassment concerning race or national origin. Discriminatory acts which will not be tolerated include the use of verbal derogatory comments.

CAUSE XI

You are guilty of acts that are incompatible with and/or inimical to the public service as set forth under Section 7.2 (s) of Rule VII of the Rules of the Civil Service Commission of the County of San Diego. You are guilty of acts, which are incompatible with the **San Diego County Sheriff's Department Executive Order** and the **Mission, Vision, Values and Goals**. Your conduct constituting such acts inimical to the public service is set forth under Cause I through X above.

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Notice of Intent of Termination and Charges, IA Case #2020-017.1
Sheriff's Deputy Andrew Phillips
December 18, 2020

Page 5

You have **five (5)** regular business days to request a Skelly Conference. You may respond either orally, in writing, or both, regarding the above proposed charges and discipline. Your response will be considered by the Sheriff before final action is initiated. Upon receipt of this notice you will be provided with all documents possessed by this department upon which this proposed action is based. If you have any questions of said documents, please contact the Internal Affairs Unit.

You have until 4:30 p.m. on January 11, 2021 to contact Internal Affairs at **(b)(6)(B)** if you wish to respond to the above charges and discipline. Internal Affairs will provide you the name of a Skelly Officer, whom you should contact without delay, as the conference must be held within ten (10) days, unless waived by mutual agreement. If there are extenuating circumstances precluding you from staying within this time limit, contact Internal Affairs immediately.

If you fail to respond, or if your response is unsatisfactory, an Order of Termination and Charges will be served upon you and the discipline initiated.

Sincerely,

WILLIAM D. GORE, SHERIFF



David Schaller, Captain
Poway Patrol Station

WDG:DS:jb

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COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

November 2, 2020

TO: William D. Gore, Sheriff
FROM: Michael Knobbe, Lieutenant
Poway Patrol Station
VIA: Chain of Command

**Disciplinary Recommendation and Rationale for Deputy Sheriff Andrew Phillips -
RE: Internal Affairs Case: 2020-017.1**

RECOMMENDATION

I have read the investigation and listened to the recorded interviews prepared by Sergeant Buckley. Sergeant Buckley found Deputy Phillips in violation of Department Policy and Procedure sections:

- **2.6 Conformance to Laws (x3)**
- **2.14 Use of Alcohol / Off Duty**
- **2.34 Carrying of firearms**
- **2.50 Use of Lethal / Less Lethal Weapons**
- **2.18 Abuse of Position**
- **2.38 Intervention**
- **2.53 Discrimination**
- **2.4 Unbecoming conduct**

I concur with Sergeant Buckley's conclusions and findings. Based on the nature of the conduct, and after weighing the factors in aggravation and mitigation, I recommend Deputy Phillips be **TERMINATED**.

RATIONALE

Sergeant Buckley's investigation was thorough and fair and there is a preponderance of evidence to believe the alleged misconduct occurred. In reviewing the investigation and recordings, I have found no evidence of bias or ill will by Sergeant Buckley or any of the witnesses in this investigation. Deputy Phillips' misconduct was independent of any verbal or written order by a Department supervisor.

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On October 20th, at 1430 hours, I met Deputy Phillips and his attorney Rick Pinckard in the Resource Conference room at the Poway Station. Before making my disciplinary recommendation, I provided Deputy Phillips and Mr. Pinckard a copy of the investigation to review.

At 1637 hours, I began the audio-recorded meeting with Deputy Phillips and Mr. Pinckard. The recorded meeting was transferred to a CD and is attached to this report. The events of this case are as follows:

On January 28, 2020 Deputy Andrew Phillips and his girlfriend, (b)(6)(B) were staying in the Rio Hotel in Las Vegas. They had stayed the two previous nights in a different hotel however after checking out were reportedly too tired to return home and checked into the Rio Hotel to stay another night. Deputy Phillips had traveled to Las Vegas in possession of a handgun (off-duty Glock 43) which he carried on his waistband. At some point in the evening, Phillips and (b)(6)(B) ended up at a bar in the Rio Hotel. They consumed alcoholic beverages, however what type and the amount appears in dispute by both (b)(6)(B) and Phillips. Phillips and (b)(6)(B) met a German national (b)(6)(B) while at the bar. (b)(6)(B) invited them up to his room to consume more alcohol. The number of people in the room is disputed. Phillips stated on BWC that he saw a girl he liked, and his girlfriend saw a guy she liked, and he said they were going to have a good time. They would invite the girl and the guy up. Phillips claimed in his Internal Affairs investigation that there were two German females and two German males. (b)(6)(B) believed there were six males from Pomona, California in the room and does not remember any German accents. (b)(6)(B) stated it was just himself and his boss (b)(6)(B). In fact, only (b)(6)(B) and (b)(6)(B) are observed on BWC at the time of the report of the incident to Las Vegas Metro Police (Metro).

While in the room some sort of dispute / altercation occurred. At some point (b)(6)(B) left the room. Phillips is seen on BWC stating that when they got to the room the guys were "Complete fucking assholes" Phillips describes them as saying, "If we don't get to fuck your girl there's no deal" So Phillips said "Fuck you, there is no deal then" He then reported they "Got in my face" and then a "heated debate happened in the room, and we go from there."

(b)(6)(B) reported that Phillips became angry and upset and pulled a firearm. (b)(6)(B) indicated as seen on BWC through verbal and physical demonstration that Phillips had pointed the firearm at him. (b)(6)(B) indicated he had Phillips disassemble the firearm and leave the room. Concerned for (b)(6)(B) after he left the room, (b)(6)(B) followed Phillips. They took the elevator to the 15th floor where Phillips began pounding on a hotel room door. Phillips reportedly thought this was his room when in fact he was staying on the 25th floor. Phillips began hitting and kicking the door causing damage while threatening to shoot the door. Rio Hotel Security indicated they received two reports from the individuals inside the two rooms and responded to the area. When they arrived, they contacted Phillips who was intoxicated, in possession of his firearm and appeared to be trying to reassemble it. Security spoke with Phillips and requested he check the firearm downstairs. Phillips went with Security to check the firearm; however, he reportedly became augmentative with hotel

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security at the check in desk and walked off while still trying to reassemble his firearm. As Phillips exited the hotel, he was contacted by Las Vegas Metro Police. Several uniformed police officers, two sergeants as well as two plain clothes detectives and a detective sergeant eventually responded to assist with the investigation. During the contact Phillips is seen on video identifying himself as a deputy sheriff, asking for a supervisor, asking to be let go and indicating to the officer detaining him that we don't "Blue Falcon" other cops. Deputy Phillips described "Blue Falcon" in his Internal Affairs interview as a term for "buddy fucking" or "screwing somebody over."

Metro officers and detectives completed their investigation and ultimately arrested Deputy Phillips for vandalism and he was transported to jail. On the morning of his release, he returned to the hotel and paid compensation to the hotel of \$1000 for damages he caused. The criminal case was settled as "restitution paid in full."

During the Recommendation and Rationale hearing, Mr. Pinckard spoke on behalf of Deputy Phillips. He mentioned that Deputy Phillips had another case pending and inquired about possibly holding a hearing for both cases. I respectfully declined and requested we move forward. Mr. Pinckard indicated they had spent the past two hours reviewing the case to include some of the BWC. He indicated this case would need much more review to sort it all out. He indicated this investigation presents conflicting information. He would need to chart it out to see "who said what and when" to come up with mitigation and rebuttal.

In way of mitigation Mr. Pinckard would hope we would take into consideration, "Credibility." Credibility of Deputy Phillips, his girlfriend as well as the German National (b)(6)(B) He indicated he is gratified that IA did not gratuitously throw in a finding of "Dishonesty."

Mr. Pinckard referred to this as an unfortunate incident. He indicated it is a reminder not to go to Vegas and get intoxicated. Both Deputy Phillips and his girlfriend admitted they were there to have a good time and were both invited up to (b)(6)(B) room. What Mr. Pinckard stated was concerning in this case is there is no corroboration from the other guy in the room identified as "Thomas." There was no statement taken from him to corroborate what did or did not occur.

Phillips and (b)(6)(B) both indicated they don't remember a whole lot, stating it was like they were drugged. (b)(6)(B) had bruises all over her body the next day and Deputy Phillips had a "goose egg" on the back of his head as well as other bruises.

Mr. Pinckard stated, "If ever there was a case study on how not to handle an investigation, this was it." He indicated they (Las Vegas Metro) "Bungled the case every which way they could." He indicated Deputy Phillips had told Metro Officers he believed he had been drugged yet he was not tested. Mr. Pinckard went on to say there is a possibility that (b)(6)(B) was possibly sexually assaulted, but there was no SART, nothing. "This case is a big mystery as to what happened."

The concern he has with this case is Internal Affairs has looked to (b)(6)(B) to tell the story. It is

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his belief (b)(6)(B) is no more reliable than Deputy Phillips and (b)(6)(B) Nuxoll had been drinking and by his admission was intoxicated. He also had motivation if he had been doing something wrong; he would not admit that. (b)(6)(B) invited Phillips and (b)(6)(B) to his room. Mr. Pinckard asked what was the motivation? (b)(6)(B) supposedly said there was "no sex." Mr. Pinckard indicated he would like to hear the recording of that interview to see if he was even asked that or just provided the information, yet there was no recording of this statement.

Mr. Pinckard indicates the statement of (b)(6)(B) reference to Phillips pointing the gun in his face has no one to corroborate it. Additionally, (b)(6)(B) statement that he told Deputy Phillips to take the gun apart and Phillips complied does not make any sense. Walking Phillips down the hall and then giving him the piece to the gun back makes no sense. Riding with Phillips in the elevator, makes no sense. Additionally, how did (b)(6)(B) know that Phillips was on the wrong floor when he was banging on the door? Mr. Pinckard agrees something happened; we just don't know what it was. He suspects that Deputy Phillips is correct, and they were either drugged, or there was an intent of robbery or rape or something.

Mr. Pinckard said based on some level of intoxication something happened. It appears this is all Deputy Phillips' fault based solely on what (b)(6)(B) reported. Mr. Pinckard indicated if you take all the pieces of what (b)(6)(B) said it does not make sense. This leads him to conclude, either he (b)(6)(B) is lying or was also impaired that he cannot recreate or reconstruct the events. In either case (b)(6)(B) is no more reliable than Deputy Phillips.

Mr. Pinckard presented his belief and questioned when a Law Enforcement agency indicates they do not have enough to charge or prosecute how can we sustain a conformance to laws in an administrative investigation. In this case Deputy Phillips was not charged with ADW based on the statements (b)(6)(B) made. The only thing he was charged with was the damage to the property and there is a question as to whether Deputy Phillips even committed the damage. There is insufficient information and the inability to say to any degree of certainty that absolutely this happened or absolutely that happened. Based on that how do we say there is a preponderance of evidence that Deputy Phillips broke any laws.

Mr. Pinckard indicated, we would hope that our deputies are aware of their circumstances and don't get themselves in a situation where they can be taken advantage of and preyed upon. He further indicated the hope would be the Department would treat them as a victim and counsel them on the fact they need to be smarter than the folks that would take advantage of them. This is an embarrassing situation. Embarrassing to Deputy Phillips (b)(6)(B) and the San Diego County Sheriff's Department. It was not Deputy Phillips' intent to go out and get into a circumstance that reflects poorly on himself or the against the Department.

Mr. Pinckard stated Deputy Phillips is not playing the victim, but this case needs to be looked at for everything, there is too much missing in this case. Not that Internal Affairs did a poor job, they interviewed and documented what they could but there is too much information missing based

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on the failings of Las Vegas Metro to find all the charges that Internal Affairs did, and this is unfair.

The meeting concluded at about 1706 hours.

During the meeting Mr. Pinckard brought up what appeared to be four areas of Mitigation.

1. This case was mishandled by Las Vegas Metro Police
2. Deputy Phillips and (b)(6)(B) were possibly drugged
3. Deputy Phillips and (b)(6)(B) were possibly the victims of a crime
4. (b)(6)(B) is not credible

In reviewing the information presented by Mr. Pinckard. I would agree it is evident in reviewing the investigation that Las Vegas Metro did a poor job with written documentation of this incident. However, as indicated in the Internal Affairs investigation, as well as my recommendation is not to just rely on the written report yet focus in on what we can see and hear from the night of the incident by viewing the BWC. I would agree that the written investigation was poorly documented. However, in watching the body worn camera videos provided from the night of the incident, one can conclude and in fact Sergeant Buckley did conclude through a ponderance of evidence that Deputy Phillips did in fact violate several sections of Sheriff's Department Policy and Procedure as well as Nevada State Law.

When contacted, Deputy Phillips appears to me, based on my 28 years of Law Enforcement experience to be under the influence of at a minimum, alcohol. I would say based on his statements that he appears heavily intoxicated. Several officers confirm this to be their observations as well as seen on BWC and in their statements.

Reference Deputy Phillips' defense of not recalling based on being "drugged," Deputy Phillips indicates in his Internal Affairs interview that he recalls going to the room and having a drink. The next thing he recalls was waking up, it was daylight out and he was in a patrol car. This appears to contradict what we see on BWC. The first indication that Deputy Phillips indicated he was possibly "roofied" was when he was walked to the bathroom. (413-9 - 12:58 hours) He made the statement "The more I am coming too, someone roofied me or some shit." He does not press the issue with Metro officers. However early in his contact with Metro he stated he didn't want this to ruin his career, he just wanted to leave. In fact, he asked to be allowed to leave, be unhandcuffed, he asked to speak with a supervisor on more than one occasion, he somewhat appeared to indicate that this is not how law enforcement handles the situation where he works. Deputy Phillips made several attempts / pleas in what appeared to be an effort to get out of the situation he was in, yet he did not push the issue of being drugged nor being a victim of a crime. In fact, in his Internal Affairs interview, he indicated upon his release from jail, in talking with (b)(6)(B) later that morning they thought maybe they had been drugged. However, they did not file a report with Metro, he

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did not contact his San Diego Sheriff's supervisor to report his belief nor did he contact Internal Affairs to inform them of the same. Lastly, he did not take it upon himself to be tested. The fact is Deputy Phillips had been arrested and taken to jail. He knew early on in his contact that this was going to have an impact on his job, yet he made no effort to gather, or provide any evidence that he was drugged. Additionally, he did not follow up with Las Vegas Metro Police or anyone else to report being the victim of any crime nor for what he would describe in his Internal Affairs interview as being the victim of robbery / theft. In fact while detained in the police car, asking about the whereabouts of (b)(6)(B) and inquiring about what is going on one of the Sergeants indicates to Deputy Phillips that the Detectives would talk with him shortly, Deputy Phillips responds "I don't want to talk, I want a lawyer."

In watching the BWC of the entire contact with Deputy Phillips, I saw no indication or anything leading me to believe that Deputy Phillips had been drugged nor the victim of any crime. This is a concerning statement that Deputy Phillip presents in mitigation as it does not appear to be the truth.

Regarding (b)(6)(B) and his credibility, again one must watch the BWC. When Deputy Phillips was initially contacted by Metro, they were briefed by security reference the two reports of him banging and damaging a hotel room door and threatening to shoot the door down as well as refusing to check-in this firearm and creating a disturbance with security over his firearm. It is during his initial contact with Metro that (b)(6)(B) can be seen on BWC walking out of the hotel to where Metro and security have Phillips detained. No one appears to have any indication of who (b)(6)(B) is until he is questioned. Metro then inquires who he is and why he is there. They then pull him aside and take his statement learning of the incident in the hotel room.

Mr. Pinckard would indicate there is no corroboration to (b)(6)(B) statement. I can only believe Deputy Phillips had a firearm while in (b)(6)(B) room. This is based on several factors (b)(6)(B) report to Las Vegas Metro, his actions and demeanor in describing what happened to him at one point appearing "shaken up" by what just happened, all captured on BWC. Additionally, (b)(6)(B) indicated he saw the gun, and described it, in addition to indicating it was pointed at him. He further stated the gun was then disassembled. It is true, when observed by security on the 15th floor, Deputy Phillips was handling a disassembled handgun. If Deputy Phillips never pulled the gun out, then how was (b)(6)(B) able to describe the gun or even know he in fact had a gun.

At the same time (b)(6)(B) who had spent the three-day weekend trip with Phillips indicated in her IA statement that she was not even aware that Phillips had a gun with him. If that is true, which I believe it is, why was (b)(6)(B) aware of a gun a short period of time after meeting Phillips for the first time.

Additionally Phillips' own statements captured on BWC, "A heated debate happened in the room and we go from there" he also stated that they "wanted to fuck my girl" and then "Shit happens" Lastly he stated "What if two dudes want to fuck your girl in a room here, something is going to

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happen."

Phillips' statement to Metro at the time was that he returned to his room and retrieved his gun from the safe, to disassemble it and make it safe based on an argument he had with (b)(6)(B). However, we would learn that this was not a truthful statement. It was learned in this investigation that the Rio does not have in-room safes. He also spontaneously stated when first detained that he "never pulled a gun, never did any of that shit." However, at that moment in the investigation Phillips had just been contacted and detained and no witness statements were taken. (b)(6)(B) had not been contacted at that moment. There was no mention of the gun by the officer. In fact he tells Deputy Phillips more than once that at that moment, he (Phillips) is the only one he has spoken with. Additionally, security reported to Officer McClain (413-22 10:29), that when contacted Phillips stated he got into an argument earlier in the night and, "punched a Nazi." Phillips also gave statements leading one to believe that there was some sort of disturbance or argument in the hotel room. In fact, he reported to Sergeant Conk that there was a disturbance in the room. He indicated they (Germans) attacked him and "shit went down in the room." He stated, "What would you do? shits going to happen."

In response to Deputy Phillips not being responsible for committing the vandalism, Phillips is seen on BWC stating to Officer Rybacki in his initial contact "Did I kick the door, I probably kicked it, yes." Additionally, as indicated earlier he returned to the hotel and paid \$1000.00 for the damage he caused.

In conclusion, it appears Deputy Phillips' mitigation in this case relies heavily on him stating he may have been drugged. I just don't believe that to be the truth. In fact, watching all the BWC and reviewing statements, that just does not appear to be the case. The statement "I don't recall" is not and cannot be taken as if the event didn't occur when there is evidence indicating otherwise. In this case we are fortunate to have BWC with Deputy Phillips and (b)(6)(B) reporting to the Metro officers shortly after the event. It allows one to piece together many parts of the story and in this case, I believe conclude with a preponderance of evidence what Policies were violated and what crimes were committed.

There is no evidence of Deputy Phillips being drugged vs. voluntary intoxication. Again, one must look at the BWC, watch and listen to Deputy Phillips on the night of this incident. His statements, recollection, his ability to describe his own work, his beliefs and how he has handled similar situations, asking to be let go, requesting a supervisor and conscious decisions and statements that in my opinion no way are consistent with someone who had been drugged. Without any evidence to the contrary, we as a Department cannot allow someone who is voluntarily intoxicated and violates several sections of our Policy and in this case Nevada State law to not be held accountable for their actions.

I believe Deputy Phillips is very fortunate. He was intoxicated on the evening on January 20th, in possession of a firearm and went to a stranger's room he had met in a bar based on an agreement

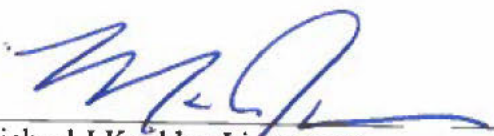
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or by his own words a "deal." It appears when the "deal" went "bad," things went bad and there was some sort of altercation and argument. Why they went to the room or what the "deal" was is unclear and left to speculation, however there was an argument and a gun was introduced into that argument by Deputy Phillips. He then went to another hotel room and caused damage trying to break down the door while threatening those inside with shooting down the door. Deputy Phillips is fortunate that no one was shot or killed.

Deputy Phillips' actions and treatment of Rio Security and Las Vegas Metro Police as seen on BWC is deplorable. He leads Metro to believe that we, as a Department, handle police misconduct differently here at the San Diego County Sheriff's Department, which is not the case. When detained in handcuffs he stated to the police, "I would never do this to you." He goes on to say, "Come on man, I have been put in this situation over 100 times, I don't ruin someone's career over a stupid fucking mistake." He asked to be unhandcuffed and allowed to go back to his room stating, "no paperwork nothing." When Officer Rybaki tells him that's not how it works. Deputy Phillips tells him it does, stating "That's how it works on my Department" and "We don't Blue Falcon each other."

These actions are offensive to this profession and the badge the men and women of this department wear every day. Deputy Phillips' actions are in violation of Policy and Procedure as indicated though the sustained findings and I believe there is a preponderance of evidence to believe his actions were criminal in nature as it relates to the possession of the firearm while intoxicated, pointing the firearm at (b)(6)(B) as well as the damage to the Rio Hotel property for which he was arrested.

This case and the actions of Deputy Phillips erode the confidence and trust the public has in the Law Enforcement profession. His actions show misconduct both administratively and criminally and he presents a liability to the San Diego County Sheriff's Department. Based on all the above, I recommend Deputy Phillips be TERMINATED from the San Diego County Sheriff's Department



Michael J Knobbe, Lieutenant
Poway Patrol Station

11/5/20
Date

MJK: mjk

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ENDORSEMENTS:

 Date 12.14.2020 Approve Disapprove
David Schaller, Captain

Comments:

Date _____ Approve Disapprove
Dave Brown, Commander

Comments:

Date _____ Approve Disapprove
Kelly Martinez, Assistant Sheriff

Comments:

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_____ Date _____ Approve _____ Disapprove _____
Michael R. Barnett, Undersheriff

Comments:

_____ Date _____ Approve _____ Disapprove _____
William D. Gore, Sheriff

Comments:

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FROM THE OFFICE OF

INTERNAL AFFAIRS – CONFIDENTIAL

DECLARATION/ACKNOWLEDGEMENT OF PERSONAL SERVICE

I, the Undersigned, certify that I am over 18 years of age and a resident of the County of San Diego, and that I served the

- NOTICE OF INTENT OF SUSPENSION AND CHARGES**
- NOTICE OF INTENT OF REASSIGNMENT AND CHARGES**
- NOTICE OF INTENT OF TERMINATION AND CHARGES**
- NOTICE OF INTENT OF DEMOTION AND CHARGES**
- NOTICE OF INTENT OF A ONE (1) DAY PAY-STEP REDUCTION AND CHARGES**

- ORDER OF SUSPENSION AND CHARGES**
- ORDER OF TERMINATION AND CHARGES**
- ORDER OF REASSIGNMENT AND CHARGES**
- ORDER OF DEMOTION AND CHARGES**
- ORDER OF A ONE (1) DAY PAY-STEP REDUCTION AND CHARGES**
- NOTICE REGARDING RESTRAINING ORDER DATED**

of which a true copy is attached hereto, by delivering a copy thereof to

Andrew Phillips Personally at VDF on
1/4/2021

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4 day of Jan., 2021, at Vista, California.

[Signature]
Signature of person making personal service

ACKNOWLEDGEMENT OF SERVICE

I do hereby acknowledge receipt of the above noted document.

Executed this 4 day of Jan., 2021.

SIGNED [Signature]

2020-017.1

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To: AP

From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

ORDER NOT TO DISCLOSE MATERIALS

Pursuant to Department Policy, materials are being furnished to you upon which your proposed discipline is based. These materials are reproductions and are a part of the confidential employee personnel records of the San Diego Sheriff's Department. Dissemination of this information is restricted to a need and a right to know.

You are ordered not to disclose, release, or copy these materials to or for anyone, other than your attorney and/or association representative, without the written authorization of the Internal Affairs Lieutenant. Materials include all written documentation, tape recordings, and videotapes.

Any unauthorized release of information contained in these documents compromises the confidentiality of your personnel file and may impede the Department's ability to protect your confidentiality in future discovery motions. This could subject you and the County to unnecessary liability and criticism, to which the Department may be required to defend in a public forum.

You are strongly encouraged to destroy or return these materials when they no longer serve a useful purpose. Should you desire to review material related to your discipline at a later time, you may make arrangements with the Internal Affairs Unit.

Failure to abide by this order could result in a charge of insubordination, and subject you to disciplinary action up to and including termination.

I have received a copy of this order.


Andrew Phillips #7217

I.A. #: 2020-017.1

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To: AP

From the Office of

INTERNAL AFFAIRS - CONFIDENTIAL

Skelly Conference Letter

IA# 2020-017.1

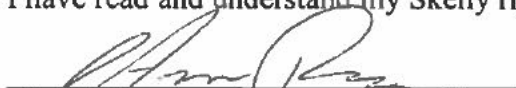
As indicated on the "Notice of Intent" to discipline, which you are receiving, disciplinary action against you is being considered. If you wish to invoke your right to a pre-disciplinary due process hearing on this matter (*Skelly Conference*), you must make the request within five (5) regular business days. The Skelly Conference is a relatively informal hearing, not an adversarial evidentiary trial. The final date to request a hearing is indicated on your "Notice of Intent". Your request should be made by calling the Internal Affairs Unit at (b)(6)(B)

If you do not request the conference within that time, your right to a Skelly Conference will have been waived, and the recommended discipline may be imposed.

Your Skelly rights are:

1. To receive a written "Notice of Intent" to discipline, that may be served upon you, either in person or by mail. That notice will include the level of proposed discipline, the charges, and a brief explanation of the reason for the discipline.
2. To receive a copy of the materials upon which the proposed discipline is based, including reports, tape/digital recordings, photographs, etc. Any item certified as confidential and withheld from you by the department cannot be used as a basis for discipline.
3. To have sufficient time to review the supporting materials so that your response can be prepared.
4. To respond orally, in writing, or both to the proposed discipline and charges.
5. To a hearing officer who is not in your chain of command.
6. To have a representative or attorney present at the hearing.
7. To receive copies of all materials prepared as a result of the Skelly Conference.
8. To receive a new Skelly Conference for any new charges or increased discipline, which arise from the Skelly Conference.

I have read and understand my Skelly rights.


Andrew Phillips #7217

 1/4/21
Witness Date

Released from I.A. Files:

To: AR



RECEIPT OF MATERIALS

EMPLOYEE: Andrew Phillips 047159/7217
IA Case#: 2020-017.1

DESCRIPTION OF DOCUMENT	EMPLOYEE RECEIVED (DATE & INITIAL)	APPOINTING AUTHORITY (Date & Sign)
Notice of Proposed Disciplinary Action to Andrew Phillips dated 11/5/2020	01/06/21	12/18/20
Notice of Intent of Termination and Charges to Andrew Phillips dated 12/18/2020		
Discipline Recommendation & Rationale to Sheriff W. Gore from Lieutenant Michael Knobbe dated 11/2/2020	Andrew	12/18/20
Investigative Reports by Sergeant J. Buckley dated 9/29/2020 and attachments		
Two (2) CDs and one (1) USB	Andrew	12/18/20
Skelly Conference Letter to Andrew Phillips		
Order Not to Disclose Materials to Andrew Phillips	Andrew	12/18/20
Declaration / Acknowledgement of Personal Service		

BOBBITT PINCKARD & FIELDS

A Professional Corporation
8388 Vickers Street
San Diego, California 92111-2109

RICHARD L. PINCKARD

(b)(6)(B)

TELEPHONE

(b)(6)(B)

FACSIMILE

(b)(6)(B)

WWW.COPLAW.ORG

(b)(6)(B)
LEGAL ADMINISTRATOR
CARI@COPLAW.ORG

January 11, 2021

William D. Gore, Sheriff
San Diego County Sheriff's Department
P.O. Box 939062
San Diego, CA 92193-9062

Via Facsimile and U.S. Mail

(b)(6)(B)

Re: Deputy Andrew Phillips - Request for Skelly Conference

Dear Sheriff Gore:

Our office represents Deputy Andrew Phillips regarding the Notice of Intent of Termination and Charges served on him on January 4, 2021. Based on the information available to us at this time, on behalf of our client, we deny the allegations on which this action is based and request an opportunity to respond to the allegations. I will serve as Deputy Phillips's representative in this matter. Please contact me directly regarding the scheduling of this *Skelly* Conference either by phone or email at Rick@coplaw.org.

Because our client is a peace officer, he is entitled to the protections afforded under Penal Code § 135.5. Accordingly, prior to any disciplinary proceeding, our client is entitled to any relevant information related to the proposed discipline. Relevant information includes evidence that has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action, or the truthfulness of a witness's testimony or of a declarant's hearsay statement. (See Evidence Code §§ 210, 780 and 1202.) Penal Code § 135.5¹ has expanded the nature of information that must be provided to a public safety officer during any disciplinary proceeding. It is now unlawful to conceal any relevant evidence during the disciplinary process. Concealment would include knowingly not providing any relevant evidence.

I recognize some information that may not be relevant to the appointing authority in order to make a decision regarding discipline of a public safety officer would be relevant to our client to disprove the allegations or mitigate the facts or level of discipline. Therefore, I have provided a list of information that we consider relevant to defending our client from the allegations alleged in the Notice of Intent of Termination and Charges. Relevant evidence also includes evidence which may assist in mitigation of the level of discipline. Please keep in mind the information we are requesting is in addition to that information that must be provided pursuant to *Skelly v. State Personnel Board*, (1975) 15 Cal.3d 194.

On behalf of our client, to the extent not already provided, we request the following information:

1. A current copy of all policies and procedures alleged to have been violated by our client.

¹ Penal Code § 135.5 states: "Any person who knowingly alters, tampers with, conceals, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor."

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2. All written reports (as defined by *San Diego Police Officers Assn. v. City of San Diego*, (2002) 98 Cal.App.4th 779) prepared as a result of the allegations against our client.
3. All investigator notes.
4. A copy of all radio transmissions related to this investigation.
5. All written or recorded statements of any potential witness.
6. All prior criminal history of any known potential witness related to this investigation.
7. All information that could lead to or tends to mitigate the conclusions as set forth in the proposed notice of discipline. Information includes any information known to members of your agency whether in a written form or merely within the knowledge of members of your staff.
8. All statements or utterances by our client, oral or written, however recorded or preserved, whether or not signed or acknowledged by our client.
9. The names and addresses of any witness who may have knowledge of the events that caused the discipline to be proposed.
10. An opportunity to examine all physical evidence obtained in the investigation against our client.
11. All laboratory, technician, and other reports concerning the testing and examination of any physical evidence.
12. All reports of experts made in conjunction with the case, involving the results of physical or mental examinations, scientific tests, experimental or comparisons which relate to the allegations as set forth in the notice of proposed discipline.
13. All photographs, motion pictures, or videotapes taken during the investigation.
14. Any exculpatory or mitigating evidence in the possession of your agency.
15. Any information relevant to the credibility of any witness.
16. Any potential rebuttal evidence in the possession of your agency.
17. Any and all relevant evidence known or in the possession of your agency.
18. Any recommendations from supervisory or management staff that differ or contradict the current conclusions or recommendation of discipline.
19. All performance evaluations for the past 10 years.
20. Any and all materials reflecting documentation of positive or negative performance maintained in any department files (including Internal Affairs files).
21. Any and all notes, minutes and/or materials from any meetings or discussions involving captains or chiefs in the process of determining the level of discipline to be proposed.
22. Any and all electronically stored data including email and any other computer generated files.
23. Any and all findings of the Citizen's Law Enforcement Review Board relating to this proposed discipline.
24. All discoverable information under Penal Code §1054 as required by *San Diego Police Officers Association v. City of San Diego*, supra, 98 Cal.App.4th 779.

Please treat this request as a continuing request until this matter has been settled or adjudicated.
Thank you for your anticipated cooperation.

Sincerely,



Richard L. Pinckard

RLP/clc
cc: Internal Affairs (via email only)



FROM THE OFFICE OF

INTERNAL AFFAIRS - CONFIDENTIAL

January 12, 2021

Skelly Conference Assignment Notification

Captain: Daniel Brislin

IA#: 2020-017.1

Employee Name: Deputy Andrew Phillips

Discipline Recommendation: Termination

This letter is to notify you of your assignment as Skelly Conference Officer for the above listed employee. Pursuant to Sheriff's Policy & Procedure Section 3.3:

An employee may request a Skelly Conference for any proposed discipline other than a written reprimand or counseling. The employee shall have five (5) working days in which to request a Skelly Conference. The Skelly Conference must take place within ten (10) working days of the request for the conference. A waiver of the ten (10) working day limit must be mutually agreeable to both the employee and the conference officer.

Failure of the employee to request a Skelly Conference within the allotted time, or failure to appear at the designated time and place without just cause, shall constitute a waiver, and the package will be forwarded to the appropriate level for final decision via Internal Affairs.

Please call Rickard Pinckard with Bobbitt Pinckard & Fields at (b)(6)(B) (b)(6)(B) or email him at Rick@coplaw.org to schedule a Skelly Conference.

Please notify the Internal Affairs Unit and your Command of the date of the Skelly Conference. If there are any issues regarding your assignment as the Skelly Officer for this case/employee, please contact the Internal Affairs Unit (b)(6)(B) (b)(6)(B) as soon as possible.

Thank you.

C: Kelly Martinez, Assistant Sheriff
Charles Cinnamo, Commander