

SHERIFF

KING COUNTY

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

Mitzi G. Johanknecht
Sheriff

April 12, 2018

Rich Rowe

RCW 42.56.250(4)

Re: *Loudermill* response IIU 2017-150

Dear Detective Rowe:

I am writing to issue my decisions as to potential policy violations and discipline related to the investigation of IIU2017-150. This incident occurred on Wednesday, August 16, 2017. The events that gave rise to this internal investigation, and the findings and recommendations were completed, before I took office on January 1, 2018.

We met for a *Loudermill* hearing on January 16, 2018; our meeting included Undersheriff Scott Somers, IIU Captain Rodney Chinnick, Chief Jerrell Wills, Major Daniel Pingrey, Capt. Noel Fryberger, Major Marcus Williams, Sgt. Jason Houck, Chief Lisa Mulligan, Legal Advisor Diane Taylor and Guild President Steve Eggert.

At the start of your statement you expressed remorse that your actions brought so much negative attention to the King County Sheriff's Office (KCSO). You took responsibility for your actions and behavior and stated that your goal in your work is to do the right thing. During our meeting you challenged the fairness of the investigation due to statements made by former Sheriff John Urquhart, in the media, before any investigation had been started. You said these statements "set the tone," and that a judgment of guilt was made before a thorough internal investigation could be completed. You noted that the findings and recommendation memo was one-sided and inaccurate with regard to your statements about the driver's hand movement and your subsequent search for a weapon.

You told me that only a portion of the video of this event was shown in the media and that it painted an incomplete picture of the entire traffic stop and interaction with motorcycle driver Alex Randall. You stated that the resulting public opinion was shaped and impacted by the repetitive showing of this incomplete version. Further, you contend it impacted the investigation, the findings and recommendation.

I have reviewed the investigative file and the formal recommendations of Captain Fryberger and Acting Chief Deputy Fenton. I also requested input from current Undersheriff, Scott Somers, but did not consider that as a formal recommendation.

The Notice of *Loudermill/Name Clearing* you received from Acting Chief Deputy Fenton outlined the following potential violations of KCSO policy:

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

Allegation #2: - GOM 3.00.015 (2)(i) – RULES OF CONDUCT: MISCONDUCT –
Courtesy
SUSTAINED

Allegation #3: - GOM 3.00.015 (2)(k) – RULES OF CONDUCT: MISCONDUCT –
Conduct Unbecoming
SUSTAINED

Allegation #4: - GOM 4.00.010 (2) – *IDENTIFICATION AS A SHERIFF'S OFFICE MEMBER* – *When not wearing the authorized uniform and when taking police action, acceptable identification is the authorized badge and identification card*
SUSTAINED

Allegation #5: - GOM 3.00.020 (3) – PERFORMANCE STANDARDS – *Appropriate Use of Authority*
UNFOUNDED

I must address the statements and actions taken by Sheriff Urquhart, in the media, before this investigation was initiated or concluded. Monday, August 28, 2017, Sheriff Urquhart stated to KIRO 7, “And that’s not the culture I want, that’s not the culture I will tolerate and I will take swift action when I hear about it.” He further stated “What I’m gonna do with that video is I’m gonna show it to every single new recruit that comes in to the Sheriff’s Office, and I have about 70 or 80 a year. And I want them to know specifically what they’re not allowed to do.” It was also reported that Sheriff Urquhart phoned the motorcycle driver and apologized for the actions of the deputy.

The next day, on his Facebook page, Sheriff Urquhart notes he has not yet heard the other side of the story, but is “deeply disturbed with the conduct and tactics that were recorded.” Sheriff Urquhart ordered that you be placed on administrative leave pending an investigation. That same day he states to King-TV, “From what I’ve seen I don’t approve of the actions, therefore what comes next is an investigation,” and “All things being equal you don’t pull your gun on a traffic stop, on a misdemeanor traffic stop, you don’t do that. It’s against our policy. It’s against federal law.”

I disagree with Sheriff Urquhart regarding his public comments when he asserted certain actions were against policy and federal law. I believe his comments were inappropriate, premature, and technically

wrong. Any message, public or private, should have focused on the fact that a thorough investigation would delve into all of the facts surrounding the event and that conclusions (findings and recommendations) would be drawn *after* all aspects of the investigation and *Loudermill* hearing were concluded. However, his comments taken as a whole fell short of a predetermination that negatively impacted the data collected in the investigation itself.

Under stressful circumstances, Sergeant Houck did a thorough job of examining and documenting the issues raised by you. He made extensive attempts to locate witnesses and in his fact finding work he listed your concerns to include the lack of plain clothes protective equipment you possessed as well as your lack of familiarity in your newly assigned detective role. In fact, when this event occurred you were actually on your way to the uniform and equipment store to pick up the proper detective protective outerwear and equipment. Sergeant Houck made sure the more complete video that was provided for the criminal investigation of this incident was also included in his investigative file. In his follow-up report he also made comprehensive notes documenting investigative steps taken.

It is my job to review the evidence and potential policy violations with a neutral eye, based on the relevant factual record and departmental history regarding training, practices, prior discipline, etc. As the final decision maker in this matter, it is my responsibility to look at this case without influence of outside factors or opinions. Outside factors may include community outrage or support, media coverage, improper internal pressure or direction on investigative teams, or other external/internal opinion. I did not have any information nor cause to review this matter or investigation until just prior to our scheduled *Loudermill* hearing.

I found it essential to review the entire contact you had with the driver that was documented in the more comprehensive version of the video. This video was not originally provided by the complainant to the Internal Investigations Unit Detective Sergeant. However, it was provided to the criminal investigative team after the Criminal Division of the King County Prosecutor's Office offered the driver of the motorcycle immunity from prosecution. I will also point out that the driver provided different information in his statement to the criminal investigative team than what he provided to the assigned internal investigative sergeant. I do not believe that the entire video of your contact with the driver was ever shared with the public or media. It shows your interaction ended on a positive note, and that you and the driver shook hands prior to concluding the traffic stop. Putting your chosen tactics, profanity, and handgun retention aside, the video of the entire contact is consistent with your description of the events of that day.

I find that you had probable cause to stop the motorcyclist for reckless driving. The decision to contact the driver while at a stop light rather than pull him over and conduct a traditional traffic stop, in hindsight shows poor judgment. While it was your intention to provide a warning, educate the driver regarding motorcycle safety, and return to your vehicle, you were not prepared for any other circumstance beyond what you intended to occur. In fact, you described to me that you got stuck in an "OODA"¹ loop. It appears that the motorcyclist and his actions got "inside" your OODA loop and that he gained the upper hand in this stop. While I take into account the previously described mitigating factors of plain clothes, lack of vest, and lack of training and preparation for your new

¹ The OODA loop is the decision cycle of observe, orient, decide, and act, developed by military strategist and United States Air Force Colonel John Boyd. *Wikipedia*

assignment, I believe you made an error in your initial decision to make the traffic stop, thus escalating the chain of events with a passively resistive driver.

There is no dispute that you drew your duty weapon while approaching the driver and after observing arm and hand movement downward toward the driver's waistband. It is not uncommon for persons to keep handguns in the waistband of their clothing or in front pockets of their jackets. It is also not uncommon for a motorcycle driver to flee traffic stops while deputies approach the motorcyclist on foot. I understand and acknowledge the need for deputy and public safety in these circumstances. However, while a deputy may have to use a raised voice to communicate with a helmeted driver, over the noise of a loud motorcycle and traffic, you repeatedly used profanity while issuing commands in a raised voice and it appears clear that the use of profanity had no effect on the driver's actions.

You threatened to "dump" the driver, later explaining this as a verbal tactic only and that you had no intention of taking such action against the driver or motorcycle. Your demeanor appeared angry and "amped up." I believe your excessive use of profanity, your verbal and non-verbal communications, were ineffective, discourteous and not aligned with my expectations nor our department Core Values. The appearance of your actions diminish community support, confidence and trust in the King County Sheriff's Office to the point of the department receiving phone calls and correspondence seeking your termination. I mention this to show you the impact your actions had on how members of our community viewed you on that day.

Your decision making and lack of preparedness led to improper handgun retention. While having your handgun drawn under the conditions already described is within policy, and criminal charges against you were declined, you admitted that you were surprised when viewing the video. You perceived that your carrying of your handgun was at the low-ready position, with the barrel pointed downward. The video showed that perception was not accurate. Your weapon was actually raised horizontally, contrary to training. You agreed that you lost awareness of proper gun positioning in this circumstance, thereby not following trained handgun practices employed by the King County Sheriff's Office in this incident.

I have also found that there were mitigating factors in this investigation that I am taking into consideration, some of which I have already addressed. At the beginning of our meeting you owned and apologized (on more than one occasion) for the mistakes you made during this contact. I have taken your acknowledgement into account. I have also found your statement of events line up with the fuller length video taken in this incident. Prior to this assignment you were in uniform positions, wearing a ballistic vest under uniform clothing. Habits form and stay with us over time and it takes repetitions and training to build new habits and procedures.

I also have taken into account the pressure you were under while being put on administrative leave and placed under an administrative and criminal investigation. Extra stress came with the intense media coverage of this event and their discovery of your home address by the media and others. Media staged near your home and you received threats to yourself and your family. You honestly and emotionally described to me the extent you took to protect your family and the extreme toll it took on you and your familial relationships. This is part of the reason I took you off of administrative leave and put you into a very restricted administrative assignment during the time I considered my decisions.

I have taken all of these mitigating factors into consideration while making the following disciplinary decisions:

I do not agree with Acting Chief Deputy Fenton that the proper finding for Allegation #1 is UNFOUNDED. The proper finding definition as documented in the administrative and criminal investigation, according to GOM 3.03.185 Classifications is EXONERATED. Therefore, I list my finding for Allegation #1 as:

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

I concur with Acting Chief Deputy Fenton's finding for both Allegation #2 and Allegation #3 as listed.

Allegation #2: - GOM 3.00.015 (2)(i) – RULES OF CONDUCT: MISCONDUCT –
Courtesy
SUSTAINED

Allegation #3: - GOM 3.00.015 (2)(k) – RULES OF CONDUCT: MISCONDUCT –
Conduct Unbecoming
SUSTAINED

In Allegation #4 I do not concur with the finding made by Acting Chief Deputy Fenton. I believe that how soon you are able to identify yourself formally depends upon the situation and can't be judged based upon a set or predetermined time period. The totality of the circumstances must be taken into effect. Therefore, I find:

Allegation #4: - GOM 4.00.010 (2) – IDENTIFICATION AS A SHERIFF'S OFFICE
MEMBER – *When not wearing the authorized uniform and when taking police action,*
acceptable identification is the authorized badge and identification card
EXONERATED

I am changing the finding found by Acting Chief Deputy Fenton for Allegation #5. The administrative and criminal investigation provide enough information to determine that the alleged incident occurred, but was lawful and proper. Therefore, I find:

Allegation #5: - GOM 3.00.020 (3) – PERFORMANCE STANDARDS – *Appropriate Use of*
Authority
EXONERATED

With regard to the recommended 10-day suspension, I acknowledge the concern raised by you and the Guild that statements in the public realm and the public's attention on this matter may have influenced the disciplinary recommendations in this case. However, I did not follow the recommendation for discipline. I took a fresh look at the evidence and made a different

determination on discipline. I also found mitigating circumstances that were not taken into account in those recommendations. Those mitigating circumstances are mentioned above and outline the reasons I also changed findings. As a result, I am issuing a **5-day suspension** without pay, 50 hours. This is sufficient for corrective action in this case for the two sustained violations. Either of the findings of Conduct Unbecoming or Courtesy individually could support this level of discipline, in my view. Additionally, I had previously directed that appropriate training be provided to you as a condition of your return to an administrative assignment and as determined by your command staff. Based on your statements during the *Loudermill* I believe you have learned from this incident and are committed to ensuring that the concerns noted here will not recur.

By way of this letter I am authorizing your return to full-duty status effective Monday, April 16, 2018. I look forward to your return to work, and I wish you success moving on from this unfortunate incident.

Sincerely,



Mitzi Johanknecht
SHERIFF

cc: IIU File 2017-150
Undersheriff Somers
Chief Wills
Chief Mulligan
Major Pingrey
Major Williams
Captain Chinnick
Captain Fryberger
Sergeant Houck
Legal Advisor Diane Taylor
Steve Eggert, Guild
Office of Law Enforcement Oversight