

# County of Santa Clara

Office of the Sheriff

55 West Younger Avenue  
San Jose, California 95110-1721  
(408) 808-4611



Laurie Smith  
Sheriff

**HAND DELIVERED**

February 24, 2017

Correctional Officer Michelle Broussard

SERVICE COPY - RETURN TO PERSONNEL UPON  
SERVICE OF ORIGINAL

2-24-17 @ 1710 HRS

DATE / TIME SERVED

**SUBJECT: Final Disciplinary Action: TERMINATION  
Internal Affairs Case #2015-029**

LOCATION

1 Lt. D. Tolles #10316

BY (NAME & BADGE #)

MB #2543

Dear Officer Broussard:

In a letter dated August 4, 2016, Sheriff Smith issued you a Recommended Disciplinary Action Letter advising you of the recommendation that you be TERMINATED from your position as a Sheriff's Correctional Officer for the County of Santa Clara **effective Thursday, August 18, 2016 at 1700 hours.**

The August 4, 2016 letter reads, in relevant part, as follows:

**"This action is based on, but not limited to, the following sustained charges:**

1. Violation of Santa Clara County Merit System Rule A25-301(a)(1): "Violation of the county charter, merit system rules and regulations and written and published departmental rules and policies which do not conflict with this article."
2. Violation of Santa Clara County Merit System Rule A25-301(a)(2): "Inefficiency, incompetence, or negligence in the performance of duties, including failure to perform assigned task or failure to discharge duties in a prompt, competent and responsible manner."
3. Violation of Santa Clara County Merit System Rule A25-301(b)(1): "Guilty of gross misconduct, or conduct unbecoming a county officer or employee which tends to discredit the county or county service."
4. Violation of Santa Clara County Merit System Rule A25-301(a)(4): "Brutality in the performance of duties."

5. Violation of D.O.C. Policy 1.15.II.D: *"Employees assigned to posts must use good judgment, tact, and careful attention to detail in performing their duties, whether or not they are covered in post orders."*
6. Violation of D.O.C. Policy 9.01-2. I.A.1: *"That the officer used a level of force that was unnecessary and not objectively reasonable under the circumstances."*
7. Violation of D.O.C. Policy 3.31.IV.J.14.a: *"Employees shall not make less than truthful statements, either verbal or written."*
8. Violation of D.O.C. Policy 9.27.I.B: *"All staff involved in a reportable incident shall promptly notify a supervisor."*

**The facts, which are the basis for these charges:**

See attached Investigative Report (Statement of Findings IAU#2015-029) dated June 15, 2016 and the Basis for Recommendation section below. Internal Affairs conducted an extensive investigation into the allegations of your misconduct.

**The Basis for the Recommendation:**

On Sunday, August 9, 2015, Inmate \_\_\_\_\_ was brought to Elmwood Processing after being arrested on numerous drug related warrants. You took inmate \_\_\_\_\_ into the female side dress out room without incident.

In the dress out room, a conflict occurred between you and Inmate \_\_\_\_\_ over changing out of her street clothes and into DOC issued clothing. \_\_\_\_\_ was yelling and demanding to see a sergeant and complaining that you grabbed her by the head and shook her for about 15 seconds. Because she was agitated, in an attempt to calm \_\_\_\_\_ you left the dress out room so she could calm down. The voices were loud enough and agitated enough to draw the attention of Deputy \_\_\_\_\_ Divine. He walked over to the dress out room and arrived just as you were walking out. You told him that you had an inmate that might need to have her clothes cut off. This is when Inmate \_\_\_\_\_ started screaming for you to stop and to see a sergeant. You have denied that this took place, instead, you stated that inmate \_\_\_\_\_ was belligerent, complaining about being in jail again, how San Jose PD treated her, and wanted to know why they were "fucking with her." Inmate \_\_\_\_\_ was not going along with the clothing change, so she left her alone to calm down.

By your own admission, you determined from the outset that Inmate \_\_\_\_\_ was uncooperative and would need her street clothing forcibly removed. A correctional officer with your years of experience should have known that a supervisor is present when an inmates clothing is forcibly removed; yet you did not call your sergeant. A supervisor must be present when clothes are forcibly removed from an inmate. The statements by your peers reiterating this expectation, shows it is the proper procedure. These statements of proper procedure were reflected in several

interviews of employees obtained during the IA investigation. Your statement in the IA investigation that this expectation was new and implemented only after the in-custody death of Inmate [redacted] is incorrect. This incident with Inmate [redacted] occurred on August 9, 2015 which is prior to the in-custody death of Inmate [redacted] on August 26, 2015, and this clearly shows that DOC employees know that the procedure and expectation is to have the supervisor present during forcible removal of an inmates street clothes. You did not call for a sergeant at any time, but instead you called Deputy Simpson-Hogan and asked her to walk 8-10 minutes from her assignment in the W4C housing unit to the Processing unit, and you asked her stand by just in case [redacted] did not cooperate with the dress out process.

You re-entered the dress out room and within a short period you grabbed inmate [redacted] and took her to the ground. You and Deputy Simpson-Hogan began removing [redacted] clothing. Deputy Rivera, who was present in processing at the time, heard the commotion in the dress-out and responded to assist. When she arrived, she observed you and Deputy Simpson-Hogan struggling with [redacted] to remove her clothes. You told her that you and Deputy Simpson-Hogan had control of the situation and did not need her assistance. Deputy Rivera, however, could see that [redacted] was struggling and that you and Officer Broussard required assistance, so she left the room to get gloves. She returned and engaged by applying a control hold to [redacted] Deputy Rivera observed you place your foot on [redacted] chest and kept it there for a few seconds. As you did this, [redacted] was saying things like "Why did you punch me? Why are you doing this?" and "I can't breathe. I can't breathe."

As you continued to remove the [redacted] clothing, you kept telling her, "Calm down, sweetie. Calm down." At one point as [redacted] shirt was removed, you grabbed inmate [redacted] by her hair with one hand, and then grabbed her throat in a "C-clamp" with the other hand as you pulled her back down to the floor. The use of force methods you used are not taught at the Correctional Academy or approved by policy.

The force Deputy Rivera and Inmate [redacted] reported that you used during the incident was unnecessary and unreasonable when compared to the actual circumstances the administrative investigation established. Sergeant Sevillano stated that he believed that instead of confronting [redacted] and using force on her you should have notified Sevillano and stepped back until he arrived.

The investigation determined that there was no reasonable justification for grabbing [redacted] head and neck and shaking her, or placing your foot on her chest or grabbing her hair and throat and forcing her down to the floor.

Your actions indicated that you believed that inmate [redacted] might require her clothing be forcibly removed from her by calling another deputy to assist/stand by. Both acts, indicate that you believed [redacted] would be uncooperative, you failed to notify your supervisor as required by department policy.

During your administrative interview, you were less than truthful regarding the reason why you called Deputy Simpson-Hogan to assist you with an inmate you indicated maybe uncooperative. It is reasonable to believe your call for assistance directly related to your belief that would be uncooperative and force might be required. Concluding that you had this belief, it is astonishing that a correctional officer with your years of experience would not call for a supervisor. This casts great doubt on your professional judgment as to when force should be used and as to the appropriate reporting requirements after force has been used.

You were also less than truthful regarding the force you used and the amount of force you used on inmate [redacted]. Your Sergeant Sevillano stated that he asked you, twice, if you used any force on inmate [redacted] other than what you relayed to him, - which you said was that [redacted] tried to get up from the bench and you grabbed her by the shoulders and pushed her down onto the bench. You never mentioned placing your foot onto [redacted] body, or pulling [redacted] hair or grabbing [redacted] throat with your hand in a "C-clamp" to pull her back to the ground. Instead, you twice said to Sergeant Sevillano that you only placed your hands on her shoulders to push her back down onto the bench. The IA investigation concluded that the information you provided to your sergeant, and to IA investigators investigating this matter was untruthful.

The Internal Affairs investigation determined that you exhibited poor judgment and inefficient performance of your duties by pursuing a course of action, which resulted in you using unnecessary and unreasonable force against an inmate. You failed to report truthfully the use of force and you failed to advise the supervisor, in advance of using force on an isolated uncooperative inmate that you knew, or reasonably should have known, would require some level of force due to their behavior.

Your written account (employee's report), and your oral accounts to investigators of the physical encounter between you and inmate [redacted] was less than truthful. On numerous occasions immediately after the incident and during your interview with investigators you failed to accurately report important facts and circumstances integral to a honest and credible account of the incident. You omitted information specific to the type and amount of force you used on inmate [redacted].

In our profession there is no place for a deceitful and untrustworthy employee, such a person cannot effectively witness before the court on any matter and impedes our professional ability to maintain trust with the citizens we protect and serve. Your actions have compromised your integrity and as a result, the department, the justice system and the public have lost the ability to trust you to be honest, ethical and forthright. Your ability to function effectively as a Correctional Deputy or as an employee of this County has been significantly compromised.

Based upon the foregoing, I am recommending that you be **TERMINATED** from your position as a Correctional Officer with the Santa Clara County Department of Correction/Office of the Sheriff - Custody Bureau **effective Thursday, August 18, 2016 at 1700 hours.**

The above-mentioned discipline is a recommendation. Therefore, the termination date listed is tentative. Any actual discipline dates will be listed on a Final Disciplinary Action Letter that will be served to you.

**History/Past Discipline:**

None"

This concludes the relevant quotation from Sheriff Smith's August 4, 2016 Recommended Disciplinary Action Letter.

**Administrative Hearing:**

An Administrative Hearing was convened on October 20, 2016 to allow you the opportunity to respond to the recommended disciplinary action letter dated August 4, 2016. The hearing was held at 55 W. Younger Avenue in the 4th floor conference room in front of myself as the designated Hearing Officer. You were present along with your

I briefly opened up the discussion by letting you know that I take this matter seriously and that I will be further hearing what you and your would like to convey at the hearing.

then stated that this case involving use of force and allegations of dishonesty will ultimately go to arbitration which will most likely result in you being reinstated to your position. He indicated that it would be in the best interest of the county for it not to go that far and for me to re-instate you to your position.

Regarding the use of force allegations, said that you understood that you should've contacted your Sergeant before going back to deal with an uncooperative inmate who was refusing to dress out. stated that this incident occurred before the incident and that you were operating under generally accepted practices at the time and that the requirement for notifying a supervisor was loosely enforced, if at all. After death, notifications from the top came down advising all policy to be strictly adhered to.

also stated that an intoxicated inmate ( accused you of things that there was no evidence for, and that the witnesses all have different understandings of what happened. He also stated that a witness accused you of grabbing the inmate by the neck and shaking her but there were no marks to prove it. The inmate also swore that she wasn't resisting but also that she was sober.

further stated that Deputy Rivera was inconsistent in her statement to two different people who she talked to. She made a statement that you grabbed by the neck in a "C-clamp" and also did a hair grab and then put her onto the ground on her back. said he didn't believe Deputy Rivera made up her statement, but she must've been confusing her recollection or couldn't remember and was trying to piece everything together. He said you didn't remember everything exactly, either. He also said that your foot may have been on inmate briefly, but it wasn't intended as a use of force and there was no injury. He also said that

you agreed that you shouldn't have done a forced dress out without getting a Sergeant involved. He said you agree that you need to be disciplined but that it's not a terminable offense, but rather time off or training would be more appropriate.

Regarding the dishonesty allegations, \_\_\_\_\_ said that he sees inconsistencies in Internal Affairs investigations all of the time when departments draw one conclusion or another. He said you have always been consistent in your statement, but only gave more detail when more questions were asked. He also stated that Deputy Rivera was only present for the last 20% or 30% of the entire incident. \_\_\_\_\_ said the higher burden of proof to show someone is lying is that their intent to deceive must be shown, and most of the things in question for this investigation can't be proven one way or the other.

\_\_\_\_\_ concluded by stating that the brutality and dishonesty charges should be dropped, and that you were willing to take discipline or punishment for failing to notify the Sergeant.

You then made a very brief statement on your own behalf. You told me that you were very offended and that you have never been part of such hurtful allegations. You said you know that the policy said for you to call a Sergeant when you had a problem. You said you had a male Sergeant and male Correctional Deputies working with you that day and you didn't want to subject them to seeing a naked female inmate. You said it was bad judgement on your part and that you were trying to protect your partners and that you were sorry about what happened to Ms. Simpson-Hogan (that she is involved in this discipline case also). You said that in no way did you want to brutalize that woman (inmate \_\_\_\_\_ and it was just a bad judgment call (not to notify the Sergeant beforehand).

#### **Administrative Hearing Officer's Decision:**

After thoroughly reviewing your presentation, the recommended discipline letter and the documentary evidence, I have decided to uphold the recommended disciplinary action. Based on the totality of the investigation, I believe all of the policy violations charged in the Recommended Disciplinary Action letter dated August 4, 2016 to have occurred.

Your position as a Correctional Officer is a position that requires the trust of the public, the inmates you supervise, your peers and supervisors, and the administration of the Department of Correction/ Office of the Sheriff. Based on the investigation, your actions in both the incident, as well as the subsequent administrative investigation, have broken the trust required for you to adequately perform your duties as a Correctional Officer. It's clear that the incident on August 9, 2015 started off with a poor decision on your part not to notify your supervisor, in violation of written policy, regarding an uncooperative inmate who was refusing to dress out. You admit that you should have notified your sergeant. From thereon, your statement is not consistent with the findings of the investigation. You stated you did not notify Correctional Deputy Simpson-Hogan to come to your aid in dealing with an uncooperative inmate, although you reluctantly mentioned calling her. You told investigators that you may have been returning her call or just calling her

since you call your friends on a regular basis but that you didn't call her to come assist with an uncooperative inmate. That was clearly a lie on your part because Correctional Deputy Simpson-Hogan acknowledged that you called her on the phone and asked her to come to the Processing Center. At the Processing Center, both of you discussed inmate behavior and that you were going to make another attempt to get her to comply, which highlights another untruthful statement made by you. You reported that the first you saw of Correctional Deputy Simpson-Hogan was when she came in to assist you in dealing with inmate . This is very inconsistent with Correctional Deputy Simpson-Hogan's statement that you two talked and had a game plan before you went in to talk to inmate . However, your statement would be consistent with someone who was trying to cover up the fact that she called an officer to come assist her in a situation that would probably require force rather than advising a supervisor and partners about the uncooperative inmate. Once an initial lie is made, more lies are needed to keep the initial lie covered up when subsequent questions are asked. Your conflicting statement about not calling Officer Simpson-Hogan shows a lack of credibility and further brings into question the veracity of your statements about the force that you actually used and reported.

You also said that Correctional Deputy Simpson-Hogan is one of the people you would call when dealing with an uncooperative inmate in the absence of an ERT team, but that you didn't call for help on that day (August 9, 2015) because you didn't know it was going to be that kind of a situation. Not only is it highly concerning that you refrained from contacting your sergeant about the uncompliant inmate, but you also did not communicate with your partner deputies assigned to work in your area when they are the ones who should be assisting with an uncooperative inmate at the Processing Center. It is concerning that you would contact a different deputy assigned to a different area that you "trusted" to come assist you in a situation that ended up requiring use of force, and gives the perception that you wanted to control what was reported, if anything, about the amount of force used. In fact, you did not report the incident until one of your co-workers (Deputy Devine) reported it to your supervisor.

Your statement about the force that you used during this incident with inmate is different than other witness statements. However, your statements lack credibility. If you were unable to be fully truthful in your statement about calling Correctional Deputy Simpson-Hogan to come assist you with an uncooperative inmate, how can your statement about the amount of force that you used during the incident also be trusted? When Deputy Rivera walked into the room while you and Correctional Deputy Simpson-Hogan were forcefully dressing out inmate , she was told it was "Code 4" that her assistance wasn't needed. However, she observed that force was still being used. After putting on gloves, Deputy Rivera further assisted with the dress out of inmate and had serious concerns about the force she observed. Deputy Rivera had no reason to exaggerate the force she observed, but appeared to be speaking her conscience when she reported that the force used was excessive. You did not report the force that she stated she observed, nor did you admit to using that force when questioned by investigators. Deputy Rivera wasn't the only one who's statement wasn't consistent with yours regarding the use of force. Inmate also reported that you used force which you denied. Your trusted friend,

Correctional Deputy Simpson-Hogan, failed to report the force that she observed you use during the incident when she documented the incident in an Employee's Report.

Based on the totality of the investigation and in preponderance of the evidence, I believe that you failed to contact a supervisor before using force when you knew force was likely, and then you engaged in an unlawful use of force and lied about it after the fact in an attempt to cover it up. It is clear that you are no longer able to hold the position of Correctional Officer in Santa Clara County. **Accordingly, as the Administrative Hearing Officer, I am upholding the recommended discipline of termination. Therefore you will be terminated from your position as a Correctional Officer with the County of Santa Clara effective at 1700 hours on Friday, February 24, 2017.**

**Right to Appeal:**

Should you be dissatisfied with the decision in this Final Disciplinary Action Letter ("final action"), the County of Santa Clara Charter, Section 708(c) gives you the right to appeal the final action. You may appeal the final action within ten (10) working days of receipt of the final action to the Personnel Board pursuant to County of Santa Clara Charter, Section 708 (c):

*"The employee shall have ten working days from receipt of such written notice within which to file an answer to the statement of charges should the employee desire to do so, and the filing of such an answer shall be deemed to be an automatic request for a hearing unless such employee otherwise indicates. The answer to such charges shall be filed with the Personnel Board."*

Should you choose to appeal the decision you must send a written notice to:

William Anderson  
Chairperson, Personnel Board  
c/o Clerk of the Board  
70 West Hedding Street, 10th Floor East Wing  
San Jose, CA 95110

Alternatively, should you voluntarily waive your right to appeal any disciplinary action to the Personnel Board, by filing for arbitration of your appeal pursuant to Section 23 Grievance Procedure, of the Memorandum of Understanding between the County of Santa Clara and the Santa Clara County Correctional Peace Officers' Association, Inc. to appeal the disciplinary action to arbitration by submitting a request in writing to the Office of Labor Relations within fifteen (15) working days from receipt of the Final Notice (Skelly Decision) of disciplinary action. Should you choose to do so, you must send the written request to:

Mitchell Buellesbach  
Employee Services Agency, Labor Relations



70 West Hedding Street, 8th Floor East Wing  
San Jose, CA 95110

You may seek either a hearing before the Personnel Board or an arbitration hearing, but not both.

Filing a request for an arbitration hearing, under Section 23 shall be deemed an automatic waiver of the employee's right to appeal to Personnel Board.

You have the right to be represented in your appeal by your union or another representative of your choice. You can contact your Union at:

Santa Clara County Correctional Peace Officers' Association (CPOA)  
1930 O'Toole Way  
San Jose, CA 95131  
(408) 526-0606

You have the right to the materials upon which this action is based. Those materials have already been provided to you.

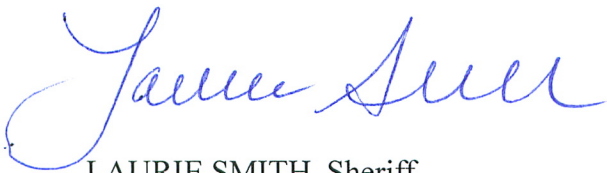
Sincerely,



Ken Binder, Assistant Sheriff  
Administrative Hearing Officer



Carl Neusel, Undersheriff/ Chief of Correction



LAURIE SMITH, Sheriff

- c: Troy Beliveau, Assistant Sheriff, Custody Bureau  
Captain Eric Taylor, Main Jail Division  
Captain Tim Davis, Elmwood Division  
Captain Frank Zacharisen, Personnel Unit  
Juan Gallardo, Acting Director of Admin Services  
Mitchell Buellsbach, Labor Relations Representative, ESA  
Anita Asher, Human Resources Manager, ESA