

# 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**

July 7, 2017

Jereh Lubrin

**SUBJECT: Final Disciplinary Action: Termination  
Internal Affairs Case #2015-022**

Dear Deputy Lubrin:

In a letter dated May 6, 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 Deputy for the County of Santa Clara effective May 21, 2016.

The May 6, 2016 Recommended Disciplinary Action letter reads, in relevant part, as follows:

"This is to advise you that I am recommending you be TERMINATED from your position as a Sheriff's Correctional Deputy for the County of Santa Clara, Sheriff's Office Custody Bureau, effective May 21, 2016.

Based on the findings of the attached investigation report, the Department sustains the following charges, which are the basis of this recommended disciplinary action:

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."

Santa Clara County Merit System Rule A25-301(a)(4): "Brutality in the performance of duties."

Santa Clara County Merit System Rule A25-301(b)(2): "Guilty of immoral conduct or criminal act."

Santa Clara County Merit System Rule A25-301(b)(1): "Guilty of gross misconduct, or conduct unbecoming a county officer of employee which tends to discredit the county or county service."

D.O.C. Policy 3.31.II.A - Employee Relationships with Inmates: "Employees have the responsibility to provide for the safety, security and welfare of the inmates under their supervision."

D.O.C. Policy 3.31.II.B - Employee Relationships with Inmates: "Brutality will not be tolerated and is cause for dismissal and possible criminal charges."

D.O.C. Policy 3.31.II.C - Employee Relationships with Inmates: "Employees shall not touch an inmate except to: 1. Defend themselves. 2. Control or restrain an inmate. 3. Prevent the escape of an inmate. 4. Prevent serious injury or damage to a person or property. 5. Quell a disturbance. 6. Search an inmate. 7. Render medical aid."

D.O.C. Policy 3.31.IV.J.I.a - Employee Conduct/Conformance to Law: "Employees are expected to adhere to Department Policies and Procedures, County Personnel Regulations, County Administrative Procedures, Executive Orders, County Merit System Rules, and all laws applicable to the general public."

D.O.C Policy 3.31.IV.J.2 : Compliance with Order: "Employees shall obey a lawful order from a supervisor."

D.O.C. Policy 3.31.IV.J.3.a - Employee Conduct/Use of Force: "Employees shall only use force in accordance with the law and the Department Policy 9.01, Use of Force and Restraints."

D.O.C. Policy 3.31.IV.J.4.a. - Integrity of Reporting System. "Employees shall submit all necessary reports in accordance with established Department policy and procedures. These reports will be accurate, complete, and timely and will be submitted before the end of the employees' tour of duty unless permission is obtained from the on-duty watch Commander to do otherwise."

D.O.C. Policy 3.31.IV.J.9.a- Employee Conduct/Conduct Unbecoming: "An employee shall not commit any act which constitutes conduct unbecoming a Department employee. Conduct unbecoming an employee includes, but is not limited to, any criminal or dishonest act or an act of moral turpitude."

D.O.C. Policy 3.31.IV.J.10.b - Neglect of Duty/Unsatisfactory Performance: "Unsatisfactory performance is demonstrated by an inability or unwillingness to

perform assigned tasks, failure to take appropriate action in a situation needing attention, or failure to conform to work standards established for the employee's rank grade or position."

D.O.C. Policy 3.31.IV.J.14.a-- Employee Conduct/Untruthful Statements: "Employees shall not make less than truthful statements, either verbal or written."

D.O.C. Policy 9.01.I.4.1 - Use of Force: "In the performance of their duties, badge staff is authorized to use that level of force which is necessary and objectively reasonable, under the circumstances."

D.O.C. Policy 9.01.I.A.2 - Use of Force: "Badge staff will not use force to discipline..."

D.O.C. Policy 9.27.I.B - Reporting of Incidents: "Staff made aware of reportable incidents or conditions shall promptly notify their supervisor. The seriousness of the situation shall dictate the means of notification. All staff involved in a reportable incident shall submit a written Incident Report describing the event in detail to the supervisor."

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

(See attached Investigative Report (Statement of Findings IAU#2015-022) from Renne Sloan Holtzman Sakai LLP, dated February 2, 2016)

**The Basis for the Recommendation:**

The administrative investigation revealed that, on August 26, 2015, between 10:38 p.m. and 11:09 p.m., during a cell search of \_\_\_\_\_ for excess clothing, you, Deputy Farris and Deputy Rodriguez used excessive and unnecessary force to discipline \_\_\_\_\_ and \_\_\_\_\_ for disruptions that occurred earlier in the evening in \_\_\_\_\_ and \_\_\_\_\_ were protective custody inmates with mental health issues. Witness accounts and video documentation established that you, Deputy Farris and Deputy Rodriguez were present inside \_\_\_\_\_ and \_\_\_\_\_ cells when the excessive and unnecessary force was used on them. Witness accounts also establish that while you, Deputy Farris and Deputy Rodriguez were present inside each cell they heard sounds and statements coming from the cell that would lead a reasonable person to believe force was being used on the inmate in the cell.

On August 27, 2015, at approximately 12:12 p.m. (0012 hours), you found \_\_\_\_\_ in his cell unresponsive and summoned assistance. Although life saving measures were taken, at 12:35 a.m. \_\_\_\_\_ was declared dead.

The Medical Examiner's Report concluded that \_\_\_\_\_, a 31-year-old inmate, sustained a severed spleen and liver as the result of the infliction of blunt force trauma at the hands of another. He died of exsanguination and his death was classified as a homicide. The unnecessary and excessive force you, Deputy Farris and Deputy Rodriguez used on \_\_\_\_\_ caused the injuries that resulted in his death.

After \_\_\_\_\_ death, you made false and misleading statements during incident briefings and in your written Employee Reports. Although you stated to Officer Temptra that you had used force on \_\_\_\_\_, you did not report any use of force against \_\_\_\_\_ or \_\_\_\_\_ on the night of the incident as required by department policy.

\_\_\_\_\_, a 44-year-old inmate, suffered injuries to his arm, shoulder, wrist and knee, causing visual bruising as a result of the excessive and unnecessary force you, Deputy Farris and Deputy Rodriguez used on him.

On September 3, 2015, the Sheriff's Department notified you to appear for an investigative interview on October 2, 2015. The interview was continued to November 6, 2015. On November 6, 2015 you appeared, accompanied by counsel, for your Investigative Interview. You were given the Lybarger admonition, which compelled you to cooperate with the Administrative Investigation by truthfully and candidly answering all questions asked by the investigators. You were advised that failure to do so would be considered insubordination, which could lead to termination from the department. With this knowledge, you chose to invoke your Fifth Amendment right against self-incrimination and refused to cooperate with the Administrative Investigation.

The preponderance of the evidence established by the investigation, found that you participated in using excessive and unnecessary force on \_\_\_\_\_ and \_\_\_\_\_ to discipline them for disruptions they were a part of earlier in the shift. Your brutal treatment of these two inmates was purposeful, malicious and immoral.

Your failure to file the necessary use of force reports, and the misleading statements you made to others regarding the incident was conduct which was unprofessional, dishonest, self-serving and unbecoming of a Santa Clara County correctional deputy.

Your actions during and after the incident, can only be categorized as misconduct that was negligent, unprofessional, indifferent, irresponsible, dishonest, unbecoming a Correctional Deputy, and violated County and Department policy.

As a deputy with your level of experience and training, you knew, or reasonably should have known, the importance of adhering to department policy, using good judgment that supports department policy and your absolute responsibility to protect inmates from cruel and unusual punishment. Instead, your actions demonstrated a lack of concern for the physical and mental well-being of inmates in your care and custody. You knew, or reasonably should have known,

that it was your responsibility and duty when faced with an uncooperative or disruptive inmate, especially an inmate with mental health issues, to competently resolve the situation without or with the least amount of force necessary. You understood, or reasonably should have understood the magnitude and possible ramifications of your decisions and actions and made the proper decisions to include intervening to prevent harm to the inmates, not participate in the brutal treatment of inmates and immediately report those who do.

The administrative investigation established facts that support a conclusion that you used excessive and unnecessary force, failed to discharge your duties in a responsible and professional manner, failed to exercise good judgment, failed to uphold the law, failed to report your actions, and failed to follow Department and County policy. Based on your training, knowledge and experience you should have known that the actions you took against \_\_\_\_\_ and \_\_\_\_\_ violated County Merit System Rules and department policies and would result in the death of \_\_\_\_\_ and would physically and mentally harm \_\_\_\_\_.

Based upon the foregoing, I am recommending that you be TERMINATED from your position as a Sheriff's Correctional Deputy with the Santa Clara County Department of Correction/Office of the Sheriff- Custody Bureau effective May 21, 2016.

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 May 6, 2016 Recommended Disciplinary Action letter.

**Administrative Hearing:**

On June 1, 2017, you were given notice that your Administrative Hearing in this case was scheduled for June 8, 2017. On June 7, 2017, the Sheriff's Office received a request from your attorney, \_\_\_\_\_, to reschedule the Administrative Hearing due to a scheduling conflict on the part of \_\_\_\_\_. The Administrative Hearing was subsequently rescheduled to and conducted on June 13, 2017 at the Maguire Correctional Facility in Redwood City, California.

You attended the hearing along with \_\_\_\_\_. I served as the Administrative Hearing Officer at the hearing, and Captain Frank Zacharisen of the Sheriff's Office Personnel Division attended as my note-taker.

During the hearing, [redacted] pointed out that the jury in your criminal trial returned a verdict finding you guilty of second degree murder, and this verdict had not been finalized to a conviction yet.

[redacted] also asserted that your refusal to give a statement during the administrative investigation in this case could not be construed as insubordination since Sheriff Smith had already made public statements concerning your guilt. [redacted] opined that you could not have been expected to answer questions about your actions in this case if the department head had already declared the outcome of the investigation.

[redacted] also stated her view that the County should refrain from proceeding with any discipline until your sentencing. She stated that the County had nothing to lose by waiting, and would be put at additional risk by acting earlier as demonstrated by the previous issue concerning your unpaid leave status.

You had no comments to make at the hearing, which was then concluded.

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

After reviewing the Internal Affairs investigative file, the May 6, 2016 Recommended Disciplinary Action letter, and the evidence provided during the investigation and Administrative Hearing, I find that there are sufficient grounds to believe that you engaged in the alleged misconduct listed in the Recommended Disciplinary Action letter and that your misconduct supports the recommended disciplinary action of termination. I also find that your misconduct constitutes a violation of the Merit System Rules and Department of Correction Policies and Procedures listed on pages 1-3 of this letter. Your voluntary misconduct has caused irreparable damage to this organization.

At your Administrative Hearing, [redacted] pointed out that the guilty verdict returned by the jury in your criminal trial had not yet been finalized to a conviction, suggesting that it would be premature for the Sheriff's Office to move forward with discipline until your conviction was final. However, the May 6, 2016 Recommended Disciplinary Action letter was issued nearly 13 months prior to the jury verdict on June 1, 2017. The charges put forth against you in the May 6, 2016 Recommended Disciplinary Action letter are based upon the administrative investigation report attached to that letter; and were not based on your recent felony conviction in June, 2017.

In my view, your termination is warranted based on the sustained findings of misconduct in the Sheriff's Office administrative investigation report and based upon the charges levied against you in the May 6, 2016 Recommended Disciplinary Action. The list of sustained allegations against you includes brutality, insubordination, gross misconduct, and untruthful statements. While circumstances vary from case to case, any of these sustained charges, standing alone, could warrant termination from this department. In your case, I believe that any one of these sustained charges standing on its own would merit your termination, but when considered as a whole it

forms an insurmountable impediment to your continued employment with this law enforcement agency.

Your position as a Correctional Deputy 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 and Office of the Sheriff. Based on the investigation and sustained findings against you for brutality, insubordination, gross misconduct and untruthful statements, your actions have broken the trust required for you to perform your duties as a Correctional Deputy.

As an employer of law enforcement personnel, the County has a mandated responsibility to ensure that all employees, particularly peace officers employed by the department, maintain the highest standards of ethical, moral and legal behavior. The County also has a responsibility to ensure employees do not expose themselves or the County to criticism, disgrace or public ridicule. You have failed in your mandated responsibility to uphold the ethical, moral and legal standards of this County and your appointed position, and you have greatly damaged the reputation of standards of this County and your appointed position, and you have greatly damaged the reputation of the Office of the Sheriff, the Department of Correction, and everyone who works here. Allowing you to continue working in a public law enforcement agency and jail environment would send a message of tolerance in an area of behavior and conduct where I believe none should be shown. Based on the foregoing, I am upholding the recommended disciplinary action. Therefore, you will be **TERMINATED** from your position as a Sheriff's Correctional Deputy with the County of Santa Clara, Office of the Sheriff, Custody Bureau **effective July 7, 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 decision. 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 of the MOU 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, 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 Division  
Juan Gallardo, Director of Administrative Services  
Mitchell Buellesbach, Labor Relations Representative, ESA  
Anita Asher, Human Resources Manager, ESA

Jereh Lubrin (hand-delivered at Maguire Correctional Facility, Redwood City, California)