

# 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

Sheriff's Correctional Deputy Alana Simpson-Hogan

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

Dear Deputy Simpson-Hogan:

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 Deputy for the County of Santa Clara **effective Thursday, August 18, 2016 at 1700 hours.**

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

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

- I. 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."
- II. 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."
- III. 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."
- IV. D.O.C. Policy 1.15.II.D- Post Order Compliance: "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."

SERVICE COPY - RETURN TO PERSONNEL UPON  
SERVICE OF ORIGINAL

2/24/17 1445 HOURS

DATE / TIME SERVED

ELMWOOD ADMINISTRATION

LOCATION

Lt. [Signature] #10266

BY (NAME & BADGE #)

Alan Smith 2-24-17

- V. 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."
- VI. D.O.C. Policy 9.27.I.B- Reporting of Incidents: "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 the Recommendation section below. Internal Affairs conducted an extensive investigation into the allegations of your misconduct. The investigation confirmed that:

On August 9, 2015, you exhibited a lack of good judgment and inefficient performance of your duties by assisting Officer Michelle Broussard (#2543) in pursuing a course of action, which resulted in a physical confrontation with an uncooperative inmate . and you did so without notifying a supervisor of the potential problem.

You were less than truthful when documenting the details of the physical encounter between inmate you, Officer Broussard and Officer Rivera, in your submitted Employee Report and in your oral reports to investigators.

**The Basis for the Recommendation:**

The Internal Affairs investigation shows that on Sunday, August 9, 2015, Inmate (" was brought to Elmwood Processing after being arrested on numerous drug related warrants. Correctional Officer M. Broussard ("Officer Broussard") took inmate into the female side dress-out room without incident. In the dress-out room, a conflict occurred between Officer Broussard and inmate was yelling and demanding to see a sergeant and complaining of how she was being treated.

Because she was agitated, Officer Broussard attempted to calm her by leaving her alone in the in the dress-out room. The voices were loud enough and agitated enough to draw the attention of Correctional Deputy Michael Divine. He walked over to the dress out room and arrived just as Officer Broussard was walking out. Officer Broussard told him that she had an inmate that might need to have her clothes cut off.

You were assigned to W4C housing unit with trainee Correctional Deputy Kitong when you received a call from Officer Broussard. Officer Broussard explained that she was having difficulty with who was refusing to dress-out of her street clothes. Officer Broussard asked you "can you come to Processing?" You agreed and left your duty assignment to assist Officer Broussard in Processing. It takes approximately 8-10 minutes to arrive at Processing from WC4 housing unit, due to the various doors and security procedures required to access Processing.

When you arrived at Processing, Officer Broussard told you "I don't think this lady's gonna dress out; could you stand by just in case?" Even though you were told by Officer Broussard that a difficult inmate was refusing to follow orders and dress-out, and that she had asked you to walk approximately 8-10 minutes from W4C to Processing just to assist with this very difficult inmate, you did not call for a sergeant to supervise and assess the situation. However, based on the information provided to you, and based on your many years of experience, you should have immediately called for a supervisor to be present before you and Officer Broussard began further interaction with inmate [redacted]. However, neither you nor Officer Broussard called for a supervisor.

You agreed with Officer Broussard that you would remain outside the room while she re-entered the dress-out room alone. Shortly after Officer Broussard re-entered you heard the partition move and you then entered the room to assist Officer Broussard by forcible removing Inmate [redacted] clothing while Officer Broussard held [redacted] down. Dep. Rivera also responded to assist after hearing the physical confrontation with [redacted].

During the physical encounter, Deputy Rivera stated in interviews with both IA investigators and Sheriff's Detectives that she heard yelling and screaming coming from the dress out room in Processing. She responded and when she arrived, she saw you and Officer Broussard holding a female inmate on the ground, dressed in street clothing. As Deputy Rivera rushed into the room, Officer Broussard told her "We got this, Rivera. We got this." However, it was obvious to Rivera that you could use assistance due to inmate [redacted] struggling to keep you from removing her clothes, so she retrieved gloves and assisted. Rivera wondered why you and Officer Broussard were forcibly removing clothes from an inmate without a Sergeant present, which she believed was protocol.

During the encounter, Deputy Rivera saw Officer Broussard put her left foot on the inmate's chest with [redacted] saying, "I can't breathe. I can't breathe." Deputy Rivera also reported that she saw Broussard pull [redacted] hair with her right hand and pull her back down to the floor, and at the same time Broussard put her left hand onto [redacted] throat in a "C-clamp", with [redacted] again yelling, "I can't breathe. I have asthma. I have asthma." During this time, Officer Broussard was saying "Sweetie calm down" – and Rivera felt Broussard was speaking this way so people outside of the room would think that she was trying calm down the inmate, while instead Broussard had a hand on [redacted] throat and a foot on her chest.

Inmate [redacted] reported that during this encounter Officer Broussard used force on her that was unnecessary and unreasonable given the circumstances. The Internal Affairs Investigative Report indicates that you were present, along with Dep. Rivera, to observe Officer Broussard's use of force on [redacted] but **you failed to include any information relating to Officer Broussard's use of force** in your official Employee Report, and you failed to mention or reference Officer Broussard's use of force on inmate [redacted] to both IA investigators and Sheriff's Detectives.

Internal Affairs determined that you wrote one Employee's Report and were interviewed two times- once by IA investigators and once by Sheriff's Detectives. These interviews and your report contain many inconsistencies and omissions as detailed below.

**Employee's Report:** Your Employee's Report was written the same night as the event. It was very vague. You did not mention that you had received a call for assistance from Corr. Off. Broussard (while you were 8-10 minutes away in the W4C housing unit) and that was the real reason you were present in the Processing area. You wrote instead that you were already in Processing to get some cheesecake, and then heard a commotion in the dress out area. You did not write that you spoke to Officer Broussard and directed Broussard to go back into the dress out room to see if inmate [redacted] would voluntarily change her clothes. During the physical encounter with [redacted] you did not write that you dropped inmate [redacted] when [redacted] went limp. There was no mention of Corr. Off. Broussard grabbing inmate [redacted] head to stop her from biting. There was no mention of Corr. Off. Broussard putting her foot on inmate [redacted] body or that Corr. Off. Broussard pulled [redacted] hair. There was no mention of Corr. Off. Broussard putting a C-clamp hold on inmate [redacted] neck. You also did not mention that Corr. Dep. Rivera assisted them in changing out the inmate.

**Interview with Sheriff's Detectives:** You told investigators that you received a call from Corr. Off. Broussard telling you that Broussard needed help changing an inmate. You did not mention anything about already being in Processing to get cheesecake. When you arrived in Processing, you told Corr. Off. Broussard to go back into the dress out room and tell inmate [redacted] that she had to dress out. You heard a commotion from inside the dress out room, went inside, and saw Corr. Off. Broussard holding inmate [redacted] down on the bench by the shoulders. When they stood up, you said inmate [redacted] went dead weight and fell to the ground. You did not mention that you let her go. You said you wouldn't have seen anything that Corr. Off. Broussard did after this because you were facing the inmate's legs and feet.

**Interview with Internal Affairs Investigator:** You said you got a phone call from Corr. Off. Broussard asking you to come to Processing. You said you did not know why Broussard wanted you to come to Processing, but you went. You do not think you said anything to your trainee, Corr. Dep. Kitong about leaving. Once in Processing, you said Carr. Off. Broussard told you that she didn't think this woman was going to dress out and could she stand by just in case. You told Broussard to ask [redacted] if she was going to change out and you would stand by. You said that Corr. Off. Broussard went in and heard her tell inmate [redacted] that she had to get dressed and inmate [redacted] yelled something like "Fuck you, bitch." You then heard the partition curtain slide, so you went into the room. You saw Officer Broussard holding the inmate down by her shoulders and the inmate kicking. You made the decision to continue changing the inmate instead of stopping and calling a sergeant because you "already hands on."

In your Employee's Report of the physical encounter with inmate [redacted] you failed to record any information associated with Off. Broussard's physical force that she used on inmate [redacted] information that a reasonable officer would have realized is very important and pertinent to

include in their report. As a competent and trained Sheriff's Correctional Deputy with many years of experience, you have a duty and responsibility to accurately report, orally and in writing, all use of force incidents involving inmates whether you applied the force or you witnessed the force being used by another deputy or officer. Your failure to do so in this incident is simply unacceptable for any Correctional Deputy but more so for one with your years of experience and service. The only reasonable conclusion that can be drawn as to why a deputy with your years of experience and training would omit such important information from your reports was to conceal the facts of the incident to minimize the possible adverse impact the truth may have had on you or Officer Broussard or both of you.

In our profession, there is no place for a deceitful and untrustworthy employee because such a person will only impede our ability to establish and 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 witness, 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 Sheriff's Correctional Deputy 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 DATE Recommended Disciplinary Action Letter.

**Administrative Hearing:**

An Administrative Hearing was convened on October 4, 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

                    began the hearing by asking me to review the recordings of your statements to Investigators. He said that the criminal and IA statements mirror each other and there are no inconsistencies.                      said he didn't agree with the Investigator's findings. He stated that Deputy Broussard called Alana (Officer Simpson-Hogan) and asked if she could come to

Processing, but she didn't say why. presented the events as he believed them to have occurred and raised issues he has with the Recommended Disciplinary Action letter. stated that supervisor reporting is necessary when Level 3 force is used or imminent, but that you didn't know it (Level 3 force) was used because you were facing the other way. also said you didn't know it was going to go south (inmate becoming uncooperative) when you were standing at the door. also mentioned that this incident occurred a few weeks before the death and that there were many changes regarding use of force in the jail after the death. After the death, directives came out to notify supervisors before force was to be used if it was anticipated. further indicated that you felt you were operating according to normal practice at the time. also said that no disciplinary action has been taken against (Correctional Deputy) Rivera and that Rivera did the same thing that you did. He said if anyone was going to call the Sergeant, she (Rivera) had the time to, but instead she left to get gloves and then came back to assist. He said it wasn't consistent. said that in hindsight, you said you would've cuffed the inmate and called for a Sergeant and that hindsight is 20/20 and you have learned from this incident. also asked what kind of harm came from the incident. said that Sgt. Sevillano couldn't have done it as a male (dress out or supervise the dress out of the female inmate).

Regarding the reporting issues, stated that the investigators claimed that you were dishonest in your reporting. You, however, said that you didn't see the acts (use of force by Deputy Broussard) occur and that you didn't know about the allegations regarding use of force. said that the department claimed that the employee's report is too brief, and the investigators claimed that you omitted facts but it's not the case. then provided example ER's of 4 other Level 2 use of force reports that you had submitted and turned in. He said that these reports are normally approved and you weren't attempting to conceal anything. continued that Sgt. Sevillano told you to write a quick E.R. and to write exactly what you did. said that yours was the supplemental report (ER) and not the original which has all of the information. also said that you were told to print out a second copy of your E.R. and to give it to Sgt. Liddle, and that you asked Sgt. Sevillano if it was good or needed to add more and he said no (no more needed). After the incident, you remembered briefing memos regarding use of force and that everything needs to be documented really well, even if you just showed up and you would need to write that you just showed up. said that the interviews were conducted 6 months later and everyone said they'd call the sergeant in a similar situation as you, but that the practice was different before

said that there is no untruthfulness or deception or omission of facts and that the reports and statements were consistent. said that Broussard did call you, and that Broussard also brought in the cheesecake. said when you went over to Processing, you figured you'd get a piece of cake while you were there before it was gone. said you went over to Processing for both reasons (to get a piece of cheesecake and because of the call you received from Broussard).

also said that as a whole, things could've been done differently and that you played only a small part. He said the best way to correct these actions is through training because you are willing and able to change. also said that in over 10 years, you have taken a lot of training, and that you had even completed seven classes while you've been on Admin Leave. He said you are a Jail Training Officer and have never been disciplined. He also said your performance evaluations show that you need minimal supervision and are a fantastic employee all around and well liked.

You then spoke on your own behalf. You told me that Rivera said in her E.R. that you were facing the other way and that you didn't see anything. You also said you've been around for 10 years and take training seriously. You also said that at the time of the incident, it happened so quickly that you didn't think to notify a Sergeant. You said that you hope for another chance to show that you're a great employee to the Sheriff's Office and that you would never lie because that's what would get someone fired.

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

After thoroughly reviewing your presentation, the recommended disciplinary letter and the documentary evidence (including your audio statement to IA investigators), 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 part in the August 9, 2015 incident began when Officer Broussard called you on the phone and asked you to come to Processing. When you got to Processing, by your own admission to the Internal Affairs investigators, you said that Ofc. Broussard told you that she didn't think an inmate ( was going to dress out and she asked you to standby. Rather than contacting a Sergeant per policy about an inmate who was failing to dress out, you agreed to standby while Ofc. Broussard went back to make contact with the inmate. You knew that if the inmate was combative that you would have to assist Ofc. Broussard with overcoming the resistance. Your position as a Jail Training Officer (JTO), coupled with your years of experience make it clear that you knew that the appropriate course of action was to call a Supervisor before making contact with the uncooperative inmate. Then, according to Ofc. Broussard, the inmate became physically and verbally aggressive. You then assisted Ofc. Broussard in conducting an unauthorized strip of inmate to dress her out. Then on the same shift that force was used (approximately 2 hours after the force was used), while it was fresh in your memory, you wrote an Employee's Report to document the incident. Your employee's report was very sparse. It was also deceitful because it indicated that you were in Processing to get a piece of cheesecake when you heard a commotion in the dress out area, as if the commotion occurred unexpectedly to you. However, you omitted the fact from your Employee's Report that you were in Processing because Ofc. Broussard called and asked you to come there. You also omitted the fact from your Employee's Report that Ofc. Broussard had a discussion with you about the uncooperative inmate before she made contact with her and you stood by outside of the dressing room. Clearly

the inmate's aggression was not a surprise to you. A lie can occur by commission or by omission. In this case, your omission is clearly deceptive in your Employee's Report, and I must reasonably conclude that you had an underlying motive to protect Ofc. Broussard and yourself for not calling the Sergeant beforehand for an inmate who was refusing to dress out and where use of force was likely to occur due to the inmate's conduct, contrary to policy. You then conducted an unauthorized strip of inmate \_\_\_\_\_ to change out her clothes. Furthermore, your employee's report failed to document the force used by Ofc. Broussard, who was a mere few feet away from you at most since you were both using force against the same, petite inmate. Also, by Deputy Riviera's witness account, inmate \_\_\_\_\_ was screaming that she couldn't breathe and that she had asthma, but you did not mention those statements in your employee's report. It was also reported that \_\_\_\_\_ claimed that Ofc. Broussard punched her in the face. \_\_\_\_\_ yelled that statement while you were there, yet you did not document it in your report. You told Investigators that you didn't list such information because your Sergeant told you to only write what you did. Which begs the question, "Did you not hear such things from the inmate?" These statements would be important to document for various reasons. The fact that you again omitted relevant information from your Employee's Report regarding this use of force situation creates further concerns about your ability to truthfully and fully report a situation that involves force against a County inmate. Honesty and integrity are critical qualities that all Correctional Deputies must possess in order to maintain credibility with the public, the justice system, and the inmates that you are sworn to protect. If force is used by another Correctional Officer or Correctional Deputy that you observe, it is your duty to fully report what you saw and did. The fact that you were evasive in your report about the reason you were in Processing reasonably leads me to conclude that, in the face of conflicting witness statements, you were also evasive about what you fully saw and heard during the use of force situation itself. Your lack of making a thorough and complete Employee's Report regarding this use of force incident is indicative that you were trying to protect your friend, Officer Broussard, from being in trouble due to possible excessive force used on her part. There is no room in this organization for someone who is not fully honest and open.

Based on the totality of the investigation and in preponderance of the evidence, I believe that you failed to contact a supervisor when you knew that contact with inmate \_\_\_\_\_ was likely to result in force, and that you did not report the questionable force that was used by Officer Broussard during the incident. Then in interviews with detectives and Internal Affairs investigators, you were not honest and forthright about the force you heard or saw that was used by Ofc. Broussard. In doing so, you covered for her. That is unacceptable conduct for someone sworn in as a peace officer and you are no longer able to hold the position of Sheriff's Correctional Deputy 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 Sheriff's Correctional Deputy 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 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 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.

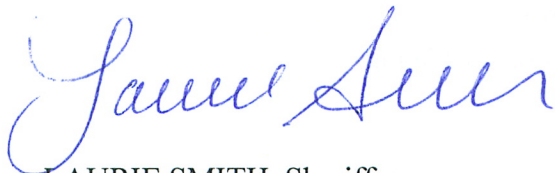
Sincerely,



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 Division  
Juan Gallardo, Acting Director of Administrative Services  
Mitchell Buellesbach, Labor Relations Representative, ESA  
Anita Asher, Human Resources Manager, ESA