



Friday, April 21, 2017

Preliminary Expert Witness Report and Opinion

Introduction

I am an expert witness retained by client Vera O'Reilly for the purpose of investigating a complaint against a Gulf County Florida Sheriff's deputy. Ms. O'Reilly requested that I provide her with a report concerning her allegation that Deputy Brian Smith engaged in serious misconduct while on duty, and that; the Gulf County Sheriff's office ignored her complaint.

I am prepared to render my findings and discuss the evidence I reviewed for my opinion. My report is written within the guidelines of federal court rule 26 concerning expert witness testimony. My credentials can be found on my website PoliceAbuse.com bio page. My fees will be provided as part of my final report

Factual background

On February 28, 2017, Vera O'Reilly contacted my office reporting that a Gulf County Florida Deputy was engaged in misconduct on duty. Ms. O'Reilly reported that Deputy Brian Smith was masturbating in his patrol car, misusing official crime scene evidence, sleeping on duty, dodging radio calls, insulting accident victims and arrestees and mocking his superiors. She also reported that Deputy Smith regularly hid from work assignments and made himself unavailable on duty while he engaged in Internet sex acts from his patrol car.

I notified the Sheriff's office in a recorded telephone call on March 3, 2017, about the reported behavior. Six days after I delivered Ms. O'Reilly's evidence electronically to Sheriff Mike Harrison, Deputy Smith was formally disciplined with a verbal reprimand by the sheriff.

Ms. O'Reilly was not satisfied with the punishment. I waited a month to see if the Sheriff would reconsider. I discouraged Miss O'Reilly from going to the press or rushing to judgment about the Sheriff's decision. I believed that in time after reviewing the evidence Sheriff Harrison would reach a different conclusion. There was sufficient evidence during my first review of the evidence to determine that obvious misconduct in violation of Gulf County departmental policies had occurred.

Because of the serious nature of the allegations I expected the Sheriff to review everything I sent and impose a much more serious discipline. However, Deputy Brian Smith was immediately returned to service patrolling the streets of Gulf County, though there was overwhelming evidence that he should not be allowed to patrol the streets of the county unsupervised in the Sheriff's possession.

I was also concerned because Ms. O'Reilly had become increasingly worried about her safety. She could not be certain that Brian Smith would not travel to Canada where she is a citizen and retaliate against her for making the complaint to the Sheriff. Deputy Smith had purchased tickets to travel to Canada a few weeks before Ms. O'Reilly contacted Sheriff Harrison. Ms. O'Reilly provided evidence that Deputy Smith and another deputy repeatedly attempted to discourage her from reporting her complaint.

In explaining the decision not to sanction deputy Smith with a more severe punishment the Sheriff told me that the conduct was off-duty and therefore his hands were tied. The Sheriff also told me that he did not receive a file folder that I gave him containing videos of Deputy Smith masturbating at home and engaging in other misconduct while on duty. Sheriff Harrison assured Ms O'Reilly in a letter she would be safe and the accused officer would not contact her. He also explained his reason for imposing the most minimal discipline possible. Sheriff Harrison said that Deputy Smith would be closely supervised going forward and the conduct was unlikely to reoccur.

On April 3, 2017, I published the evidence supplied by Miss O'Reilly online on the website PoliceAbuse.com. 48 hours later Deputy Smith resigned.

Analysis

My investigation demonstrates that Deputy Smith violated several policies related to the conduct of a law enforcement officer both on and off duty. Though the masturbation videos were filmed from deputy Smith's home they are not exempt from departmental policy solely because he was off-duty. Any public official and especially a police officer who recklessly sends pornographic materials over the Internet is violating departmental policy. It is a basic example of conduct unbecoming and conduct detrimental to the agency that employs the officer. Moreover any deputy who sends multiple pornography videos to a stranger, he has never met over the Internet, raises questions about his judgment and character.

I must challenge the Sheriff's contention that there was not enough evidence to proceed with a more thorough and comprehensive investigation and greater sanctions against Deputy Smith. Ms. O'Reilly provided dates and times of on duty misconduct and she made repeated attempts to contact the Sheriff's office by email. Though the Sheriff may not have received the documents I sent him Ms. O'Reilly sent him a duplicate set of the very same documents a month and a half before I started the case.

Many of the charges required modest investigation and evidence collection. For example, Ms. O'Reilly told Sheriff Harrison that Deputy Smith regularly chatted with her on Facebook for hours at a time while on duty. She provided screenshots of many of the sessions both on and off duty. The Sheriff's office did not attempt to collect the records.

Though I accept the Sheriff's explanation that his inability to access files that I sent to him may have caused him to misinterpret the extent of Deputy Smith's misconduct, there was nevertheless a prima facie case of misconduct that would be obvious to any police supervisor based solely on the pornographic videos, chats and email exchanges that Ms. O'Reilly sent a month earlier. Sheriff Harrison does not dispute receiving the evidence from Ms. O'Reilly. And, Sheriff Harrison never told me that he had a

problem opening any files until I published Deputy Smith masturbating on the Internet leading to his resignation.

The Sheriff should have done the following upon being notified of Smith's conduct:

- a) Immediate Suspension with pay until an investigation was completed
- b) Confiscate/Seizure of Deputy Smith's phone
- c) Complete a full review of all work records, time sheets, and radio traffic including calls for service during Smith's duty hours
- d) Subpoena for all Facebook communications initiated by Smith during work hours.
- e) Collect semen and other biological evidence from the Deputy's patrol car.

Placing the sexual allegations aside, Deputy Smith should have been criminally investigated for fraud solely for the work hours he allegedly eluded while on duty. Based the complaint there is evidence demonstrating that Deputy Smith was being paid by the taxpayers of Gulf County for work that he never performed. There is evidence that he was sleeping, having internet sex and turning his radio off to avoid calls for service. His favorite resting spots according to our investigation included the fire station, a canine training area and a locker room where he purportedly masturbated on camera in front of Ms. O'Reilly. There are Facebook records that could corroborate many of the most serious allegations.

Opinion

It is my opinion to a reasonable degree of professional certainty that Deputy Brian Smith engaged in substantial and repeated acts of misconduct while acting as a law enforcement officer. The services fraud executed by Deputy Smith depleted the resources of a small law enforcement agency and deprived Gulf County citizens of an essential emergency service that were paying for. Gulf County residents are fortunate that a serious crime did not happen during one of Deputy Smith's sexual interludes. His conduct is much more serious than a security guard falling asleep at a bank. It is more akin to soldier falling asleep a critical checkpoint. Deputy Smith put the lives of Gulf County citizens at risk through his conduct. It is also my opinion that the disciplinary measure initially imposed by Sheriff Harrison was deficient.

Ms. O'Reilly has asked that I submit a request to the Florida Department of Law enforcement seeking the decertification of Deputy Brian Smith to prevent him from continuing to work as a law enforcement officer in the state of Florida. Based on my review of the evidence I support her request. This report is a formal request for the decertification of Deputy Brian Smith through the Florida Standards and Training Commission and the Department of Law Enforcement.

Evidence reviewed

As part of this report I am providing a portion of the evidence supplied to me by Miss O'Reilly. Ms. O'Reilly provided a detailed record of her communications with Deputy Smith and her later communications with the Sheriff's office. She also supplied chat logs, emails, pictures of crime scene evidence that were confidential and multiple videos sent to her by Deputy Smith masturbating at home.

Ms. O'Reilly provided almost 300 evidence exhibits and detailed records demonstrating misconduct.

The evidence included the following:

Masturbation videos

Crime scene evidence

Restricted information on county computers

Photographs of a car accident victim who was allegedly mocked by Deputy Smith

Photographs of an arrestee who purportedly had his neck broken by Deputy Smith

This report may be considered a preview of my testimony should the matter proceed to a formal hearing or review. I reserve the right to amend my opinion should additional evidence be made available to me.

It is my opinion to a reasonable degree a professional certainty that the following policies were violated:

1. Professional Conduct Guidelines
2. Fraud for payments made while the accused officer hid from work
3. Misuse of county computers
4. Misuse of crime scene evidence
5. Failure to properly investigate misconduct

Evidence Supplied to the Sheriff:

Qualifications

My qualifications are as described in my curriculum vitae. To summarize, I am a former member of the Hawthorne Police Department, in the State of California, where I was at various times, a police officer, field supervisor, detective and sergeant. I was specially trained as an undercover investigator by the Los Angeles County Sheriff office. As a member of the Hawthorne Police Department, I have performed all the duties of a law enforcement officer. I engaged in the traffic stop of motorists, investigations, arrests, handcuffing, transporting and processing of individuals. I hold an advanced certificate in Peace Officer Standards and Training. I am a qualified instructor in Police Control Restraint Techniques. I have been qualified as an expert in police practices in both federal court and California state courts, especially with regard to the use of force, report writing and officer misconduct. Prior to becoming a police officer, I had worked as a deputy in Ventura County, California. I spent a combined period of approximately nine years as a sheriff deputy and police officer.

I have testified before the California State Assembly and the United States Congress on police practices. My investigative work in the field of law enforcement has resulted in changes in the law in California with regard to false police reports. As a result of my investigations the law in CA. was changed increasing the penalties for filing false police reports from a misdemeanor to a felony. Many police agencies have made policy changes as a direct result of my hidden camera test with national and local media. Others use our videotapes or portions of our training material for in-service training. I have conducted training sessions for law enforcement organizations throughout the United States, including training and seminars for police chiefs. I have provided training for the following law enforcement agencies and educational institutions:

Partial list...

Florida Highway Patrol

Los Angeles Police Department

Department of Justice

United States Atty.'s office

Los Angeles County sheriffs

Broward County sheriffs

Collier County sheriffs

Florida State University

Harvard Law school

Penn State University

Florida State University

Florida Department of Law Enforcement

I am the owner of Policeabuse.com, a national organization that investigates and documents alleged police misconduct throughout the United States. Policeabuse.com maintains the only national video database for complaints of police misconduct allegations in the United States. My organization has conducted numerous undercover investigations documenting racial profiling and other misconduct by various law enforcement organizations throughout the United States. Our videos are used by more than 1200 police departments and the DOJ for training. PoliceAbuse.com videos are used as part of "Verbal Judo" training.

I earned a bachelors degree from California Lutheran University and Masters Degree in criminal justice from Penn State University. I have served as an Adjunct Professor of Criminal Justice at Florida A&M University and Florida State University. I have been a licensed private investigator for 10 years and I have conducted numerous investigations in that capacity. I have more than 500 investigations of police misconduct in my experience. I have published editorials in the New York Times and Los Angeles Times. As an investigative journalist my stories have received acknowledgements; thus far four Emmy awards and four Edward R Murrow awards for investigative journalism.

I will testify to the aforementioned opinion at the appropriate time. I reserve the right to amend or supplement this report should any other relevant information become available to me.

Sgt. Don Jackson (Ret.)

COMPLAINT SUMMARY FOR: V

DATE OF COMPLAINT: 2017-04-17 COMPLAINT
STATUS: Complete EMAIL:vera.kitties@hotmail.com

1. Agency Name?
Florida, Gulf county

2. Date of Police Interaction?

3. Complaint Summary?

January 9th 2017, I reported sheriff's deputy Brian Smith of Unprofessional misconduct to Sheriff Mike Harrison of the Gulf county sheriff's office Florida. I told Sheriff Harrison I had many videos, pictures text messages and emails Brian had sent me in the span of 10 months. February 2016 to December 2016. I described how Brian had come into contact with me via Facebook and explained the constant and in-depth interactions. Brian had sent me videos of him turning his radio off / down while on duty to talk to me and send videos. Him telling me how he fell asleep in his car on duty. Brian would park his car in his hiding spots to talk with me via live video chat and send video messages. Brian also complained his superiors gave him trouble for not putting enough miles on his patrol car while on duty, He would also go to the fire hall and hide inside to chat. I have a video of him further explaining how he broke a man's neck and was told by another deputy that he hit the guy more times than he remembered and reported. He seemed pleased with himself. I have many crime scene photos with insults to the victim(s) including wishing them dead. I have call out screens with addresses / names of callers. Brian would often tell me on shots fired calls he wished he would have shot the person so he could have 30 days paid leave. Brian also told me he was going to take a bear tooth from a bear that was hit by a car once the State Trooper left. Insults to the sheriff and the lieutenant. I also told the sheriff I had many nude photographs, videos and live chat videos of sex acts from Brian on and off duty. I also informed the Sheriff Brian had active plane tickets to come to Canada and visit me for 2 weeks. They were for March 1 to 14th 2017. I was unable to get the Sheriff the live video chats, he was informed of

how often the live chats happened. He is in a position to obtain them himself and I trusted he would do so. The sheriff made a total of 3 calls to me that day that lasted no longer than 5 minutes each. The first call he was very interested in the evidence I had and listened to what I had to say. The second call he agreed to open the message section on the official Facebook page to allow me to send the evidence. I told him it would take a long time to send as I have 10 months worth of constant interaction. He told me he would get another deputy to do this as he did not know how to use technology very well. I was informed that only the things he did no duty were of use to him as citizens in the United States were allowed freedoms that would not be of use to him. I tried to send videos, photos and screen shots but was unable to do so. I was informed on the Facebook page the Sheriff would call me back via telephone in a few minutes. The final call I received was a call speaker phone call asking for me to send what I had via email to the sheriff. I did as I was asked. I had so much evidence and I got him what I could from the last few months of our communications as directed by the sheriff as to what was appropriate evidence. On January 14 2017, I sent another email asking if he needed more. I told him I had many many more on duty exchanges and nude photos and videos. I didn't get an email back from the sheriff until January 17 2017, saying send what ever I had. So I sent more. 26 emails in total were sent to the Sheriff full of videos, emails, text messages and screen shots. I waited for the Sheriff to call me back. I waited for more direction or if he still needed more evidence. I waited to be interviewed or given some sort of confirmation that the citizens were safe and my complaint was being taken seriously. On February 16 2017, I had still not heard back from the Sheriff and was growing concerned for the safety

of the Gulf county citizens and my own as the plane tickets were still active. On February 26 2017, I still had not heard anything from the Sheriff, I felt ignored, unsafe and was extremely worried. 3 days remained until his flight landed and no one was getting back to me. February 28 2017, I was beside myself with disbelief, no one took me seriously or cared for my concerns about safety for the Gulf county citizens or myself. I was scared, the person I knew Brian Smith to be was scary and unpredictable when emotional. His flight landed the next day, I searched reporting police and Don Jacksons website Policeable.com came up. I instantly called the number. Don called me back within an hour. I told him what I could about the on goings of the last year. He told me about the process to file a complaint. I told him the flight landed the next day. Don instantly took my case, he was concerned for my safety as much as I was. He also realized the severity of the case and uniqueness surrounding it. He understood how much evidence I had accumulated in a 10 month span. He interviewed me many times while keeping in constant contact. Vera O'Reilly

4. The Primary reason for your complaint is?

Unprofessional conduct

5. If you had to choose the three most serious offenses that the officer is accused of which would it be among the following choices?

Making insulting remarks

6. Race of the officer?

White/European-American

7. Officers Badge Number?
Former deputy Brian Smith

8. Were you arrested?
No

9. Do you want your report to appear on policeabuse.com ?

10. PD Zip Code?

11. Client Phone Number?
NOT AVAILABLE IN APP COMPLAINTS

12. Incident Location?