



Internal Affairs Investigation – AUDIT

Case Details	
Complainant Name	N/A. Civilian involved is [REDACTED]
Case No.	20-IA-0006
Type of Investigation	Excessive force, firearm policy, conduct unbecoming
Incident Dates	October 31, 2020
Date/Origin of Complaint	November 12, 2020 / SCSO internal investigation
Date IA Sent to IOLERO	November 8, 2021
Date Audit returned to SO	December 29, 2021

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Executive summary

As relevant to this audit, I reviewed the following material:

- Body-worn camera videos recorded by Deps. Vega, Camarena, and Esponda (respectively Vega, Camarena, and Esponda BWC)
- The Incident/Investigation Report (Incident Report)
- Interviews by the IA investigator with Deps. Vega, Camarena, and Esponda (Vega Interview, Vega Follow-Up Interview, Camarena Interview, Esponda Interview)
- The Order of Suspension from Employment issued on October 27, 2021 (Order of Suspension)
- The investigator's report (IA Report)

We **agree** with the investigation's conclusion that Dep. Vega violated several departmental policies. However, we **disagree** with the decision to discipline him with a lengthy suspension rather than terminating his employment. We also consider the investigation **incomplete** because there was a potential policy violation that it failed to address.

Factual background

The underlying criminal conduct and use-of-force investigation

A very drunk 17-year-old boy named ██████ walked up and down Boyes Blvd. in Boyes Hot Springs in the early morning hours of October 31, 2020, shouting and banging on cars with a knife. (Camarena BWC 29:10, 32:08, 32:53, 34:18.) He got into a fight with one ██████.¹ (Camarena BWC 21:55, 33:00; IA Report 5.) In the course of the fight, both participants were stabbed. (Camarena BWC 25:37.) A neighbor took ██████ to Sonoma Valley Hospital before any deputies arrived. (Camarena BWC 29:13.) ██████ was arrested by Deps. Camarena, Vega, and Esponda after a brief struggle and was transported to Memorial Hospital. (Camarena BWC 5:18, 30:13; Vega BWC 6:46.)

A routine use-of-force investigation followed this incident, focused on the force employed in apprehending ██████. (IA Report 1.) In the course of that investigation, information came to light that raised concerns about whether Dep. Vega had violated departmental policies in the course of detaining ██████, who ultimately proved to be involved in the incident only as a reporting party. The investigation under audit here followed. (*Ibid.*)

¹ Dep. Camarena gave ██████ name as ██████ while describing the event to Dep. Vega, but he apparently misspoke. (Camarena BWC 32:56.) A witness named ██████ had previously identified the stabbing victim to Dep. Camarena as ██████. (Camarena BWC 7:18.)

Initial activities and the detention of [REDACTED] and [REDACTED]

A little after 1:00 AM on the morning of October 31, 2020, Deps. Camarena and Vega responded in separate cars to a call about subjects engaged in a knife fight near the intersection of Boyes Blvd. and Riverside Dr. in Boyes Hot Springs. (Camarena Interview 2:56.) The call described one perpetrator as a Hispanic male in his late teens wearing a red jacket. (*Id.* at 3:25; IA Report 1.)

The deputies initially detained three subjects who ultimately proved to have nothing to do with the incident. Dep. Camarena encountered the first one, [REDACTED], immediately upon arriving at the scene. (IA Report 6; Camarena BWC 0:26.) [REDACTED], who was wearing a red jacket, lay down on the ground in apparent response to a command from Dep. Camarena before his BWC's audio cut in. Dep. Vega arrived shortly after that, ordered [REDACTED] to put his arms out to the side, and added "don't reach for anything, I'm going to shoot you." (Vega BWC 2:05.) Dep. Vega handcuffed [REDACTED], stood him up, and placed him in the back seat of his patrol car. (Camarena BWC 1:37; Vega BWC 5:47.) [REDACTED] was later released. (Camarena BWC 35:56.)

A second suspect, later identified as [REDACTED], got on the ground in response to a command by Dep. Vega. (IA Report 6.) Another man, who was never identified, was walking by, and Dep. Vega ordered him to get on the ground, which he did.² (Camarena BWC 2:28; IA Report 6.) Dep. Camarena ordered [REDACTED] to place his hands behind his back; he complied, and Dep. Camarena said "Just stay there." (Camarena BWC 2:32.) Dep. Camarena then approached the unidentified man, ordered him to stand up, handcuffed him, walked him to Dep. Vega's patrol car, and sat him down on the bumper. (Camarena BWC 2:47.) After indicating that he was going to investigate reports of other suspects on the Boyes Blvd. bridge, he drove off in his own car at high speed. (Camarena BWC 3:34.) Dep. Vega placed the unidentified subject into the back seat of his patrol car along with [REDACTED]. (Vega BWC 5:48.) Dep. Vega then got into the car and drove away. (Vega BWC 6:26.) [REDACTED] remained lying on the ground. (Vega BWC 5:59.)

² There is a bit of confusion in the IA report as to which subject was [REDACTED]. The report identifies him as the person who was "ordered to the prone position" and was "still on the ground in the prone position" when the third never-identified subject walked backwards past him. (IA Report 6.) If that is correct, the two men visible at Vega BWC 3:50 are [REDACTED] on the ground, and the unidentified man standing with his hands up to the viewer's right of [REDACTED].

The report subsequently identifies [REDACTED] as the man who Dep. Vega placed into his patrol car after finding him "in handcuffs, sitting against Deputy Vega's push bumper." (IA Report 6.) That does not appear to be consistent. The man whom Dep. Camarena ordered to "get on the ground," and whom he subsequently handcuffed and sat on Dep. Vega's front bumper, is the one who was located to the viewer's right of the man lying prone on the ground. (Camarena BWC 2:33 [showing both men, one on the ground and one to his right with hands raised], 2:52 [Dep. Camarena handcuffing the one on the right and walking him to the patrol car].) Thus, the IA report is either incorrect about the "still in the prone position" man being [REDACTED], or about the subject placed in the patrol vehicle being him. (IA Report 6.) This audit will proceed on the assumption that the man to the viewer's left, the one who remained lying on the ground when Dep. Vega drove away (Vega BWC 5:59), was [REDACTED].

Upon reaching the bridge, Dep. Camarena observed another male in a red jacket, matching the description he had received from Dispatch. (Camarena BWC 4:05.) This ultimately proved to be [REDACTED], one of the participants in the fight. Dep. Camarena ordered him repeatedly to get on the ground, but [REDACTED] continued walking away from him. (Camarena BWC 4:40.) Dep. Camarena aimed his TASER at [REDACTED] and threatened to use it, but never did. (Camarena BWC 4:58.) Dep. Esponda, who had arrived on the scene a few minutes earlier, took [REDACTED] by the arm and forced him to the ground. (Camarena BWC 5:19; Esponda BWC 0:46, 1:00.) Dep. Vega arrived shortly after that and assisted Deps. Esponda and Camarena in detaining [REDACTED]. (Vega BWC 6:46.) After [REDACTED] was immobilized by the deputies, Dep. Esponda handcuffed him. (Esponda BWC 1:25.) Dep. Camarena asked Dep. Esponda to stay with [REDACTED], and then walked back toward the cars in order to interview a witness who had been recording the incident on his cell phone. (Camarena BWC 6:12.)

During the altercation with [REDACTED], the deputies had observed two men standing on the other side of the bridge. (Vega BWC 7:04.) One, who was wearing a white shirt, ultimately proved to be a friend of [REDACTED] named [REDACTED]; the other, wearing a purple shirt, proved to be [REDACTED], one of the reporting parties. Dep. Vega shouted at them “Hey, you two, get on the fucking ground! Get on the fucking ground or I’m going to shoot you guys!” (Vega BWC 6:59; Camarena BWC 5:28; Esponda BWC 1:13.) After [REDACTED] was secured, Dep. Vega approached the two men, and shouted “Don’t fucking move, I’ll shoot you.” (Vega BWC 7:19.) [REDACTED], who had voluntarily assumed a prone position on the ground, responded “I won’t, I won’t, I promise to God I won’t” and urged Dep. Vega to handcuff him, which Dep. Vega did.³ (Vega BWC 7:23.) [REDACTED] and [REDACTED] had a shouted conversation in which [REDACTED] urged [REDACTED] to cooperate with the police and stated that he was not involved in the fight but was only there because he had been walking [REDACTED] home. (Esponda BWC 2:16.) Dep. Esponda stood [REDACTED] up and walked him back toward the end of the bridge where [REDACTED] had been detained, walked both of them back toward the patrol cars, and seated them on the tread of a tractor that was parked there. (Esponda BWC 5:04, 8:32.)

The detention of [REDACTED]

After using his second set of handcuffs on [REDACTED], Dep. Vega proceeded toward the far end of the bridge, his gun drawn, in pursuit of [REDACTED], who was walking away from him. (Vega BWC 9:31 [clear shot of gun].) He shouted “Hey, get on the ground,” but [REDACTED] continued walking. (Vega BWC 8:19.) [REDACTED] said “I live in there, I called you guys for the problem,” to which Dep. Vega responded “Get over here.” (Vega BWC 8:26.)

When he caught up with [REDACTED], the following conversation ensued:

Dep. Vega: “Hey you, get on the fucking ground. I’m going to shoot you.”

[REDACTED]: “No, I work in here.”

³ [REDACTED] is the nephew of [REDACTED]. (Esponda BWC 2:46, 13:58; IA Report 13.) [REDACTED] involvement in this incident was minimal and there is no suggestion that his family connection had any effect on the way he was treated. However, it is a sad comment on present reality that despite from being from a [REDACTED] family, [REDACTED] clearly believed that he was in danger of being killed. (Esponda BWC 3:02 [“I’m the only thing my mom’s got. Just please don’t kill me . . . I just don’t want to die tonight”].)

Dep. Vega: "Get on the ground, I'm going to fucking shoot you."

██████: "I live in here. I not the . . ."

Dep. Vega: "Get on the ground!"

██████: "I call you guys for the problem. You guys, there's somebody walked there."

Dep. Vega: "Get on the fucking ground!"

██████: "Oh my God. I work in the lunch."⁴

Dep. Vega: "I'm going to fucking tase you."

██████: "Ok, ok."

Dep. Vega: "Get on the fucking ground."

██████: "I work in the . . ."

Dep. Vega: "I'm not fucking playing with you."

██████: "What is the problem? I work at the lunch."

(Vega BWC 9:34.) ██████ then got on the ground, face-down and supported on his elbows, holding a cell phone in his left hand and a flashlight in his right. (Vega BWC 9:58.) Dep. Vega kicked the flashlight away and said "Shut the fuck up." ██████ said "Oh my god, I work in there, I live in there, man," to which Dep. Vega replied "I'm going to fucking shoot you," aiming his firearm directly at ██████ head. (Vega BWC 10:05.) After some more conversation along similar lines, Dep. Vega held his firearm directly to ██████ head, either touching it or extremely close, and said "You under-fucking-stand me? Do not fucking move!" (Vega BWC 10:12.) His index finger is not visible on the video, but it is not inside the trigger guard. The IA investigator concluded that at this point he was holding his firearm in one hand, his TASER in the other, and the flashlight clamped under one arm. (IA Report 27.)

Dep. Vega asked Dep. Camarena by radio to bring him some handcuffs, pointed his gun at ██████ upper back, and ordered him to put his hands behind his back, which ██████ did. (Vega BWC 10:20, 10:39.) A female voice from out of the video frame said "He did not do anything," and ██████ reiterated "I call you guys, I call you." He then called out in Spanish, presumably to the female, "Digale que yo no tengo nada que ver" (tell him I don't have anything to do with it). (Vega BWC 11:00.) ██████ made a few more indistinguishable comments in Spanish; Dep. Vega responded "cállate" to the first⁵ and "shut the fuck up" to the second. (Vega BWC 11:04, 11:32.)

After Dep. Camarena arrived and told Dep. Vega that he did not have any handcuffs, Dep. Vega stood ██████ up and began escorting him toward the patrol cars at the other end of the bridge. (Camarena BWC 9:53; Vega BWC 11:24.) Despite the fact that ██████ was fully compliant at that point, Dep. Vega said "You try to run, I'm going to fucking punch you in the face so fucking hard, you understand me?" as they walked. (Vega BWC 12:04.) When they

⁴ ██████ worked for the ██████. ██████ (██████ IA Report 13;) "Lunch" was presumably his English version of "lonchería," a Spanglish word for a lunch counter or snack bar.

⁵ This was the only time Dep. Vega spoke to ██████ in Spanish until considerably later. (Camarena BWC 12:38 et seq.) See the *Use of Spanish* section under *Recommendations*, below.

reached the cars, Dep. Vega searched [REDACTED] pockets and handcuffed him with handcuffs provided by Dep. Esponda. (Camarena 12:53, 18:48.)

[REDACTED] was released about 18 minutes later. (Camarena BWC 37:15.) Nobody ever asked him for his surname or his contact information. (IA Report 1.) After considerable investigative effort over the course of more than eight months, [REDACTED] was identified and interviewed. (IA Report 24-25.)

Discussion

Dep. Vega's conduct violated policy as stated in the IA report.

The IA investigation found that Dep. Vega had violated the following policies:

- 304.3(d): “Deputies should not hold both a firearm and the TASER device at the same time.” (IA Report 27-28.)
- 300.3: “Deputies shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the deputy at the time of the event to accomplish a legitimate law enforcement purpose.” (IA Report 28-32.)
- 320.5.9(f and g): Listing, respectively, “Discourteous, disrespectful, or discriminatory treatment of any member of the public” and “Use of obscene, indecent, profane, or derogatory language while on-duty or in uniform” as “causes for disciplinary action.”⁶ (IA Report 32-33.)
- 323.1.1: “All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense, and any actions taken.” (IA Report 33-34.)

The report's discussion of these policy violations was thorough and complete, and we wholeheartedly agree with its findings.

Dep. Vega's use of his firearm arguably rose to “deadly force.”

Under both state law and the department's use-of-force policy, “deadly force” is defined as “Any use of force that creates a substantial risk of causing death or serious bodily injury, including but not limited to the discharge of a firearm.” (Pen. Code, § 835a(e)(1); Policy 300.1.1.) Under this definition, “deadly force” can consist of something other than firing a gun, and it does not have to actually *cause* injury or death; it is enough if it merely creates a substantial risk. It is reasonable to wonder if holding a loaded firearm to someone's head, while holding a TASER in the other hand and a flashlight clamped in an armpit, under volatile circumstances in which the subject might easily move or twitch or squirm, creates a risk of

⁶ In his discussion of policy 320.5.9, the investigator noted that Dep. Vega's conduct was “full of obscene and inappropriate profane language.” This presumably referred to Dep. Vega's frequent use of the word “fuck.” While we have no problem with encouraging deputies to avoid using that word in their dealings with the public or with disciplining them for doing so, we have observed that it is used quite commonly and that investigations of whether that rises to a policy violation are very rare. The investigator acknowledged that “moments in law enforcement do exist where cursing at subjects . . . [is] reasonable and justified,” and then concludes that the encounter between Dep. Vega and [REDACTED] was not such a moment. (IA Report 33.) We agree with both points.

death sufficient to bring the conduct within the definition of deadly force.⁷ If Dep. Vega's conduct qualified as deadly force, he was entitled to use it only to protect himself or someone else from what he reasonably believed was an imminent threat of death or serious bodily injury, or to apprehend a fleeing person who has committed a felony that threatened or resulted in death or serious bodily injury. It is indisputable that neither of those circumstances existed.

The IA investigation did not address the question of whether Dep. Vega's conduct amounted to deadly force. This was not a significant omission, but we note it by way of suggesting a point that could be worthy of consideration in future investigations.

The abandonment of [REDACTED] may have constituted a policy violation, which should have been addressed by the investigation.

When Dep. Vega drove away from the spot where he and Dep. Camarena had detained the first three subjects, one of them, [REDACTED],⁸ remained lying face-down on the ground at the side of the road. (Vega BWC 5:59.) While he must have been relieved by Dep. Vega's departure, it left him in a distinctly unenviable position. The last words that had been addressed directly to him by any deputy were "Just stay there," which Dep. Camarena said after ordering him to put his hands behind his back (which he did) and before turning his attention to the unidentified third suspect. (Camarena BWC 2:38.) [REDACTED] was never personally threatened with being shot if he did not comply, but he must have overheard Dep. Vega's unsubtle threat to shoot [REDACTED], and he had no reason to suppose that it didn't apply to him too. (Camarena BWC 0:43; Vega BWC 2:05.) After hearing two patrol cars drive off he might have guessed that nobody was watching him anymore and he could get up and go about his business, but he could not have known whether other deputies who might carry out Dep. Vega's threat were still present. It is not clear how long [REDACTED] stayed face-down at the side of the road before summoning up the courage to move, but that cannot have been an easy thing to do under the circumstances.

Policy 420.3 provides that a person who has been detained "shall not be detained longer than is reasonably necessary to resolve the deputy's suspicion." There is no question that [REDACTED] was detained, in the technical sense of being in a situation where "a reasonable person would have believed that he was not free to leave." (*United States v. Mendenhall* (1980) 446 U.S. 544, 555.) No reasonable person who had been told "get on the ground" by one law enforcement officer, and "put your hands behind your back" and (most significantly) "just stay there" by another, could conceivably consider himself free to leave. (Camarena BWC 0:43, 2:38.) By driving away and leaving [REDACTED] on the ground, Dep. Vega clearly demonstrated that his suspicion had been resolved. If [REDACTED] felt that he was not free to leave for any period of time after that, and if that feeling was reasonable, then the detention violated policy 420.3. Although the investigation noted that [REDACTED] "was not addressed or given further direction by Deputy Vega before leaving the scene" (IA Report 6), it was incomplete because it did not address the question of whether that omission constituted a policy violation.

⁷ It is particularly reasonable in light of the recent conviction former police officer Kimberley Potter, whose unsuccessful defense to the charge of the first-degree manslaughter of Daunte Wright was that she mistakenly discharged her firearm when she intended to discharge her TASER. Ms. Potter was not even holding both weapons at the same time.

⁸ Presumably. See footnote 2.

The level of discipline imposed

IOLERO audits IA investigations, but IA investigators do not decide what specific discipline to impose, or at any rate the investigator did not make that decision in this case. Since the material we audit does not include any record of SCSO's internal deliberations about the appropriate discipline, we have no basis to critique the process by which that determination is made. IOLERO's enabling regulation, Measure P, is silent on the question of whether we can make specific recommendations regarding discipline.

That said, we believe that Dep. Vega's misconduct in this case was serious enough to render the degree of discipline imposed on him ripe for discussion.

Dep. Vega should have been dismissed

There is no question that the department could have responded to this incident by firing Dep. Vega. Civil Service Commission rule 10.3(A) authorizes dismissal for, inter alia, "conduct which brings discredit to the County" (10.3(A)(3)), "incompetence or inefficiency" (10.3(A)(7)), "failure to meet reasonable work performance standards and requirements" (10.3(A)(14)), "hostile and discourteous treatment of the public" (10.3(A)(16)), and "willful carelessness of violation of safety rules and regulations" (10.3(A)(21)). Any of those provisions would have amply justified Dep. Vega's outright dismissal. Instead, he was disciplined with a 132-hour suspension, consisting of 80 hours of unpaid leave and 52 hours in the form of a 5% pay reduction for 1,040 hours. (Order of Suspension.) That was a significant degree of discipline, to be sure, but it fell short of termination.

The question of whether it was appropriate to retain Dep. Vega as a deputy is a close one. On the one hand, it is worth noting that nobody actually got hurt. ██████ most certainly *could* have gotten seriously injured or killed and it is a piece of luck that he didn't, but the reality is that he walked away from the encounter unharmed. (Camarena BWC 37:15.) It is not unreasonable to suppose that this was because Dep. Vega never intended to harm him, but only, in the investigator's words, to intimidate him. (IA Report 33.) Dep. Vega pointed out that he did not have his finger on the trigger of his firearm when he was threatening ██████ with it, and the BWC video confirms that assertion. (Vega Follow-Up Interview 21:20; IA Report 10, 11, 23; Vega BWC 10:12.) He acknowledged during both of his interviews that he understood that shooting ██████ would have been inappropriate so long as ██████ did not "somehow produce[] a weapon in his waistband or his pocket or something." (Vega Follow-Up Interview 19:59; Vega Interview 23:59.) All of this is consistent with the notion that Dep. Vega was accomplishing a legitimate purpose by wildly inappropriate means. That is not even close to an excuse, but it is somewhat better than accomplishing an illegitimate purpose, and might arguably merit somewhat less than the maximum available degree of discipline.

Moreover, it appears that Dep. Vega's misconduct was not motivated by animus or malevolence, but rather by fear. Dep. Vega was outnumbered by a group of people who might be Hispanic gang members, might have been armed, and probably didn't like him very much. He was scared; anyone would have been. He reacted by falling back on "you have to do what I tell you because I have a gun and you don't." That was very far from being the right thing to do, but it is nevertheless understandable, and it does not necessarily mean that he is an irredeemably bad person. Reacting badly to fear can, at least in theory, be resolved by training and experience.

On the other hand, Dep. Vega began threatening to kill people began immediately after he arrived on the scene. (Vega BWC 2:05 ["don't reach for anything, I'm going to shoot you" to ██████].) At that moment, all he knew was that some Hispanic males were fighting

somewhere in the area, which he had learned from Dispatch; that someone was in a prone position on the ground; that this person gave not even the slightest indication of being about to reach for anything; and that nobody other than another armed deputy was anywhere in sight. When he later threatened to “fucking shoot” [REDACTED] while aiming his firearm directly at [REDACTED] head, there was also nobody else within view and no apparent threat. (Vega BWC 10:03.) Dep. Vega’s threats to shoot [REDACTED] and [REDACTED] immediately after the forcible detention of [REDACTED] (Vega BWC 6:59, 7:19; Esponda BWC 1:13, 1:33) might perhaps have been motivated by a reasonable fear of being outnumbered by a crowd of knife-wielding gang-bangers, but his initial threat to [REDACTED] and his later threats to [REDACTED] (Camarena BWC 0:33; Vega BWC 9:34, 9:39, 10:05), uttered when there was no apparent danger, cannot be justified on that basis. The same is true of his decision to hold a gun directly to [REDACTED] head and then directly to his back, again at a time when there was no apparent threat to [REDACTED] safety or anyone else’s.

The severity of the discipline imposed leaves no doubt that SCSO takes Dep. Vega’s misconduct seriously, and we presume that in addition to the discipline, he will receive extensive training and mentorship directed at preventing a recurrence of the misconduct. We give the department due credit for that. However, on consideration of the factors mentioned above, we disagree with the decision to retain him. If his misconduct had consisted solely of threatening to shoot people in the context of a stressful and volatile crowd scene, we might feel differently about second-guessing the apparent conclusion that he has the potential to become a competent law enforcement officer despite this unfortunate incident. Under the circumstances, however, and particularly in light of the potential danger to [REDACTED] presented by Dep. Vega’s mishandling of his firearm and his TASER (policy 304.3(d)), we cannot agree that he has any claim on further employment with SCSO.

Dep. Vega’s continued employment has the potential to cause future problems.

Moreover, we feel obliged to point out that there are some potentially serious downsides to retaining Dep. Vega.

Anyone with hiring/firing authority over a law enforcement officer may be directly liable for negligent retention.

[REDACTED] several court decisions holding that individual government officers who have the authority to discipline violent police officers can be held liable for failing to do so if the officer injures or kills someone. The most applicable case is *Abrahamson v. City of Ceres* (1949) 90 Cal.App.2d 523, which holds that officials of a municipality may be liable “if they knew or had notice that the person appointed or employed was inefficient or incompetent to perform or render the services for which he was appointed or employed; or if they retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetency.” (*Id.* at p. 525, emphasis supplied.)

In Dep. Vega’s case, the potential liability is somewhat mitigated by the fact that, although the department has retained him, it has disciplined him significantly. There is a difference between not taking any action whatsoever and taking action that proves ineffective, and the 132-hour suspension is enough to forestall any future plaintiff from credibly claiming that the department simply ignored Dep. Vega’s inefficiency or incompetence. Still, it is notable that *Abrahamson* just says “retained,” which is exactly what has happened here. There is no question that SCSO has exposed itself to at least some increase in its potential liability if Dep. Vega should engage in similar misconduct in the future and someone is injured or killed as a

result. It would therefore be very much in the department's and the County's interest to make extremely sure that does not happen.

Brady, Pitchess, and impeachment at trial

In *Brady v. Maryland* (1963) 373 U.S. 83, the U.S. Supreme Court held that in a criminal case, the prosecution must disclose to the defense any evidence that might exonerate the defendant. In keeping with that holding, policy no. 605 (*Brady Material Disclosure*) provides that SCSO "will provide the prosecution with the name[s] of potential witnesses who may have information in their file that may adversely affect their credibility as a witness." In *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, the California Supreme Court held (in high-level summary) that law enforcement agencies must disclose an officer's personnel records when the defendant alleges in an affidavit that the officer has used excessive force or lied about the events surrounding the defendant's arrest.

Both the voluntary disclosure required by *Brady* and the disclosure in response to a court order on a *Pitchess* motion are likely to complicate any future criminal case that depends on Dep. Vega's testimony. The excessive force is bad enough, but the considerably worse problem is his failure to mention in his incident report that he told a suspect "Get on the ground or I'm going to fucking shoot you," pointed a gun at the suspect's head, and repeated "I'm going to fucking shoot you." (IA Report 8-9.) It is true that Dep. Vega claimed that this was an oversight – or rather, his lawyer claimed it and he agreed. (Vega Follow-Up Interview 33:06.) However, that claim is not credible enough to remove the omission from the category of "information . . . that may adversely affect [Dep. Vega's] credibility," especially given that he was found to have violated a policy that requires truthful reporting. (IA Report 33-34; policy 323.1.1.) Therefore, policy 605 requires disclosure of this incident to the prosecution in any case where Dep. Vega will be a witness, and the prosecution must in turn disclose it to the defense under *Brady*. Even if that does not happen, any competent defense attorney will find out about it anyway by means of a *Pitchess* motion. Either way, if Dep. Vega is called as a witness, a significant portion of his cross-examination is going to consist of questions like "Isn't it true that in 2021 you were disciplined for lying on a police report?" and "Can you explain why the jury should believe anything you say here today?" For the remainder of Dep. Vega's career, SCSO will be well advised to have him accompanied on his patrol duties by another deputy who can testify to any significant events without being subject to that type of impeachment.

Conclusions

We **agree** with the investigation's conclusions regarding Dep. Vega's policy violations. We **disagree** with the decision to discipline him with a suspension and loss of pay rather than with outright dismissal. We find the investigation **incomplete** because it did not address the question of whether Dep. Vega violated policy by leaving a detained subject lying on the road after Dep. Camarena had instructed him to stay where he was.

Recommendations

Use of Spanish

The interaction between [REDACTED] and Dep. Vega began spiraling out of control when, as Dep. Vega saw it, [REDACTED] "walk[ed] away from a 245 after I gave him commands to stop." (Vega Interview 7:12.) This clearly referred to Dep. Vega's initial interaction with [REDACTED], which consisted of Dep. Vega shouting at [REDACTED] and another suspect, from the opposite end of

the Boyes Blvd. bridge, “Hey, you two, get on the fucking ground! Get on the fucking ground or I’m going to shoot you guys!” (Vega BWC 6:59.) Dep. Vega’s perception that [REDACTED] was deliberately ignoring his commands came up repeatedly during his interviews. (Vega Interview 11:28 [“it was simply for not listening to me”], 16:44 [“there is no reason that an RP to a 245 would keep walking away from deputies that were telling him to stop. Even once I was right in front of him, he still wouldn’t listen to get on the ground”]; Vega Follow-Up Interview 13:59 [“he still was not listening to me”].) But the genesis of Dep. Vega’s over-the-top hostility toward [REDACTED] appears to have been the latter’s failure to obey that particular command.

[REDACTED] clearly spoke some English (see, e.g., Vega BWC 9:34), but it became apparent at his interview that his fluency was limited, which is why he needed an interpreter. ([REDACTED] Interview 0:32.) It is possible that [REDACTED] did not obey Dep. Vega’s initial command to get on the ground because it was given in English – very fast and hyped-up English, at that, and shouted from a considerable distance away – and he did not understand it. That is speculation, of course, but the fact that [REDACTED] responded “no” when Dep. Vega asked him if he spoke English lends it a certain amount of credibility. (IA Report 12; Vega BWC 11:51.) Dep. Vega speaks excellent Spanish (Vega Interview 36:03; see Camarena BWC 12:38 – 13:03), so it is somewhat surprising that he did not at least attempt to give his commands in that language, but he did not. If he had, this entire incident might have been avoided. Therefore, we recommend that Spanish-speaking deputies be urged to attempt to give commands in Spanish before acting on the assumption that suspects are deliberately ignoring them.

For a similar reason, we also recommend that deputies who do not speak Spanish be urged to learn a few key Spanish phrases. In a county with a Hispanic population of 27.3%, it seems likely that the minimal amount of time required to learn to say, for example, “ponte en el suelo ahora mismo” (“get on the ground right now”) could prove to be time well spent.

Documentation of prior incidents, or lack thereof

Dep. Vega began working for Central Marin Police Authority in 2016, and transferred to SCSO in May of 2019. (Vega Interview 1:02.) If he had been involved in any similar incidents during his time with Central Marin, or previously while employed by SCSO, the question of whether or not he should have been fired would be a considerably less close one.

The IA report does not say whether or not there were prior incidents. We presume that if there were any the report would say so, and that it is silent on the topic because the investigator determined that there were not. But it would be somewhat more satisfactory to not need to presume. We therefore recommend that in any future incidents where a deputy is found to have violated a policy in a manner that would affect the appropriate degree of discipline if it was not a first offense, the report explicitly state whether or not there were prior incidents, and describe any such incidents in detail.

Date: December 29, 2021
Respectfully Submitted:
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[REDACTED]
