



VALLEJO POLICE DEPARTMENT

Memorandum

To: Fabio Rodriguez, Police Lieutenant, #563

From: Shawny K. Williams, Chief of Police

Date: March 23, 2021

Subject: Notice of Intent to Discipline – 40-hour suspension
Re: IA#2020-10

Pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, Civil Service Commission Rule 18.1 and Administrative Rule 2.35, I am recommending that you be suspended, without pay, from your employment with the City of Vallejo. If my recommendation remains unchanged following completion of any pre-disciplinary review in this matter, then your 40-hour suspension (without pay) will be effective immediately following completion of the pre-disciplinary process and written notice of your suspension.

This notice is being issued based on the conduct and findings of Internal Affairs Investigation No. 2020-10. This investigation was conducted by Rudy Escalante of the Municipal Resources Group at the request of the Vallejo Police Department. The results of the investigation are described in further detail below.

The recommended discipline is based upon findings that you have committed the following violations of the Vallejo Police Department policy. Please note that each one of the listed violations standing alone could support my recommendation for discipline; the recommendation is bolstered by, but does not depend on, the finding of multiple violations.

IMPLICATED POLICIES

306. Officer-Involved Shootings and Deaths

306.5 CRIMINAL INVESTIGATION

The District Attorney's Office is responsible for the criminal investigation into the circumstances of any officer-involved shooting or death.

306.7 CIVIL LIABILITY RESPONSE

A member of this department may be assigned to work exclusively under the direction of the legal counsel for the Department to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation. All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

321 Standards of Conduct

321.2 Policy:

The continued employment or appointment of every member of the Vallejo Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

321.4 General Standards, states:

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. This policy is not intended to cover every possible type of misconduct.

321.5.6 Efficiency

- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.

801. Property and Evidence

801.6.4 Authority To Release Property

The Investigations Division shall authorize the disposition or release of all evidence and property coming into the care and custody of the Department.

FACTUAL BASIS FOR RECOMMENDED ACTION

- On or about June 2, 2020, a sworn Police Officer with the City of Vallejo discharged his duty weapon through the front windshield of a Vallejo Police Department vehicle, an unmarked Ford F150 truck, Police Vehicle #118, fatally wounding a suspect. The incident occurred within the Vallejo City limits and you were among the numerous investigative personnel called to the scene to assist in the investigation.
- On that date, you were the Lieutenant assigned to the Investigations Section and represented the Vallejo Police Department as the venue officer in the Solano County Officer Involved Fatal Incident Protocol.
- Because of your role, you were responsible for coordinating the investigation with District Attorney Chief Investigator Andre Charles. Prior to responding to the crime scene, you and Sergeant Matthew Mustard led a briefing identifying assignments that needed coverage and assigning team members to those specific tasks. Chief Investigator Charles was also in attendance at this briefing.
- Once the crime scene investigation was complete, you received a phone call from [REDACTED] who asked for permission to remove Vehicle #118 from the crime scene. You authorized removal of the vehicle, which was taken to the City's Corporation Yard.
- The June 2 Officer Involved Shooting resulted in large demonstrations in multiple Bay Area Counties, with a substantial focus on demonstrations in Vallejo. The protest and the shooting garnered national press coverage.
- Approximately two days after the shooting, [REDACTED] called to request permission to replace Vehicle # 118's damaged windshield and place the vehicle back into service. Despite the broad public focus on the shooting, you authorized [REDACTED] to replace the windshield with no direction to preserve the windshield as evidence.
- During your investigatory interview, you stated that you did not consult Chief Investigator Andre Charles or anyone else from the District Attorney's Office prior to giving this authorization. You also stated that you did not

consult with the City Attorney's Office seeking permission to replace the windshield or about preserving the windshield for any future civil litigation. You did not advise or consult with your captain about this critical decision.

- You told the investigator that you "didn't think twice" about giving [REDACTED] permission to have the windshield replaced, as you had determined there was no "evidentiary value" to the windshield, which you believed had been thoroughly photographed and processed at the incident scene.
- Shortly after you authorized the destruction of the windshield, an attorney representing the family of the suspect filed a preservation order including a request for preservation of the windshield from Police Vehicle #118.

INVESTIGATOR'S FINDING

Based on the foregoing facts, the Investigator considered the following question:

Did Lt. Rodriguez mishandle property/evidence from a crime scene that occurred on June 2, 2020, in relation to the Vallejo Police Investigation 20-06322, violating the Officer Involved Shootings & Deaths Policy, the Standards of Conduct Policy, and/or the Property and Evidence Policy in an incident involving the handling of a windshield from a City Police vehicle impacted by a weapon discharged by an on-duty Vallejo Police Officer, fatally wounding a suspect?

Mr. Escalante **Sustained** the finding that your conduct violated the identified policies. I **concur** with this finding.

As a Lieutenant in the Vallejo Police Department assigned to Investigations and as venue officer for the Solano County Fatal Incident Protocol, you had a responsibility to ensure the proper collection and maintenance of property which could be of evidentiary value in either the pending criminal investigation or potential civil litigation. As the investigator found, you "failed to provide proper foresight and direction to preserving the windshield for potential future examination in criminal or civil proceedings and had a duty as a risk manager representing the City of Vallejo."

You also failed to coordinate the handling of this potential evidence with the Offices of the District Attorney and City Attorney. As noted in the Countywide Protocol, "The District Attorney has final oversight of the criminal investigation." Countywide Protocol, Section III.A. During the Investigatory Interview, you acknowledged your role in coordinating the investigation with District Attorney Chief Investigator Andre Charles. Your failure to coordinate with Chief Investigator Charles or anyone at the District Attorney's Office violated Department Policy 306.5.

Similarly, your failure to coordinate with the City Attorney's Office on the potential implications of the destruction of the windshield in the event of civil litigation violated Department Policy 306.7. Furthermore, you failed to notify the captain to whom you report.

Although you noted your determination that the windshield held no "evidentiary value," you were unable to cite and the Investigator was unable to find, any Section of the California Evidence Code or California Penal Code which authorized you to independently determine whether an item had evidentiary value.

Taken together, your lack of consideration for the importance of preserving the windshield and your failure to coordinate with any of the other parties responsible for the investigation into the shooting or the potential litigation stemming from the shooting demonstrates a failure to follow and fulfill the responsibilities expected of any sworn officer in the Vallejo Police Department. These duties are especially important for individuals in a supervisory capacity, such as a Lieutenant. Therefore, I concur with the Investigator's conclusion that you violated the identified Vallejo Police Department Policies.

PERSONNEL FILE

In addition to the above specific violations, I have also reviewed and considered your entire personnel file with the Vallejo Police Department in making the above recommendation. You have been an exemplary employee without significant failures. These facts have been considered in this review process.

I have reviewed the following materials in connection with this recommendation:

1. The contents of IA file IA#2020-10
2. Solano County Officer Involved Fatal Incident Protocol, Dated May 12, 2016
3. The contents of your personnel file

All materials upon which the recommended disciplinary action is based are being provided to you with this NOTICE. You may also review your personnel file upon reasonable request by contacting the Professional Standards Division.

CONCLUSION

Based on all of the foregoing, I conclude that it is appropriate to issue a 40-hour suspension without pay.

WARNING AGAINST RETALIATION

This provision is to notify you that it is illegal and inappropriate to retaliate against any person who has participated in complaining or providing information regarding allegations of your misconduct. You may not contact or in any other manner retaliate against any individual who has provided information to the City of Vallejo regarding your above described conduct.

RIGHT TO RESPOND


If you choose to appeal this proposed discipline, the first step in the process is to notify the Chief of Police that you request a pre-disciplinary (Skelly) hearing at which you may respond, at your option, either orally or in writing or both. You have six (6) working days from receipt of this Notice, to contact the Chief of Police and request such a hearing (refer to City of Vallejo Administrative Rule Number 2.35, Attachment A). You may be represented at the pre-disciplinary hearing by a representative of your choice including, but not limited to, an attorney, another officer, or a member of the Vallejo Police Officers' Association.

Your failure to provide a written response or to request a pre-disciplinary conference will constitute a waiver of your right to provide a response. Accordingly, the Chief of Police's decision to either sustain, modify, or reject this recommendation will be based upon a review of this Notice of Intent and its attachments. The Chief of Police shall provide you with written notice of his determination within 10 working days of the pre-disciplinary conference.


Regardless of whether a Skelly hearing is held, if I issue a formal letter imposing discipline, you may still choose to appeal. At that time, you are required to notify the Human Resources Director within five (5) calendar days of your intent to exercise your post-disciplinary appeal rights (see VPOA MOU Section 30 J). Failure to appeal within the time specified shall constitute a waiver of your right to appeal.

 #563
Employee FABIO RODRIGUEZ

3/23/21
Date

 #550
Personal Service By ROBERT KNIGHT, LT.

03/23/21
Date

 #587
Witness(es) CAPRIO TODD TRIBBLE #587

03/23/21
Date