INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME: JAMES MUTUKU

POST ID NUMBER: C25-A69

EMPLOYING AGENCY: RIVERSIDE POLICE DEPARTMENT

POST CASE NUMBER: POST2303451

WRITTEN BY: LAW ENFORCEMENT CONSULTANT DAVE PELETTA

DATE: 6/3/2024

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I. Executive Summary

The Peace Officer Standards and Accountability Division (hereafter “Division”) finds that Sergeant James Mutuku (hereafter “Respondent”) lied and provided misleading statements to Internal Affairs investigators when questioned about whether he placed threatening flyers directed at an officer he was having issues with at work.

Respondent was questioned by Internal Affairs investigators on two separate dates (January 19, 2023, and February 21, 2023). During the first interview, Respondent denied printing, placing, or even seeing the flyers. Respondent was confronted with the fact that he was seen entering the police station minutes prior to the flyer being saved on a computer and printed. Respondent continued to deny any knowledge or involvement. Respondent was asked if he heard who placed the flyers, Respondent changed his response from “no” to acknowledging he had heard rumors that people believed he had placed the flyers. The Respondent denied that his fingerprints would be located on a flyer.

One day after the initial interview, fingerprint examiners contacted internal affairs to advise they located the Respondent’s fingerprints on the flyer located in a vinyl frame. Respondent was interviewed a second time and maintained he did not print, put up, or place the flyer in the vinyl frame. The Respondent could not provide any explanation as to how or why his fingerprints were found on the flyer and was adamant that he never saw the flyer.

Respondent was terminated for being dishonest surrounding his answers during the internal affairs process.

II. Background

a. Identity of Respondent

At the time of the events at issue, the Respondent was employed as a Police Sergeant with the Riverside Police Department.

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

The Respondent began his employment with the Riverside Police Department on January 12, 2009, as a full-time peace officer. He was promoted to the rank of Police Sergeant on July 10, 2020.

The Respondent has no prior allegations of serious misconduct on record with POST.

c. Prior Employment History

The Respondent does not have any additional law enforcement appointments in California.

d. Peace Officer Certification

The Respondent is assigned POST ID C25-A69. He received the following peace officer certificates from the Commission on Peace Officer Standards and Training (POST):[1]

- Basic (March 28, 2011)
- Intermediate (July 28, 2011)
- Advanced (September 14, 2015)
- Supervisory (July 28, 2022)

[1] (Attachment A) Respondent's POST profile

e. The Present Allegations of Serious Misconduct

1. On October 26, 2022, an internal complaint was initiated within the Riverside Police Department.

2. Following an internal affairs investigation, and two interviews with the Respondent, an allegation of dishonesty against the Respondent was sustained.

3. On October 26, 2023, the Riverside Police Department reported the allegations of serious misconduct against the Respondent to POST pursuant to California Penal Code Section 13510.9.

The Riverside Police Department sustained three violations against the Respondent:

330.3.5(z) Performance

Any on-duty or off-duty conduct which is contrary to good order, efficiency or morale, or which reflects unfavorably upon the Department or its members.

322.3.4 Retaliation

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because the person has engaged in protected activity, filed a charge of discrimination, participated in an investigation, or opposed a discriminatory practice. Retaliation will not be tolerated.

330.3.5(ad) Dishonesty

Giving false or misleading statements or misrepresenting or omitting material information in connection with any investigation or in the reporting of any department-related business.

An additional allegation of retaliation was also part of the Riverside Police Department's internal investigation. This was specific to the allegation that the

Respondent used his hand to simulate a handgun and motioned as if firing twice at the Complainant[2] in retaliation. This was not sustained.

III. Investigative Process

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included a review of the Riverside Police Department's administrative investigation which included interviews with twenty-one witnesses and four subject officers.

Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt."

This report is necessarily summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to that evidence that I believe establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

On October 26, 2022, an internal complaint was initiated within the Riverside Police Department, which concerned a number of allegations, including the allegations relevant to this report. An Internal Affairs investigation followed. The assigned Internal Affairs investigators conducted interviews of twenty-four personnel from the Riverside

[2] The name of the complaining party is not disclosed in this report because the complainant's identity is protected by Penal Code section 832.7, subdivision (b)(6)(B). Additionally, the Riverside Police Department investigated certain allegations concerning the complaining party's own conduct. These allegations are not subject to disclosure pursuant to Penal Code section 832.7. For this separate and independent reason, the name of the complaining party is withheld. (See Pen. Code § 832.7, subd. (b)(5).)

Police Department and prepared an 155-page investigative report, which detailed the investigators' findings.[3] The Respondent became one of the subjects in the Internal Affairs investigation.

The Respondent was sworn in with the Riverside Police Department on January 12, 2009, as a full-time peace officer. He was promoted to the rank of Police Sergeant on July 10, 2020. At the time of this incident, he was assigned as a patrol supervisor.

Officer-1[4] was sworn in with the Riverside Police Department on October 6, 2017, and promoted to the rank of detective on December 22, 2022. She is married to the Respondent. At the time of this incident, Officer-1 was assigned to patrol.

Complainant was sworn in as a peace officer with the Riverside Police Department on November 11, 1999. At the time of this incident, he was assigned to patrol.

Shortly after shift change in July 2022, the Complainant complained to Sergeant Dawson Smith about Officer-1 (who was afforded lactation breaks). Officer-1 was on the same patrol team as the Complainant. During this time, Officer-1 and Officer-2[5] rode together as partners. An arrangement made with supervision was that Officer-2 would leave Officer-1 at the station during these breaks, should a "hot call" come out or if an officer needed back up. Officer-2 would also handle any phone reports or write reports during this time.

[3] (Attachment B) Administrative Memo PA2211047 [Complainant's initials omitted].
[4] The name of Officer-1 is not disclosed in this report because the allegations of misconduct against Officer 1, which are referenced in this report, do not relate to a sustained finding against the officer that is itself subject to disclosure. (See Pen. Code § 832.7, subd. (b)(5).)
[5] The name of Officer-2 is not disclosed in this report because the allegations of misconduct against Officer 2, which are referenced in this report, do not relate to a sustained finding against the officer that is itself subject to disclosure. (See Pen. Code § 832.7, subd. (b)(5).)

The Complainant claimed that when Officer-1 and Officer-2 were not on the street, this created a safety issue for he and his partner (Officer Spencer Weddle). The Complainant went on to claim that he and Officer Weddle were left to handle the beat by themselves. The Complainant said in his interview with internal affairs, “we’re ripping our hair out, because we’re getting our butts kicked.”[6]

On September 16, 2022, the Complainant filed a complaint with Internal Affairs and alleged Officer-1 and Officer-2 failed to take a police report on a call they handled at LA Fitness (occurred on September 15, 2022). The investigation concluded that no policy violation(s) occurred.

On October 1, 2022, the Complainant said he worked at a swap meet and saw the Respondent. The Complainant said, “So I saw (Respondent) Saturday as I walked out at 7:00 o’clock in the morning, and I said, ’Hello,’ and he walked by me, and he said, ’You’ll see, you’ll see.’ And then he walked into the sergeants’ office. So I’m like, ’Here we go.’ He’s gonna retaliate. I know it. I’ve been doing this a long time. He’s going to retaliate. That was Saturday. Sunday, I don’t see it. Monday, I come in. There’s a flyer in my mailbox of a rat and it says, ’Rat Buster.’”[7]

[6](Attachment C) Transcript_ Complainant Interview 11-8-22(1), Pg 2 of 62, Line 14-15 & (Attachment D) _ Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:01:56).
[7] (Attachment C) Transcript_Complainant Interview 11-8-22(1), Pg 10 of 62, Line 2-7 & (Attachment D) _ Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:10:54).



[8]



[9]

[8] N1480020.jpeg (Attachment E)
[9] N1450021.jpeg (Attachment F)



[10]



[11]

The Complainant said he researched the term “Rat Busters” and learned it referred to an exterminator’s rifle used to shoot rats. The Complainant said in his Internal Affairs

[10] N1480022.jpeg (Attachment G)
[11] N1480023.jpeg (Attachment H)

interview, “That-that’s a threat on my life. That’s a rifle used to kill a rat.”[12] The Complainant knew this was retaliatory for him filing the Internal Affairs complaint against Officer-1.

The Complainant said he worked another swap meet on October 8, 2022. He reported to investigators that he saw the Respondent and said, “Hello James, how ya doing?” The Complainant further described the encounter as follows: “And I came-went and changed. When I came back, I said, ‘James, I checked my mailbox, and there’s nothing in it,’ and I walked out. Well, he could fe-he walked out the other door and confronted me and said, ‘Your voice is trembling. What’s wrong with you?’” [13]

The Complainant told investigators that he responded, “My voice is trembling because a ‘Rat Buster’ is a rifle used to kill rats, and you threatened my life.”[14] The Complainant reported that the Respondent then turned, “…he formed a – a handgun with his hand and pointed it at me and acted like he fired it twice.”[15]

In the Respondent ’s Internal Affairs interview (January 19, 2023), Respondent described the encounter differently. According to Respondent, the Complainant said “…something along the lines of, ‘I checked my mailbox. Uh, it’s clear. Thanks, guys.’ something along those lines...”[16] Immediately after the Complainant said this, Respondent then exited the station to confront the Complainant, and said to the Complainant: “Hey, have a good day, [Complainant’s initials omitted]. Have a good

[12] (Attachment C) Transcript__Complainant Interview 11-8-22(1), Pg 34 of 62, Line 10 and 11 & (Attachment D) _ Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:01:56).
[13] (Attachment C) Transcript__Complainant Interview 11-8-22(1), Pg 15 of 62, Line 4-7 & (Attachment D) Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:17:38).
[14] (Attachment C) Transcript_Complainant Interview 11-8-22(1), Pg 62 of 62, Line 6-7 & (Attachment D) Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:17:53).
[15] (Attachment C) Transcript_Complainant Interview 11-8-22(1), Pg 34 of 62, Line 15-16 & (Attachment D) Complainant_Interview_1644KC_11_08_2022_03_43_PM (minute 0:18:02).
[16] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 19 of 38, Line 19-21 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:28:22).

day, dude. Be safe out there."[17] According to Respondent, the Complainant's reaction to Respondent's comment was as follows: "…And then he says-he turns immediately beet red, starts charging at me, but doesn't come all the way towards me…and says, 'I know you put that [expletive] thing in my mailbox.'"[18] According to Respondent, however, Respondent pointed his finger at the Complainant, "'Cause I had pointed at him to have a good day."[19] but Respondent denied he used his hand/finger to simulate a handgun and motion as if firing it.[20] There were no independent witnesses or surveillance videos that captured this encounter.

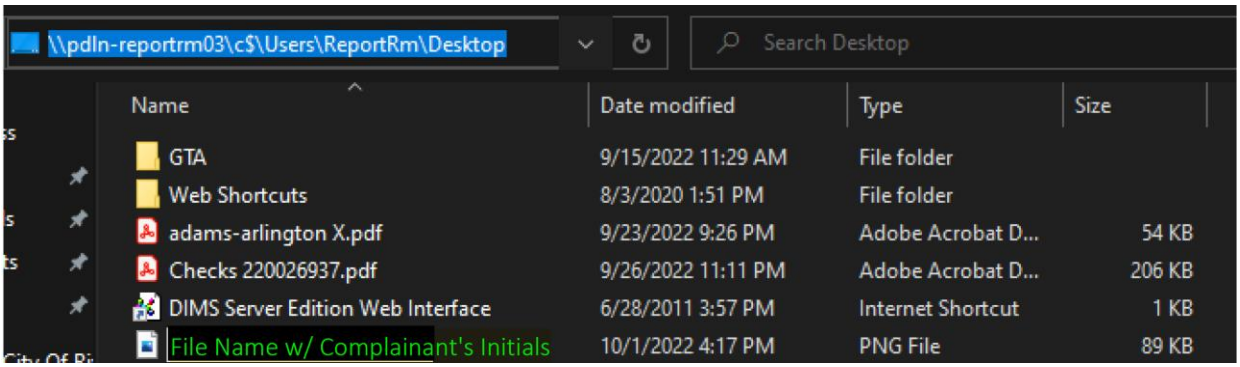
On October 4, 2022, Lieutenant Eric Meier was made aware of the flyer and removed one from the men's locker room and the one from the Complainant's mailbox. When Lieutenant Meier asked if the Complainant wanted to open an (Internal Affairs) investigation, the Complainant responded no, as he feared further retaliation.

That same day, Lieutenant Meier told Division Commander Chad Milby about the incident. Commander Milby directed Lieutenant Meier to investigate 'informally' and outside Internal Affairs Division.

On October 5, 2022, Lieutenant Meier contacted Information Technology (IT) and requested print queues on the Lincoln Street Police Station printers. IT personnel were able to determine the flyer was saved to a computer in the report writing room as a .png file, using the Complainant's initials for the file name on October 1, 2022, at 4:17 pm (below photo).[21] The flyer was printed at 4:36 pm with the printer located inside the

[17] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 20 of 38, Line 1-6 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:28:54).
[18] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 20 of 38, Line 1-6 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:28:54).
[19] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 20 of 38, Line 20-21 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:29:47).
[20] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 31 of 38, Line 13-21 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:43:05).
[21] (Attachment K) Email_from_Meier_re_Print Queue (1)

report writing room. IT staff opened the document, and it was the “Rat Busters” flyer. Lieutenant Meier attempted to determine who had logged into the computer from which the flyer was printed, but the responsible party used a generic log in.



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Note: On January 4, 2024, I spoke to Internal Affairs investigator (Lieutenant) Karla Corbett who was the lead investigator to get clarification on the generic password. She explained that it is a password given/used by all sworn staff to access the computers in the report writing room. The purpose is to allow officers to write reports with the software on these computers. All sworn staff also have an individual password they use to log into departmental computers that contains personal files/documents and software programs specific to their assignments.

Lieutenant Meier pulled video from the Lincoln Street Police Station. The video showed the Respondent driving into the back lot of the Lincoln Street Police Station. He exited his vehicle at 4:05 pm and walked toward the station. At this point, the investigation was turned over to Internal Affairs.

As part of the Internal Affairs investigation, patrol rosters were inspected for all officers listed as either witness officers or subjects of the investigation, who were working on October 1, 2022. Only three people listed in the investigation were on the roster: the Respondent, and two other officers. The first officer was assigned unit #3839 and GPS

[22] The file name is redacted in order to preserve the confidentiality of the Complainant’s name.

showed her vehicle on a call far from the Lincoln station at 4:17 pm. Telestaff showed the second officer ended her shift at 4:00 pm.[23]

The Internal Affairs investigators also reviewed GPS records to determine what police units were at the Lincoln Street Police Station around the time that the flyer was saved to a computer in the report writing room and printed. The Internal Affairs search of GPS records was broader, and not limited to officers who were listed as witness or subject officers in the investigation. According to the Internal Affairs report, "[t]he only two units with automated vehicle locator (AVL) information at the Lincoln Station between 4:00 pm and 4:30 pm, on October 1, were S30 (Sergeant Tanner Paes) and S53 (J. Mutuku). Paes was not mentioned by any officer interviewed in this investigation."[24]

On December 5, 2022, Internal Affairs investigators met with Supervising Forensic Specialist Reporting Party 1[25] to have her conduct a latent print search of the "Rat Busters" flyers. Reporting Party 1 later processed the two flyers and recovered several latent fingerprints. The fingerprints were later submitted to the Riverside Cal-ID crime lab for direct comparison to the known prints of officers named in this complaint investigation.

On January 19, 2023, the Respondent was interviewed by Internal Affairs regarding this investigation. He made the following statements:

- The Respondent denied he ever saw the flyers but said he heard about them. Respondent said, "I've never… I've never seen this flyer."[26] When the

[23] (Attachment B) Administrative Memo PA2211047 [Complainant's initials omitted] Pg 17 of 155, Line 6-13.
[24] (Attachment B) Administrative Memo PA2211047 [Complainant's initials omitted] Pg 17 of 155, Line 21-25.
[25] The name of Reporting Party 1 is not disclosed in this report in order to preserve the anonymity of a non-peace officer witness. (Penal Code § 832.7, subd. (b)(6)(B).)
[26] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 26 of 38, Line 18 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:36:53).

Respondent was asked if he heard who might have placed them, initially, he said no. The Respondent then said he heard the Complainant placed them. The Internal Affairs investigator then asked, "You didn't place 'em?"[27] The Respondent replied, "No."[28]

- The Respondent said that he used his phone to look up "Rat Busters" and acknowledged it was a gun used by exterminators to shoot rats.
- In response to asking if his fingerprints would be on the flyers, the Respondent answered: "No. They're not going to be on those."[29] The Internal Affairs investigator asked if the Complainant was the only person he heard might have placed the flyers. He answered, "Yeah." The Respondent said everybody was saying the Complainant put the flyers up. The Internal Affairs investigator asked if the Respondent heard anyone say that Respondent might have placed them. He answered, "Yes. I've heard people say I might've placed them."[30] *(This directly contradicted the Respondent's previous two answers regarding who may have placed the flyers.)*
- The Respondent was advised that Lieutenant Eric Meier pulled a print log and was able to determine the flyer was printed on October 1, 2022, at 4:17 pm in the report writing room at the Lincoln Street Police Station printers. The Respondent was informed that Lieutenant Meier also pulled video which showed the Respondent pull into the parking lot and then walk into the station at 4:05 p.m. An Internal Affairs investigator told the Respondent the flyer was printed approximately twelve minutes after he walked into the station. The Respondent can be heard laughing when confronted with this information, and then

[27] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 8 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:37:28).
[28] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 9 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:37:28).
[29] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 11 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:37:34).
[30] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 27 of 38, Line 16 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:38:46).

responding, “Okay.”[31] The Internal Affairs investigator asked if he had any explanation and the Respondent said “no.” The Internal Affairs investigator again asked about the computers in the report writing room and the Respondent said, “I haven’t used those computers in-besides, again, an officer telling me to look over their report or a s-directed reason, I’d never go in and use one of those computers to log onto ‘em or do anything with ‘em.”[32]

- When asked if the Respondent ever manipulated his hand to resemble a firearm and simulate firing at the Complainant, the Respondent said “no” and said he believed this would have been captured on camera. The Respondent said he only pointed at him and was “flabbergasted” when the Complainant suggested that Respondent simulated firing at the Complainant with his hand.[33]

On January 20, 2023, the Internal Affairs investigator received an email from the Riverside County Sheriff’s CAL-ID Unit with an informal report that positive identification was made, and that the Respondent’s latent prints were collected from the “Rat Busters” flyer found in the vinyl frame in the locker room. This directly refuted the Respondent’s statement to Internal Affairs on January 19, 2023.

On January 24, 2023, the Internal Affairs investigator spoke with Fingerprint Expert Reporting Party 2[34] to follow up on the final report. The Internal Affairs investigator asked how certain Expert Reporting Party 2 was that the prints belonged to the Respondent. Expert Reporting Party 2 informed the Internal Affairs investigator that she and two additional fingerprint experts examined the prints and concluded the prints

[31] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 30 of 38, Line 13 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:41:59).
[32] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 30 of 38, Line 20-22 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:42:1).
[33] (Attachment I) Transcript Mutuku Interview 1-19-23, Pg 31 of 38 Line 14- 26, Pg 32 of 38 Line 1-2 & (Attachment J) J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM (minute 0:43:10-0:43:50).
[34] The name of Reporting Party 2 is not disclosed in this report in order to preserve the anonymity of a non-peace officer witness. (Penal Code § 832.7, subd. (b)(6)(B).)

belonged to the Respondent.[35]

Note: I spoke with Reporting Party 1, Senior Forensic Specialist with the Riverside Police Department. She confirmed that on the front side of flyer placed inside the vinyl casing, Sergeant Mutuku's left thumb print was found on the upper left corner and his right thumb print was located on the middle edge of that same side of paper.

On February 21, 2023, the Respondent was reinterviewed by Internal Affairs and confronted with the information that his fingerprints were located on one of the flyers. He made the following statements:

- The Respondent could offer no explanation as to why his prints were located on the flyer that had been encased within the vinyl frame found in the men's locker room. [36]
- The Respondent maintained throughout his interview he did not post the flyers and had never seen them.[37]

The following are additional excerpts from the Respondent 's second interview:

- The Respondent admitted he was frustrated with the Complainant and did not like him. When asked if this was enough to drive him to place the flyers, the Respondent denied it was. The Respondent said, "Eh, yeah, I don't-it-it was not and cannot explain why my fingerprints would be on there. I don't-"[38]
- The Respondent was presented with the report from CAL-ID which showed his fingerprints were located on the flyer. The Respondent said, "I understand, but

[35](Attachment L) Email_from_RSO_CAL-ID.
[36] (Attachment M) Transcript Mutuku Interview 2-21-23, Pg 4 of 18, Line 1 - 2, Pg 4 of 18 Line 25 - 26 & (Attachment N) J._Mutuku_Interview_(2),1644KC_02_21_2023_03_00_PM (minute 0:03:52-0:04:33 & 0:05:30-0:06-50).
[37] (Attachment M) Transcript Mutuku Interview 2-21-23, Pg 6 of 18, Line 8 and Line 10 & (Attachment N) J._Mutuku_Interview_(2),1644KC_02_21_2023_03_00_PM (minute 0:05:27-0:08:20).
[38](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 4 of 18, Line 1 and 2 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:05:33).

I'm telling you that I did not put the flyer up. I do not know why my fingerprints are on the flyer. I hadn't seen the flyer. I've never seen the flyer."[39]

- The Respondent maintained he did not print the flyers, put up the flyers, did not put them in the vinyl frame, and did not see them.
- The Respondent said, "I a hundred percent get it, but I… again, I'm standing by what I said. I did… I didn't print the flyer, I've never seen the flyer, and I didn't put the flyer up or touch this vinyl case that you're talking about." [40]
- The Respondent understood the evidence presented against him. He said, "Uh, I-I understand what you're saying. I understand the evidence you've presented reference this. It's black and white. I'm not stupid. I get it. I get all the circumstantial stuff. I understand that, but my answer's not gonna change. From the first interview, from the three times I've said it now, it's gonna be the same answer."[41]

The Internal Affairs investigator advised Respondent that the vinyl frame, in which the "Rat Buster" flyer was found was not an item stocked at the Department. There was DNA found on the vinyl frame; however, no comparative sample. Internal Affairs investigators asked the Respondent if he would be willing to voluntarily supply a sample of his DNA to confirm his DNA would not match the DNA found on the frame. The Respondent said, "(Unitelligible) could -could you just clar-'cause I don't-clarify exactly what this case is, 'cause I don't-location-everything else that you're saying where this thing was posted, at 'cause, gain, I don't-I don't know-it."[42]

[39](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 4 of 18, Line 25 and 26 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:06:42).
[40](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 8 of 18, Line 22-24 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:10:44).
[41](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 11 of 18, Line 1-5 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:14:09).
[42](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 12 of 18, Line 19-21 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:16:26).

The Respondent was again asked later in the interview if he would provide a voluntary DNA sample, he said, “Uh, uh, yes, I-I’d have no (unintelligible) problem doing that, but again, I’m not gonna say that I have never touched a locker in the men’s locker room, walking by, touched a locker. I’m not going to say that. So these are things that are just on these lockers-it’s just on there? A-again, I don’t-I-I may have touched, in my career here, a locker on my way out, walking and touching a locker.”[43]

At the conclusion of the interview, the Respondent stated, “before giving my DNA, I’d like to consult, uh, an attorney, ‘cause that just seems like a lot.”[44] Ultimately, the Respondent never consented to providing this sample.

On May 13, 2024, at approximately 1840 hours, I interviewed Respondent. He was represented by Attorney Wayne Smith with Brad Gage Law, APC. Respondent continued to deny any involvement with printing or posting the flyers.

V. Analysis and Findings

a. Does the alleged conduct violate California Regulation 1205(a)(1) – Dishonesty?

The Serious Misconduct category of Dishonesty is defined in Section 1205(a)(1) as follows:

> Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to false

[43](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 14 of 18, Line 15-19 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:18:19).
[44](Attachment M) Transcript Mutuku Interview 2-21-23, Pg 18 of 18, Line 9-10 & (Attachment N) J._Mutuku_Interview_1644KC_02_21_2023_03_00_PM (minute 0:29:45).

> statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct. …

There is clear and convincing evidence that the Respondent engaged in dishonesty as defined in Penal Code 13510.8(b)(1) and California Regulation 1205(a)(1). For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true." This is based on the facts revealed in Riverside Police Department's Internal Affairs investigation and summarized further below.

California Regulation 1205(a)(1) also provides guidance when deciding whether an act of Dishonesty warrants suspension or revocation of a peace officer's certification. In this regard, California Regulation 1205(a)(1) provides as follows:

> …In considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest, and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.

This investigation revealed the following facts:

- The Respondent allowed his personal feelings of dislike and impulse to defend his wife (Officer-1) to severely impair his judgment.
- The question of who was responsible for posting the "Rat Busters" flyers was the central purpose for Internal Affairs' investigation. Accordingly, getting to the truth

about who posted the flyers was a material and significant fact the investigators sought out to determine.

- The Respondent created, printed, and posted flyers with a picture of a crossed-out rat and the words, “Rat Busters” written below that image.
- The Respondent placed the “Rat Busters” flyers in the Complainant’s (work) mailbox and areas in the men’s locker room where the Complainant frequented.
- The Respondent contradicted himself when asked in his first interview with Internal Affairs if he had heard he placed the flyers. The Respondent initially said “no”, and later admitted in that same interview that he heard rumors that he was responsible for placing the flyers.
- The Complainant saw the flyers and researched the term “Rat Busters”. He learned it was a rifle exterminators used to kill rats.
- The Complainant stated that he took the information on the flyers as a direct threat and feared for his life.
- The Respondent acknowledged that he had a brief conversation with the Complainant on October 8, 2022, and that he asked the Complainant why the Complainant’s voice was trembling. The Complainant reportedly answered: “you threatened my life.”
- The Respondent was a sergeant for approximately two and a half years at the time this incident took place and as such, was held to a higher degree of responsibility and accountability within the Riverside Police Department.
- The Respondent committed these acts while he was on duty as a police supervisor.
- The Respondent was interviewed two separate times by Internal Affairs. In both interviews, the Respondent was dishonest by adamantly denying that he created, printed, saw, touched, or placed the flyers. Respondent continued to be dishonest when I interviewed him on May 13, 2024. The evidence establishes with a high degree of probability that the Respondent willfully denied his involvement with the flyers, with the intent to deceive the Internal Affairs investigators and myself.

- Internal Affairs investigators asked the Respondent if his fingerprints would be found on the flyers and the Respondent said, “no.”
- Fingerprint examiners located the Respondent’s fingerprints on the paper (flyer) that was found inside the vinyl casing.
- When the Respondent was confronted with the fact that his fingerprints were located on the flyer, he could offer no explanation and again willfully attempted to deceive the investigators by insisting he had never seen them.
- The Respondent continued to be intentionally dishonest with Internal Affairs investigators when he said no fewer than ten different times in his second interview that he had nothing to do with the flyers and that his answer would not change.
- During the second interview with the Respondent, Internal Affairs investigators repeatedly asked the Respondent to be honest; specifically, after his responses to questions surrounding his fingerprints being found on a flyer. Despite the investigators’ specific requests for honesty, the Respondent willfully continued to lie. The Respondent was terminated from the Riverside Police Department on July 12, 2023, resulting from three sustained findings (Conduct Unbecoming of an Officer, Retaliation, and Dishonesty).

Prior to Respondent’s termination in light of these sustained findings, Respondent had received no discipline in the past five years.

On October 12, 2023, a *Skelly* hearing was conducted and attended by the Respondent, Saku Ethir (Respondent’s attorney), Deputy Chief Frank Assumma and Police Chief Larry Gonzalez. In a memorandum dated October 19, 2023, Police Chief Gonzalez notified the Respondent that his decision was to terminate Respondent’s employment with the Riverside Police Department. This memorandum was signed by the Respondent on October 20, 2023.

Chief Assumma noted in this memorandum to the Respondent, “Your actions in the related incident amount to serious violations of the trust and confidence our community places in its police department and the integrity expected of a sergeant in the Riverside Police Department.”[45]

On November 29, 2023, POST received a supplement from the Riverside Police Department noting that the Respondent withdrew his appeal to the *Skelly* hearing findings. The withdrawal date was November 7, 2023.

Respondent is not currently employed as a peace officer. This investigation revealed that the Respondent had a motive to place/post the flyers and both circumstantial and direct evidence supported that he was responsible for them. There is clear and convincing evidence that the Respondent repeatedly lied to Internal Affairs investigators. Respondent chose to repeatedly lie again when I interviewed him on May 2024. The motivation for the Respondent to lie was to cover up his actions at work in which Respondent threatened another employee.

The clear and convincing evidence standard was met in determining whether the evidence supports that the Respondent was dishonest in his verbal statements during his two separate interviews with Internal Affairs investigators and again in my third interview with Respondent concerning his conduct.

VI. Supporting Evidence and Documentation

- Attachment A JamesMutuku_ProfileReport (5)
- Attachment B Administrative Memo PA2211047 [Complainant’s Initials]
- Attachment C Transcript_Complainant Interview 11-8-22(1)
- Attachment D Complainant_Interview_1644_11_08_2022_03_43_PM

[45] (Attachment O) Mutuku NOD Signed, Pg 1, Paragraph 3.

- Attachment E N1450020.jpeg
- Attachment F N1450021.jpeg
- Attachment G N1450022.jpeg
- Attachment H N1450023.jpeg
- Attachment I Transcript_Mutuku Interview 1-19-23
- Attachment J J._Mutuku_Interview_1644KC_01_19_2023_11_16_AM
- Attachment K Email_from_Meier_re_Print Queue (1)
- Attachment L Email_from_RSO_CAL-ID
- Attachment M Transcript_Mutuku Interview 2-21-23
- Attachment N J._Mutuku_Interview_(2),1644KC_02_21_2023_03_00_PM
- Attachment O Mutuku NOD Signed

VII. Findings

The evidence meets the clear and convincing standard to support the allegation of dishonesty as defined in Penal Code 13510.8. Based on the Regulation 1205 factors outlined above surrounding willfulness and materiality, the Peace Officer Standards Accountability Division finds that revocation, rather than suspension, is the appropriate sanction in this case. Reasonable grounds, therefore, exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation.