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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

JEFF GREENWOOD,

Plaintiff and Appellant,

v.

EL DORADO COUNTY CIVIL SERVICE
COMMISSION,

Defendant and Respondent;

COUNTY OF EL DORADO et al.,

Real Parties in Interest and
Respondents.

C066713

(Super. Ct. No.
PC20090576)

By this appeal, plaintiff Jeff Greenwood (Greenwood) seeks reinstatement as a deputy with the El Dorado County Sheriff's Department (Department). Greenwood's dismissal was ordered by Sheriff Jeff Neves, and sustained by the El Dorado County Civil Service Commission (Commission). Greenwood then filed a

petition for writ of administrative mandamus to overturn the Commission's decision. (Code Civ. Proc., § 1094.5.) The trial court denied relief, and Greenwood timely filed this appeal.

Greenwood went to comfort a fellow officer who evidently had long-term trauma from an on-duty shooting in which she and two other deputies had been wounded, and their assailant was killed. Greenwood witnessed the off-duty officer smoking marijuana and offering it to him, but did not timely report her. He later called a dispatcher to complain about the ensuing internal affairs investigation, and disparaged the Department and undermined his own credibility during that recorded conversation.

On appeal, Greenwood contends his termination was too harsh a penalty for his transgressions. Our task is not to determine whether we would have reached the conclusion that his misconduct warranted dismissal, but rather to determine whether the penalty imposed by the Sheriff and affirmed by the Commission represents an abuse of discretion. As we shall explain, we find no abuse of discretion. Accordingly, we shall affirm the judgment.

BACKGROUND

Although Greenwood challenges the penalty of termination and not the facts surrounding his misconduct, throughout his briefing he skews the facts in his favor. Accordingly, in addition to describing the factual findings of the Commission, we also describe some of the evidence supporting those findings.

*Commission Findings**A. Deputy M Incident*

On April 2, 2008, at about 1:30 a.m., after his patrol shift was over, Greenwood visited Deputy M, a close friend, because he had been told M was suicidal.¹ When Greenwood arrived, M was extremely agitated. She then calmed herself down by smoking marijuana, and offered some to Greenwood. Although he refused it, he did not seize it, call for assistance, or promptly report her criminal activity.² Greenwood left at about 5:00 a.m., slept for several hours, and then began his next shift.

Greenwood testified M was his best friend and the godmother to his son, the marijuana seemed to help her, and although he knew he was required to report her criminal activity, he was torn about to whom he should report it.

Early on the morning of April 3, 2008, Greenwood was asked to go to Marshall Hospital to assist with M, who had been taken there by others. Greenwood testified Sergeant Byers was at the hospital, and that *after* Greenwood learned M had already disclosed her drug use, he confirmed that he had seen her use

¹ The need to conceal M's identity would seem to have been obviated by press coverage of the prior shootout and of her subsequent suicide. Nonetheless, we will call her M, as do the parties.

² The Commission found M's conduct in possessing the marijuana and offering it to Greenwood constituted two misdemeanors. (Health & Saf. Code, §§ 11357, subd. (b), 11360, subd. (b).)

marijuana. Although one witness corroborated this testimony, Byers testified Greenwood made no such statement, and the Commission disbelieved Greenwood.

The Commission found that Greenwood's failure to report M's crimes violated a provision of the Department's Policy Manual (PM), section 340.32(f), that requires any employee to report activity of any other employee that "may result in criminal prosecution or discipline[.]" The Commission found Greenwood's conduct also violated a provision of a Personnel Management Resolution (PMR), section 1104(c), that proscribes "conduct tending to bring the County service into disrepute" because the public might conclude the Department treated its officers with favoritism, noting that a "civilian witness" was present during the incident. The Commission also found this incident was a neglect of duty and failure to comply with reasonable regulations (PMR, § 1104(h) & (j)).

The Commission also found that *if* it credited Greenwood's testimony that he told Sergeant Byers about M's drug use *after* M had already disclosed it, the result would not have changed. During an internal affairs investigation, Greenwood had admitted he had violated policy by not reporting M's drug use as soon as possible. However, Greenwood testified before the Commission that he merely violated a "common practice" requiring notification as soon as possible. The Commission further found that Greenwood allowed his personal feelings to influence his decision, thereby violating the Law Enforcement Code of Ethics

(the Code), but concluded the Code was merely hortatory. We discuss the Code more fully, *post*.

B. Dispatcher Blalock Incident

On the afternoon of April 24, 2008, Greenwood replied to an e-mail informing him of the time of an internal affairs interview about Deputy M's drug use in his presence.

About six hours later, Greenwood called Brea Blalock, a friend working as a dispatcher for the Department, and spoke to her for about 10 minutes, during which time she also handled several dispatch calls.³ Greenwood knew the call was being recorded, and the recording and a transcript of it were introduced as evidence before the Commission.

The Commission found Greenwood distracted Blalock, and therefore disrupted the efficiency of the Department (PM, § 340.35(g)), and made comments (described immediately below) tending to bring the Department into disrepute (PMR, § 1104(c)) thus violating reasonable departmental regulations (PMR, § 1104(j)). The Commission rejected the Department's claim that Greenwood knowingly made false statements calculated to harm the Department and engaged in dishonest or notoriously disgraceful conduct (PM, § 340.45 (h) & (o)). The Commission found that Greenwood "hardly seems emotional or angry in the recording of

³ Greenwood called Blalock on a non-emergency dispatch line, not the 911 emergency dispatch line.

the conversation, but rather self-indulgent and full of bravado."⁴

Without quoting everyone, the statements found by the Commission to merit discipline were generally as follows:

1) Greenwood knew the call would be heard and stated, "Fuck this, I want them to hear this on the recorded line."

2) After Blalock handled a medical call, Greenwood said he hoped "one of them pukers dies down there [sic]."

3) Greenwood said that during an upcoming Christmas party, he would sign up for overtime and arrest members of the Department's administration for drunkenness as they left, and mention their names over the police radio.

4) Greenwood said that, although he would not lie, he was not going to tell internal affairs everything, and he would not "sell [M] down the river[.]"

5) Greenwood said he was "fucking proud" of the allegation in his disciplinary notice that he had not reported M's conduct, and he wanted it distributed widely because it proclaims, "'Here you are, bitches, I'm not a snitch.'"

⁴ We have listened to the recording and disagree with this view as well as the Department's view that the recording reveals Greenwood's "full venom." Rather, Greenwood's tone is one of frustration, and supports his testimony that he was "venting" and "blowing off steam." Blalock's contributions are sympathetic and even playful at times. But we agree that the recording shows Greenwood did not speak in a blind rage, and understood what he was saying, which was the gist of the Commission's finding in that regard.

There was undisputed testimony that the recording of Greenwood's call was available to any member of the public under the California Public Records Act.⁵

A great deal of testimony was heard on the so-called *Brady* and *Pitchess* questions arising from the recording.⁶

Before Sheriff Neves decided to terminate Greenwood, these questions had been considered by several legal experts who unanimously advised him that Greenwood's statements could harm his credibility as a witness in criminal or civil litigation arising out of his duties. Four experts testified before the Commission, as follows: (1) Franklin Gumpert, the County's longtime outside counsel who had extensive experience in federal litigation, including claims of civil rights abuse by peace officers; (2) William Clark, the Chief Assistant District Attorney, who had over 20 years of experience as a prosecutor and 10 years of experience as a peace officer before then; (3) Ed Knapp, the longtime Chief Assistant County Counsel, who had expertise in *Pitchess* motions; and (4) Captain Mark Getchel, who

⁵ See Government Code sections 6251, et seq.

⁶ *Brady v. Maryland* (1963) 373 U.S. 83 [10 L.Ed.2d 215] (*Brady*) generally held that the government must disclose potentially exculpatory material to the defense in criminal cases.

Pitchess v. Superior Court (1974) 11 Cal.3d 531 (*Pitchess*) generally held that a criminal defendant may access a peace officer's personnel file in certain cases, such as when it contains relevant impeachment information about the officer.

We use the shorthand expression "*Brady*" in this opinion, consistent with its use in the record, although we recognize the legal differences between *Pitchess* and *Brady*. (See *Eulloqui v. Superior Court* (2010) 181 Cal.App.4th 1055, 1063-1065.)

handled *Pitchess* and *Brady* issues for the Department. In addition, although District Attorney Vern Pierson did not testify, Pierson was present at a meeting about Greenwood's future credibility problems, and concurred in the advice others had given Neves. Neves also consulted two other attorneys, including "Marty Mayer, who is the attorney who represents the 58 sheriffs" of California, and received the same advice.

There had already been disclosure issues in two criminal cases in which Greenwood was a potential witness. In the first, a judge had refused to disclose the recording of Greenwood's call, in response to a *Pitchess* motion, because Greenwood had not lied in the subsequent internal affairs interview. But in the second, Greenwood had been dropped as a witness by the People due to *Brady* concerns. There was also testimony that the reasoning of the ruling in the first case was unsound, and in any event not binding in other cases.

The Commission opined that judges in the future could and likely would order the recording disclosed, but found that the existence of *Brady* material did not *of itself* provide a separate *ground* for discipline.

C. Discipline

The Commission found Greenwood had repeatedly apologized, and acknowledged that it had "struggled" to determine the appropriate penalty, noting its decision was not unanimous. The Commission was aware that before the *Brady* issue was considered, an internal Department memorandum recommended a three-day suspension without pay, and Greenwood's removal as a Field

Training Officer. However, a later memorandum recommended termination, and that is the discipline Sheriff Neves personally imposed on Greenwood.⁷

The Commission found that although the Code did not provide a separate *ground* for discipline, it stated "well the nature of the faith and trust with which the public views law enforcement officers" indicating "the judgment and trustworthiness of a deputy sheriff are of paramount importance, and incumbents must be held to extremely high standards." The Commission found Greenwood had not maintained those standards, was gravely derelict in his duty, and showed "remarkably poor judgment" in the incident with Deputy M, such that "the Sheriff's trust in [him] to exercise good judgment is permanently compromised. Hence, [the Commission] finds that this violation, even standing alone, is sufficient to warrant termination."

The call to Blalock "only made matters worse" and showed "a complete lack of judgment[.]" Greenwood "may now be permanently subject to impeachment as a consequence of his statements. While not necessarily something which would automatically lead to termination, that is a factor demonstrating the gravity of the consequences of his action and hence at least militating in favor of very severe punishment." His statements would not only impair his testimony, but "will also be considered by the fellow

⁷ This was after what is known as a *Skelly* hearing. *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, generally holds that a public employee is entitled to a hearing before discipline is actually imposed. (See *Coleman v. Regents of University of California* (1979) 93 Cal.App.3d 521, 525-526.)

deputies who rely upon him as their back-up in life and death situations, and now must worry about whether their own actions, if questioned, can be adequately supported by a deputy who 'is not a snitch' and only tells the truth if the correct questions are posed. As a consequence, [his] ability to effectively act as a sheriff's deputy appears to be permanently compromised."

Greenwood had an unblemished work record with the Department, and had been a Field Training Officer, responsible for training new deputies.⁸ However, he "demonstrated repeated bad judgment over the course of this affair and has caused the Commission to conclude that he simply should not be trusted to exercise good judgment in the future, and that he is unworthy of the trust and confidence that the public must have in its law enforcement officials." Greenwood's "ability to effectively act as a witness" was "permanently impaired." "[T]he trust imposed in [Greenwood] by the Sheriff has been permanently and irreparably harmed." "He has acted in such a manner as that there can be no confidence that he will enforce the law impartially and without regard to his personal feelings or

⁸ Greenwood concedes he had a prior letter of reprimand for a preventable vehicle accident. Because the Commission disregarded this reprimand, so do we.

The record is in conflict regarding the length of Greenwood's service. The Commission found he had been a "Deputy Sheriff II" for seven years, but Greenwood testified he joined the Department in 1997, and now asserts he had been so employed for 11 years. He may have been something other than a "Deputy Sheriff II" for some period. In any event, he does not argue any such discrepancy was material.

relationships. Hence, despite the lack of prior discipline, termination is the only effective and appropriate discipline."

II

Trial Court Ruling

The trial court found the evidence supported the Commission's finding that Greenwood failed to promptly report M's drug use as required by departmental policy, which also constituted a failure to follow regulations, neglect of duty, and conduct bringing the County service into disrepute. The trial court also found Greenwood's telephone call to Blalock brought the County service into disrepute, and raised "the specter of . . . a 'Code of Silence' during internal investigations[.]" The trial court rejected Greenwood's procedural and substantive attacks on the penalty.

Greenwood timely appealed from the judgment denying his petition for writ of mandate.

DISCUSSION

We have summarized the standard a trial court applies in mandamus proceedings arising from a public employment hearing:

"The trial court was required to exercise its independent judgment of the evidence before the County. [Citation.] In so acting the trial court had the power to make credibility findings. . . .

".

"The trial court should have begun with a *strong presumption* that the County's decision was correct, and placed on [appellant] the *burden of proof* to show that the decision was against the weight of the evidence. [Citation.] As explained by the California Supreme Court,

'[R]arely, if ever, will a board determination be disturbed unless the petitioner is able to show a jurisdictional excess, a serious error of law, or an abuse of discretion on the facts.'" (*Sager v. County of Yuba* (2007) 156 Cal.App.4th 1049, 1053 (*Sager*).)

Further, "The penalty imposed by an administrative body will not be disturbed in mandamus proceedings unless an abuse of discretion is demonstrated. [Citations.] Neither an appellate court nor a trial court is free to substitute its discretion for that of the administrative agency concerning the degree of punishment imposed." (*Barber v. State Personnel Board* (1976) 18 Cal.3d 395, 404 [dishonesty by counselor at juvenile custodial facility supported termination] (*Barber*).)

Greenwood makes confusingly overlapping arguments in his briefing. To the extent possible, we will address his arguments seriatim, in the order presented.

I

Facts

Greenwood first heads an argument purporting to explain what he "really did," painting the facts in the light most favorable to himself, and disregarding contrary inferences. But we "must view the record in the light most favorable to the [Commission's] decision and uphold its factual findings if supported by substantial evidence." (*County of Siskiyou v. State Personnel Bd.* (2010) 188 Cal.App.4th 1606, 1615 (*County of Siskiyou*); see *Deegan v. City of Mountain View* (1999) 72 Cal.App.4th 37, 40.) Further, Greenwood fails to head and argue a claim that the findings were not supported by the evidence, and therefore has forfeited any such a claim. (*Loranger v.*

Jones (2010) 184 Cal.App.4th 847, 858, fn. 9.) Finally, we have already summarized the Commission's findings and some of the supporting evidence, and we need not repeat that summary here.⁹

II

Brady Issue

Greenwood contends the Commission knew "the only reason" he was facing termination was the *Brady* issue, as the Commission recognized that having *Brady* material in one's file was *not* a ground for discipline, and yet irrationally upheld termination as a penalty, instead of imposing a three-day suspension.

Here Greenwood conflates a legal *ground* for discipline with the factual basis supporting such ground and any resulting penalty. Generally, a public employee must be told the specific rules allegedly violated, that is, the *grounds* for discipline, and also must be told the general facts alleged to support such claimed violations. (See 52 Cal.Jur.3d (2010) Public Officers and Employees, §§ 171-172, pp. 249-251; 1 Silver, Public Employee Discharge and Discipline (3d ed. 2001) State Administrative Review, § 707[B], p. 398.)

The Department's rules required it to serve Greenwood with a "Skelly" notice of the proposed termination, namely, "A copy

⁹ We caution counsel that the failure to state the facts fairly forfeits evidentiary claims. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) Further, absent a record supporting a claim of actual bias, castigating the factfinder's motives is both unpersuasive and improper. (See *Lazzarotto v. Atchison, T. & S. F. R. Co.* (1958) 157 Cal.App.2d 455, 462 ["counsel . . . should not have assumed that we would be influenced by their epithets"].)

of the charges, including the acts or omissions and grounds upon which the action is based" and a copy of any rules violated. Greenwood's notice listed a number of specific legal *grounds* for discipline, but these did not include the fact that he had *Brady* material in his file. The notice based the *penalty* on many facts, including the fact that the statements Greenwood made to Blalock impaired his credibility as a peace officer.

Based on the testimony by a number of witnesses that Greenwood's recorded call to Blalock could be used to impeach him in civil and criminal cases arising from his duties as a peace officer, it was not irrational for the Commission to find that his effectiveness as a witness was irremediably impaired.

As for the claim that a three-day suspension should have been imposed, it is not for us to assess punishment, and where reasonable minds differ as to the proper penalty, we must defer to the Commission. (See *Barber, supra*, 18 Cal.3d at p. 404.)

Further, the proposed suspension Greenwood points to was a *preliminary* recommendation. In a memorandum to Captain Getchel dated July 8, 2008, Captain Altmeyer did recommend a three-day suspension and removal from the field training program. However, on August 29, 2008, Captain Altmeyer told Captain Getchel he had learned Greenwood's statements "are clearly subject to disclosure" and wanted more information.

On September 4, 2008, Captain Getchel replied that he had consulted with both William Clark and Ed Knapp, and both advised that Greenwood's statements were discoverable in civil and criminal cases, and that his statements had already been

disclosed in one criminal case, which resulted in "a lesser plea deal." Based on this information, Captain Altmeyer changed his recommendation.

Although unfortunate for Greenwood, we see nothing *improper* about this change of recommendation. First, it was Sheriff Neves who made the ultimate decision to terminate, not Captain Altmeyer. Second, the fact that a recommended penalty is increased when more dire consequences resulting from the misconduct come to light is a wholly unremarkable circumstance.

Sheriff Neves testified in detail before the Commission about why Greenwood could not act as a peace officer in the future. He even considered permanently transferring Greenwood to jail duty, but because even jail officers must testify sometimes (e.g., in cases of claimed inmate abuse), it was untenable to retain Greenwood as a peace officer in any capacity. We see no basis to disagree.

III

Dishonesty

Greenwood correctly observes that the Commission rejected two grounds for discipline, making knowingly false statements and dishonesty or notoriously disgraceful conduct. These allegations were based on the recorded conversation, and the Commission rejected the Department's contention any of Greenwood's statements during that call amounted to deception or dishonesty.

We accept Greenwood's point that he was not found to have lied to Blalock; however, so long as one valid *ground* of

discipline is sustained, all relevant *facts* must be considered in assessing punishment. (See *Skelly, supra*, 15 Cal.3d at p. 218.) The effective "acquittal" on two grounds does not diminish the evidence supporting the sustained grounds--the statements to Blalock, whether found to be dishonest or not, were properly considered in determining the appropriate penalty.

IV

The Code

Greenwood next faults the Commission's treatment of the Code. While the Commission may have *undervalued* the effect of the Code, we find no error favorable to Greenwood.

The Code, a solemn oath, provides in full as follows:

"As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional Rights of all men to liberty, equality and justice.

"I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

"I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or violence and never accepting gratuities.

"I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession . . . law enforcement."

The Commission found that this oath was merely "aspirational" and Captain Altmeyer testified it was "more of a moral code of conduct." The Commission thus concluded it could not provide a *ground* for discipline, although it had been alleged as a separate ground.

However, the testimony at the hearing was that the Code is an oath sworn by all peace officer recruits. As Greenwood admits, a copy of it is included in the Department's personnel manual. It is mandated statewide by the Commission on Peace Officer Standards and Training (POST). (See POST Admin. Manual, § C-3, available at post.ca.gov/publications.) For example, in *Kolender v. San Diego County Civil Service Com.* (2005) 132 Cal.App.4th 716 (*Kolender*), the court noted that Kolender had "signed a 'Recruit Honor Code'" and although that version is not quoted in full, the portion that is quoted in that case is consistent with the Code, both in tone and content.¹⁰ (*Kolender, supra*, 132 Cal.App.4th at p. 719.)

¹⁰ In the trial court Greenwood argued the Code was an improper religious oath. The reference to God may be omitted (see Cal. Const., art. XX, § 3; 67 C.J.S. (2002) *Officers and Public Employees*, § 59, pp. 231-232) and there was no testimony Greenwood had objected to the form of this oath. The religious oath issue was not raised in Greenwood's briefs, although his counsel mentioned it obliquely at oral argument.

Assuming for the sake of argument that violations of the Code cannot provide legal grounds for discipline, the Commission properly found the Code correctly typifies the proper attitude and standards of conduct expected of peace officers.

In most public employee discipline cases, the following general rule applies: "In considering whether [an abuse of discretion] occurred in the context of public employee discipline, we note that the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, '[h]arm to the public service.' [Citations.] Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence." (*Skelly, supra*, 15 Cal.3d at p. 218.)

But Greenwood was a *peace officer*. Therefore, although harm to the service, likelihood of recurrence, and the circumstances surrounding the misconduct must be considered, those factors must be viewed through a narrow prism of acceptable conduct.

"A deputy sheriff's job is a position of trust and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Honesty, credibility and temperament are crucial to the proper performance of an officer's duties." (*Talmo v. Civil Service Com.* (1991) 231 Cal.App.3d 210, 231; see *Sager, supra*, 156 Cal.App.4th at pp. 1060-1061 [because "officers must rely on each other during life-threatening situations, they must possess personal qualities conducive to

building trust and cooperation"]; *Ackerman v. State Personnel Bd.* (1983) 145 Cal.App.3d 395, 398-399 [police officer "must be held to a higher standard than other employees"].)

Accordingly, many cases have held or implied that conduct that might *otherwise* have resulted in lesser punishment will support termination of a peace officer, who must be held to the highest standards of honesty, probity, and fidelity. (See, e.g., *Bautista v. County of Los Angeles* (2010) 190 Cal.App.4th 869, 879 [Bautista's close relationship with drug-using prostitute in violation of policy that officers not associate with criminals "evidenced his poor judgment and undermined the Department's trust and confidence in Bautista as a law enforcement officer"]; *Anderson v. State Personnel Bd.* (1987) 194 Cal.App.3d 761, 771-772 [officer's public nudity "brought embarrassment and discredit to the law enforcement agency he served" and "undermined the effectiveness of his relations with fellow officers"]; *Constancio v. State Personnel Bd.* (1986) 179 Cal.App.3d 980, 983-985, 990-991 [off-duty use of drugs and failure to report drunk driving and license suspension warranted dismissal of supervisor at youth correctional facility]; *Hooks v. State Personnel Bd.* (1980) 111 Cal.App.3d 572, 577, 579 [correctional officer possessed marijuana and hashish off duty]; *Kelly v. State Personnel Bd.* (1979) 94 Cal.App.3d 905, 909-911, 917 [criminalist failed to cooperate with investigation into alleged diversion of drugs, which "cast discredit not only upon his laboratory results, but upon the entire department as well"]; *Warren v. State Personnel Bd.* (1979) 94 Cal.App.3d 95,

106 [agency "cannot permit . . . off-duty conduct which entangles the officer with lawbreakers and gives tacit approval to their activities. Such off-duty activity casts discredit upon the officer, the agency, and law enforcement in general"].)¹¹

Accordingly, although the Commission found the Code could not provide a legal *ground* for discipline, nothing in the Commission's findings about the duties of peace officers, as reflected in part by the Code, are inconsistent with governing legal standards pertaining to peace officer discipline. Accordingly, reliance on the Code by the Commission--as a shorthand for legal standards announced in many published cases--does not reflect an abuse of discretion.¹²

V

Bases for the Sheriff's Decision

Greenwood contends the Commission abused its discretion by concluding the Sheriff had lost trust in him solely based on the M incident. In support of this contention, Greenwood cites

¹¹ A case mentioned at argument, involving an officer's tirade against a superior, upheld termination because his "evident animosity, and his bitter, discourteous, abusive, disloyal, threatening and profane expressions of ill will were such as to make his continued employment detrimental to the city." (*Cook v. Civil Service Commission* (1960) 178 Cal.App.2d 118, 134.)

¹² Nor was the Commission's treatment of the Code unprecedented. In *Foster v. Board of Medical Quality Assurance* (1991) 227 Cal.App.3d 1606 (*Foster*), a case involving a physician's dishonesty, in part we ourselves quoted the Hippocratic Oath, noting: "Such a solemn oath requires the highest degree of honesty, a trait Dr. Foster demonstrably lacks." (*Foster, supra*, 227 Cal.App.3d at p. 1611, fn. 8.)

Sheriff Neves's testimony to the effect that he did not consider terminating Greenwood until the *Brady* issue arose. Greenwood faults the Commission for purporting to read the Sheriff's mind, and doing so incorrectly. We are not persuaded.

In the passage Greenwood complains of, the Commission found he showed "remarkably poor judgment" in the incident with Deputy M, such that the "Commission believes the Sheriff's trust in [him] to exercise good judgment is permanently compromised. Hence, [the Commission] finds that this violation, even standing alone, is sufficient to warrant termination." The Commission went on to explain the effect of the Blalock incident, and ultimately concluded that the circumstances *as a whole* justified termination.

As the trial court found, the Commission did not *actually* uphold the termination based solely on the M incident. We are not persuaded that the portion of the Commission's 32-page decision to the effect that the M incident would be "sufficient" to impose termination establishes that the Commission abused its discretion in imposing termination based on the totality of the misconduct, including the *Brady* consequences. Nor do we read the passage complained of to mean the Commission misunderstood the testimony by Sheriff Neves. The Commission heard his testimony explaining why he believed Greenwood could not be retained as a peace officer in any capacity, and the decision taken as a whole reflects that the Commission understood Sheriff Neves.

VI

Commission's Comments

As Greenwood points out, the Commission did at one point state that the fact Greenwood argued for a three-day suspension showed "that he failed to recognize just how serious a matter these violations are." We agree that this comment appears to fault Greenwood for making a colorable legal argument about the appropriate penalty. But this was no more than an aside in the Commission's 32-page decision, and it did not drive the ultimate conclusion that the appropriate penalty was termination. It was trivial, and did not deprive Greenwood of a fair hearing or decision. (See Civ. Code, § 3533 ["The law disregards trifles"].)

Greenwood also complains of the next passage of the Commission's decision, as follows: The Commission stated it did not believe Greenwood's testimony that he had told Sergeant Byers about M's drug use, was willing to accept that this was not "an out-right lie under oath" by Greenwood, and then accepted "for the sake of argument" that he had "made a brief, somewhat off-hand remark to Byers confirming Deputy M's previous comments [admitting her own drug use]." The Commission then faulted Greenwood for arguing that this was an *adequate* report of M's drug use, which "confirms in the Commission's view the statements that [Greenwood] made [to Blalock] that unless the precise, correct questions are asked of [Greenwood], one may not receive the entire story or truth. This propensity to not be forthcoming is again something which cannot be remedied by

lesser discipline, and which cuts to the very core of whether or not [Greenwood] can effectively act as a deputy or whether [Greenwood] will warrant the trust that the Sheriff and the public must have in him."

Greenwood characterizes this passage as a second instance of the Commission punishing him for making a colorable legal argument. We do not read this passage that way.

The Commission found Greenwood lacked credibility and that he did not make a timely report about M's drug use. Even assuming the accuracy of Greenwood's version, he had said nothing at all until M admitted her drug use in front of him, and the "cat was out of the bag." This was consistent with Greenwood's statement to Blalock, to the effect that he would not volunteer information during the internal affairs investigation. The Commission heard testimony that during the internal affairs interview Greenwood admitted he had violated the reporting policy, but at the hearing Greenwood testified it was merely a "common practice" to make a report as soon as possible. The Commission's consideration of this change of position on Greenwood's part as an indication of Greenwood's lack of forthrightness and lack of remorse was not inappropriate.¹³

¹³ We also note that Greenwood's counsel was present during his interview when he admitted violating departmental rules by not promptly reporting M's drug use.

VII

Severity of Penalty

Greenwood next contends his conduct did not harm the public service, was unlikely to recur, and occurred in highly stressful contexts in which (as to the M incident) he was trying to assist a distraught colleague and (as to the Blalock incident) he was venting in a "cathartic" discussion. Again, Greenwood construes the facts and inferences in his favor, and at bottom invites us to reweigh the evidence as to the proper penalty. We again decline the invitation.¹⁴

In a connected claim, Greenwood contends the penalty of termination is excessive when compared to other published cases. We are not persuaded by his comparisons.

Richardson v. Board of Supervisors (1988) 203 Cal.App.3d 486 (*Richardson*), upheld a decision overturning a deputy sheriff's termination based on insubordination and leaving his post. The facts showed Deputy Richardson discovered unlawful drinking, and checked with a supervisor (Edmonson) who told him to cite the parties, but who then criticized him after Edmonson learned the sheriff himself had tolerated such activities. In disgust, Richardson handed in his badge, but he was not allowed to have it back when he agreed to return to work shortly thereafter. (*Richardson, supra*, 203 Cal.App.3d at pp. 489-492.)

¹⁴ We also observe that although peace officers are not expected to perform as robots would, they are required to exercise good judgment *during extremely stressful situations*, involving danger to themselves, to fellow officers, and to members of the public.

In upholding the decision overturning termination, the court stated in part:

"The instance leading to his discharge was a single, isolated incident that occurred after an unblemished six and one-half year record of public service during which he had received several commendations. He was gone from his duty for only about an hour before he returned and no harm or danger to the county appears by reason of his absence. More importantly, the provocation for the confrontation with Edmondson resulted from Edmondson's contradiction of his prior authorization to issue the citation and by the sheriff's interference on behalf of his friends with Richardson's law enforcement duties. These circumstances render it highly unlikely that the incident will recur and mitigate against the Board's implied determination of harm to the public service." (*Richardson, supra*, at pp. 494-495.)

Greenwood asserts that his conduct, too, is unlikely to recur. We will assume for the sake of argument that Greenwood would not fail promptly to report a fellow deputy's illegal activities, and would not "vent" to an on-duty dispatcher, and we agree that the context of his comments matters. (See *In re C.C.* (2009) 178 Cal.App.4th 915, 921 ["The meaning of words is always contextual"].) But this does not change the fact that Greenwood boasted of being "fucking proud" he was not a "snitch," which raised the specter of a forbidden "code of silence" among peace officers (see *Kolender, supra*, 132 Cal.App.4th at pp. 720, 722) and that he would force internal affairs to ask him the right questions. Therefore, his colleagues, who may well have to depend on Greenwood during a shootout or other emergency at some point, will undoubtedly continue to question whether he is being forthright with them,

or is concealing relevant information. Further, by referring to members of the public whom he is tasked with protecting as "pukes" and expressing that he hoped they die, in a recorded conversation, Greenwood called into question his own ability to "protect and serve." Finally, Greenwood's effectiveness as a witness has been irremediably impaired by his own recorded words, as we have explained. In these circumstances, the assumed fact the specific acts done and statements made will not recur is of little mitigating value.

In *Blake v. State Personnel Board* (1972) 25 Cal.App.3d 541 (*Blake*), a longtime and exemplary state attorney was authorized to carry a gun. In an off-duty incident, after drinking with colleagues at a State Bar convention, he followed some colleagues in his car and brandished his gun at one "and told him in obscene terms to "stay away from"" a female colleague. Blake promptly apologized the next morning. On these facts, the majority found termination was excessive. (*Blake, supra*, 25 Cal.App.3d at pp. 546-549, 553-554.) *Blake* did not involve a peace officer, and is not factually analogous to the instant case.

In the reply brief Greenwood points out that many termination cases involve objectively more serious misconduct. No two cases are exactly alike, and the Commission exercised its broad discretion to consider all of the facts and circumstances. Here, harm from the recorded call was not fleeting or

transitory; unfortunately for Greenwood, it was forever. As Sheriff Neves pointed out, "So it's not how we say it, it's not what we mean when we say it, it's just that we said it. You can't call those words back. Once the bell has rung" It certainly was not unreasonable to conclude under these specific circumstances, as did the Sheriff, that Greenwood's credibility was severely impaired, to the point where he was a liability to the Department if retained in any capacity.¹⁵

CONCLUSION

Based on the record in this case, we find no abuse of discretion as to the penalty of termination. Accordingly, the trial court properly denied the petition for writ of mandate.¹⁶

DISPOSITION

The judgment (order denying the petition for writ of mandate) is affirmed. Greenwood shall pay the County's costs of

¹⁵ For example, if Greenwood's testimony were critical to determination of a suppression motion or the chain of evidence in a felony case, the recording could tip the scales and result in a trial judge or a jury disbelieving him. The Department is entitled to demand that each deputy has an unimpeachable character for honesty.

¹⁶ Our conclusion obviates Greenwood's claim that he should be awarded costs and fees as the prevailing party, due to the Commission's "arbitrary and capricious" decision. (Gov. Code, § 800.) Because we uphold the judgment confirming the Commission's decision, Greenwood is not the prevailing party.

this appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

DUARTE, J.

We concur:

BUTZ, Acting P. J.

HOCH, J.