

INVESTIGATIVE SUMMARY AND FINDINGS

David Wesley Hubbard

POST ID C15-B77

Kern County Sheriff's Office (former)

Kern County District Attorney's Office (current)

POST2300204

WRITTEN BY: Kevin P. Sherburne

January 10, 2024

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I. Executive Summary

On December 6, 2021, Kern County Sheriff's Office ("KCSO") authorized an Internal Affairs investigation of David Wesley Hubbard (POST ID C15-B77) (hereafter "Respondent"), who was then a Lieutenant with KCSO, based on allegations that Respondent had an inappropriate sexual relationship with a Sheriff's Aide (hereafter "Victim 1") who directly reported to him. During the investigation, KCSO also found evidence that Respondent had interfered with criminal and Internal Affairs investigations for personal reasons and improperly shared confidential information with the Sheriff's Aide. KCSO's Internal Affairs investigation sustained the evidence of these allegations by a preponderance of the evidence.

On January 6, 2023, KCSO submitted a report to the California Commission on Peace Officer Standards and Training ("POST") that Respondent may have committed serious misconduct. On February 9, 2023, I was charged to conduct an investigation of serious misconduct. I conducted an investigation and reviewed evidence of the following allegations. I make the following findings in this Investigative Summary and Findings:

1. Did Respondent commit "sexual assault" against Victim 1 as that term is defined by California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)? If so, did Respondent's actions constitute Sexual Assault and therefore violate California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)?

    a. ***Finding***: I find that the clear and convincing evidence did not substantiate that Respondent violated California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4). Although the clear and convincing evidence substantiated that Respondent engaged in sexual intercourse with Victim 1, who was his direct subordinate, on November 20, and November 21, 2021, while he was on duty acting as the highest law enforcement official in Kern County, I find that Respondent did not violate California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4). Section 13510.8(b)(4) incorporates California Penal Code Section 832.7(b)'s definition of sexual assault, which defines sexual assault to mean situations where a peace officer engages in sexual acts with "a member of the public." Because Victim 1 was not a member of the public and POST Regulation 1205(a)(4) was not in effect at the time, I do not find clear and convincing evidence of a violation of Section 13510.8(b)(4). When it adopted Regulation 1205(a)(4) on January 1, 2023, the Commission on POST clarified the definition of sexual assault to include "acts committed amongst members of any law enforcement agency." I find that POST Regulation 1205(a)(4) is not applicable

because it became effective January 1, 2023, and does not apply to events that occurred in 2021. Respondent's sexual relationship with Victim 1 and his other actions emanating from that relationship, however, did constitute an abuse of power and dishonesty in violation of California Penal Code sections 13510.8 (b)(1) and (b)(2), as explained further below.

2. Did Respondent's personal interests and relationship with Victim 1 compromise his judgment and professional obligations as a peace officer? If so, did Respondent's actions constitute abuse of power and therefore violate California Penal Code Section 13510.8(b)(2)?

    a. ***Finding***: I find that the clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(2). The clear and convincing evidence substantiated that Respondent abused his power when his personal interests clouded his professional obligations.

3. Was Respondent dishonest when he deleted evidence from his work cell phone and when he failed to disclose material information when he intentionally concealed his relationship with the victim in a sexual assault investigation from the criminal and Internal Affairs investigators? If so, did Respondent's actions constitute dishonesty and therefore violate California Penal Code Section 13510.8(b)(1)?

    a. ***Finding****:* I find that the clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(1). The clear and convincing evidence substantiated that Respondent was dishonest when he deleted evidence from his work cell phone. Further, the clear and convincing evidence substantiated that Respondent had an affirmative obligation to disclose material information to the criminal and Internal Affairs investigators and that he intentionally withheld information from them. Respondent's lack of candor constituted dishonesty.

Based upon the evidence presented in the KCSO Internal Affairs investigation report and my investigation, I find that reasonable grounds exist for revocation of Respondent's peace officer certifications pursuant to California Penal Code Section 13510.85(a)(1).

II. Background

KCSO's chain of command runs from the Sheriff to Undersheriff to four Bureau Chiefs, which are led by Chief Deputies. Within each Bureau is a Division, which is led

by a Commander. Within a Division is a Section, which is led by a lieutenant. Within a Section is a Unit, which is led by a sergeant.[1]

From December 19, 2020, to March 13, 2021, Respondent served as lieutenant of the Detective Section. Sheriff's Aide Victim 1 and Senior Deputy Suspect 1 reported to Respondent. Suspect 1 was a detective specializing in conducting sex crimes investigations. In February 2021, Victim 1 was assigned as a Sheriff's Aide assigned to the Detective Section.

From March 13, 2021, to May 8, 2021, Respondent served as lieutenant in charge of the Internal Affairs Section (also referred to as Internal Affairs Unit or "IAU"). In this role, he reported to then-Chief Deputy Damian Nord.

On April 19, 2021, Victim 1 alleged that Suspect 1 sexually assaulted her in late February 2021, while both were assigned to the Detective Section.[2] Respondent was the lieutenant in charge of the Detective Section in late February 2021. On April 21, 2021, the Professional Standards Unit ("PSU") initiated a criminal investigation into the allegations against Suspect 1. Sergeant Justin Weidenkopf was the lead investigator. He reported to then-Lieutenant Juan Trevino. Because one of the roles of PSU was to conduct criminal investigations of KCSO employees, Lieutenant Trevino reported directly to the Undersheriff, in addition to the Personnel Division Commander. The Undersheriff was then Doug Jauch and the Commander was Erik Levig.

From March 13, 2021 to May 8, 2021, Respondent served as lieutenant of IAU. He reported to then-Chief Deputy Damian Nord.

In 2021, PSU and IAU had discrete roles at KCSO. PSU conducted criminal investigations. During the pendency of a criminal investigation, IAU's role was limited to initiating administrative leave of the subject employee. IAU could not conduct its investigation until the criminal investigation was concluded.

On May 4, 2021, the criminal investigation of Suspect 1 concluded and Sergeant Weidenkopf submitted his report to the Kern County District Attorney's Office for a prosecutive decision. In June-July 2021, Deputy District Attorney Ken Russell declined prosecution of Suspect 1. On June 8, 2021, and upon conclusion of the criminal investigation into Suspect 1, then-Sergeant Danny Perez opened the Internal Affairs investigation into Suspect 1.

From May 8, 2021, to December 4, 2021, Respondent served as lieutenant in charge of the PSU. He reported to then-Commander Levig.

[1] Attachment A (Carpenter Report of Interview at 1-2).

[2] Suspect 1 is the subject of an investigation of serious misconduct (POST2300193).

The timeline below summarizes the organizational chart and key events described above.

Date(s)	Summary of Events
12/19/2020-3/13/2021	Respondent was Lieutenant of Detectives Section
2/2021	Victim 1 and Suspect 1 were assigned to Detectives Section.
3/13/2021-5/8/2021	Respondent was Lieutenant of Internal Affairs Unit
4/19/2021	Victim 1 reported that Suspect 1 sexually assaulted her in February 2021.
4/21/2021	Sergeant Weidenkopf was assigned as the lead investigator of the criminal case against Suspect 1. He was assigned to Professional Standards Section.
5/4/2021	Sergeant Weidenkopf completed his criminal investigation of Suspect 1.
5/8/2021-12/4/2021	Respondent was Lieutenant of Professional Standards Section.
June – July 2021	Kern County District Attorney's Office declined prosecution of Suspect 1.
6/8/2021	KCSO opened its Internal Affairs investigation into Suspect 1.

III. Methodology/Investigative Process

A. Methodology and Standard of Proof

This report summarizes the findings related to allegations of serious misconduct. I conducted this investigation in accordance with the regulations and policies of POST. During my investigation, I reviewed the Internal Affairs investigation, which included interviews of 18 witnesses and Respondent. I also conducted an independent investigation, which included interviews of ten witnesses, including Respondent.

Based on my review of the entire record of the administrative investigation, including the statements of the witnesses, evidence collected during the administrative investigation, the written investigative report, and my own independent investigation, I find that the administrative investigation findings were supported by reasonable grounds.

I analyzed the information in this case under 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." Based on the statements of the witnesses, as well as the documentary evidence

available, there was sufficient information to reach a fair and reasoned conclusion using the clear and convincing evidence standard.[3]

B. Employment History and Peace Officer Certifications

POST issued the following professional certifications to Respondent:

Certificate Type	***Certificate Number***	***Date Issued***
Basic	135727	3/12/2009
Intermediate	103800	10/24/2011
Advanced	109559	10/13/2015
Supervisory	87984	6/15/2018

Respondent began work as a Kern County Deputy on October 6, 2007. On September 19, 2015, he was promoted to the rank of sergeant. On December 19, 2020, he was promoted to the rank of lieutenant. On August 15, 2022, KCSO terminated his employment, after sustaining policy violations in connection with the allegations reviewed in this Investigative Summary.

The Kern County District Attorney's Office reported that it hired Respondent as a Senior District Attorney Investigator, effective August 13, 2022.[4]

On March 9, 2023, POST Executive Director Manuel Alvarez Jr. signed an Order of Immediate Temporary Suspension of Respondent's POST Certificates pursuant to California Penal Code Section 13510.8(d). As of the date of this Investigative Summary and Findings, the Order remains in place.

C. Other Allegations of Serious Misconduct

On June 23, 2023, KCSO submitted an allegation that Respondent demonstrated bias in violation of California Penal Code Section 13510.8(b)(5) when he created a hostile work environment during a promotional interview panel on September

[3] In matters such as this, where there are conflicting reports from parties, weighing credibility is essential. I considered several factors to assess the credibility of witnesses when there were factual disputes: (1) corroboration with other evidence, or lack thereof; (2) inherent plausibility; (3) past record of similar conduct; (4) motive to lie or fabricate; (5) opportunity and capacity to observe conduct; (6) reputation for honesty or deceit; (7) evidence of bias; (8) consistent or inconsistent statements; (9) admission of untruthfulness; and (10) demeanor. Because a witness' demeanor during an interview can be affected by many factors, such as nervousness, stress, or emotion, I did not solely rely on demeanor as a determinative factor in assessing credibility.

[4] Attachment B (Respondent's EDI Profile).

22, 2021. An investigation of the complaints found that the evidence did not sustain the allegations against Respondent by a preponderance of the evidence.[5]

D. Summary of Investigations Relating to the Allegations in This Case

1. IA Case DIIA2021-0036 Administrative Process

On December 6, 2021, KCSO initiated an Internal Affairs investigation (IA Case DIIA2021-0036)(hereafter "Respondent IA Case") of Respondent stemming from allegations that Respondent engaged in an inappropriate sexual relationship with Victim 1, who directly reported to Respondent at the time, and that Respondent obtained information from then-ongoing criminal and Internal Affairs investigations and shared that information with Victim 1. On April 8, 2022, Commander John Carpenter, the investigator, submitted his 27-page investigative report in the Respondent IA Case, which included witness summaries and 18 attachments of documentary evidence.

During the Respondent IA Case, both Respondent and Victim 1[6] admitted having sexual intercourse in Respondent's office on November 20, 2021, and November 21, 2021, while Respondent was on duty. Respondent was assigned as the Watch Lieutenant that weekend, which meant that he was the highest ranking law enforcement officer on duty at the time. In addition, both Respondent and Victim 1 admitted that Respondent obtained information from the Suspect 1 Criminal and Internal Affairs Investigations and shared that information with Victim 1, who was a victim of the subject of that investigation, Suspect 1.

Under KCSO policy, the Internal Affairs investigator collected evidence and deferred decision-making to a First Review panel to decide whether the preponderance of the evidence sustained the allegations. On April 11, 2022, KCSO conducted a First Review of the Respondent IA Case and sustained eight policy violations of KCSO Departmental Policies and Procedures Manual ("DPPM") and Kern County Rules of the Civil Service Commission ("CSR") provisions by a preponderance of the evidence. The First Review panel, therefore, recommended moving the case to the Disciplinary Review Board. On April 26, 2022, the Disciplinary Review Board recommended termination of Respondent's employment with KCSO.[7] On August 8, 2022, Kern

[5] The investigator submitted her report on March 2, 2023. On March 16, 2023, KCSO sent Respondent a letter notifying him of the finding of "not sustained."

[6] Victim 1 was also a subject of the Respondent IA Case. KCSO disciplined Victim 1 based upon sustained findings against her.

[7] Attachment C (Disciplinary Review Board). KCSO also placed Respondent on administrative leave on April 26, 2022. Attachment D (Letter entitled "Notice of Administrative Leave/Revocation of Peace Officer Powers," from Larry McCurtain, Chief Deputy, to Respondent). The Notice of Administrative Leave/Revocation of Peace Officer Powers included a provision that Respondent was to make himself available to Lieutenant Jason Colbert and/or internal affairs investigators each weekday between the hours of 8:00 a.m. and 4:00 p.m.

County Sheriff Donny Youngblood held a *Skelly* hearing for Respondent. In a letter to Respondent from Sheriff Youngblood dated August 15, 2022, entitled "Notice of Disciplinary Action – Termination," Sheriff Youngblood upheld the termination.[8]

IV. Findings of Fact and Analysis

Although Respondent's conduct occurred prior to January 1, 2022, the Commission may initiate proceedings to revoke Respondent's certifications pursuant to California Penal Code Section 13510.8(g)(1)(B) because KCSO made "a final determination regarding its investigation of the misconduct after January 1, 2022." Therefore, I will review four allegations of Respondent's conduct below.

The table below sets forth a summary timeline of key events discussed in this Investigative Summary and Findings that are relevant to serious misconduct allegations of Dishonesty, Abuse of Power, and Acts that Violate the Law.

Date	***Event Summary***
January 2021	Respondent's wife provided childcare to Victim 1 from January 2021 through June 2021.
Late February 2021	Suspect 1 allegedly sexually assaulted Victim 1. At the time, Suspect 1 was a sex crimes detective in the Detectives Section, where Respondent was the lieutenant and Victim 1 was a Sheriff's Aide.
3/13/2021	Respondent assumed command of the Internal Affairs Unit as lieutenant.
4/21/2021	PSU initiated a criminal investigation into allegations that Suspect 1 sexually assaulted Victim 1. Sergeant Weidenkopf was the lead investigator and reported to then-Lieutenant Juan Trevino.
Late April 2021	Respondent complained to KCSO command staff about the quality of the criminal investigation of Suspect 1. At the time, Respondent was the lieutenant in charge of Internal Affairs and did not have any role or authority in connection with the criminal case.
April to May 2021	Respondent sought updates from the criminal investigators about Suspect 1's case. Again, during this time, Respondent was the lieutenant in charge of Internal Affairs and did not have any role or authority in connection with the criminal case.
5/4/2021	PSU sent the criminal case against Suspect 1 to the Kern County District Attorney's Office for prosecutorial review and decision.

[8] Attachment E (Letter entitled "Notice of Disciplinary Action – Termination," from Sheriff Donny Youngblood to Respondent). On August 15, 2022, at approximately 3:10 p.m., Lieutenant Jason Colbert and Commander Carpenter called Respondent and ordered him to return to the office. Respondent refused to be served and stated that he had started working for the Kern County District Attorney's Office.

Date	***Event Summary***
5/8/2021	Four days after PSU sent the criminal case to the Kern County District Attorney's Office, Respondent assumed command of PSU as lieutenant.
5/20/2021	Respondent effectuated a temporary transfer of Victim 1, the alleged victim in the criminal case against Suspect 1, to PSU. She began reporting to both Sergeant Weidenkopf and Respondent.
June 2021	Respondent's wife stopped providing childcare to Victim 1 because she was suspicious of Victim 1's close relationship with Respondent.
Early June 2021	Respondent accompanied Victim 1 to a meeting with Kern County District Attorney's Office. At the time, Respondent was the lieutenant of PSU – the unit that had previously conducted the Suspect 1 Criminal investigation. The lead investigator, Sergeant Weidenkopf, did not attend this meeting.
6/8/2021	KCSO authorized an Internal Affairs investigation of Suspect 1.
6/28/2021	Respondent effectuated a permanent transfer of Victim 1 to PSU.
August-November 2021	Multiple witnesses reported that Respondent and Victim 1 engaged in flirtatious behavior in the workplace.
August-September 2021	Respondent became the direct supervisor of Victim 1 and told Sergeant Weidenkopf that Sergeant Weidenkopf was no longer going to supervise Victim 1.
Early- to Mid-October 2021	Respondent provided significant input to Sergeant Perez about the investigative strategy and interview questions for Suspect 1 in connection with the Internal Affairs investigation of Suspect 1 concerning the allegations that Suspect 1 sexually assaulted Victim 1. At the time, Respondent was lieutenant of PSU and did not have an active role or any authority over Internal Affairs investigations.
Mid-October 2021	Respondent asked Sergeant Perez if he could attend Victim 1's interview in the Internal Affairs case against Suspect 1 as Victim 1's personal representative and attended a meeting with Sergeant Perez and Victim 1 to discuss the Internal Affairs investigation.
10/15/2021	Sergeant Perez interviewed Victim 1 in the Internal Affairs investigation concerning Suspect 1. Respondent served as the personal representative of Victim 1 during the interview. At the time, Respondent was the lieutenant in charge of PSU.
Early- to Mid-November 2021	Evidence established that Respondent and Victim 1 flirt, kiss, and hold hands in the workplace.
11/5/2021	Respondent and Victim 1 acknowledged having feelings for each other.

Date	***Event Summary***
Mid-November 2021	Respondent asked Sergeant Perez when Suspect 1 was going to be interviewed in the Internal Affairs case against Suspect 1 and then shared that information with Victim 1.
11/20/2021	Respondent and Victim 1 had sexual intercourse in Respondent's office while he is on duty as Watch Lieutenant (the highest ranking law enforcement officer in Kern County at the time).
11/21/2021	Respondent and Victim 1 had sexual intercourse in Respondent's office for a second time while he is on duty as Watch Lieutenant.
11/22/2021	Sergeant Perez interviewed Suspect 1 in connection with his Internal Affairs investigation.
11/23/2021	Respondent entered Sergeant Perez's office and sought information regarding the interview with Suspect 1. Sergent Perez disclosed, among other information, that Suspect 1 accused Respondent of having an affair with Victim 1. Sergent Perez advised Respondent that he may need to interview Respondent and also Victim 1 again, in light of Suspect 1's statements. Respondent did not disclose that he had sexual intercourse with Victim 1 on two occasions on 11/20/2021 and 11/21/2021.
11/23-24/2021	Respondent disclosed to Victim 1 what Suspect 1 said during his Internal Affairs interview. [9]
Late-November to Early-December 2021	Respondent and Victim 1 kissed in the workplace at some point after 11/21/2021.
Late November 2021	Sergeant Weidenkopf observed visible changes in Respondent's demeanor and asked Respondent about the change in his demeanor.
Late November 2021	After learning that Suspect 1 accused Respondent of having an affair with Victim 1, Respondent deleted text and phone call records from his work cell phone. The following gaps in Respondent's work phone records are found: For text messages: 11/8/2021-11/17/2021 and 11/22/2021-11/30/2021. For phone call logs: 11/5/2021 to 11/30/2021.
12/3/2021	Victim 1's boyfriend reported the affair with Respondent to the boyfriend's supervisor.
12/4/2021	Respondent reported the affair with Victim 1 to his supervisor.

[9] Victim 1 stated to me that Respondent told her the confidential information before Thanksgiving. In 2021, Thanksgiving Day was on November 25, 2021. This means that Respondent told her either the same day he learned the information from Sergeant Perez (November 23, 2021) or the following day (November 24, 2021).

Respondent Continued to Seek Updates About the Criminal Investigation of Suspect 1 When He Was Not Authorized to Receive Updates

The clear and convincing evidence substantiated that Respondent continued to seek updates about the criminal investigation after he complained about the quality of the investigation.[10] The clear and convincing evidence – including Respondent's statements[11] to me – showed that, several days after the start of the PSU investigation of Suspect 1, Respondent complained to KCSO Command Staff, including then-Chief Deputy Damian Nord, about the quality of PSU's investigation.[12] At the time, in late April 2021, Respondent was not authorized to have a role in the criminal case.[13] When the criminal case was initiated on April 21, 2021, Respondent was the lieutenant of IAU and the case was assigned to PSU.[14] In accordance with KCSO policies and internal procedures, any role Respondent had in the criminal investigation was limited to waiting for the conclusion of the criminal case because IAU's investigations were tolled pending a decision by the District Attorney's Office whether to prosecute.

Respondent Accompanied Victim 1 to the District Attorney's Office Without Informing the Criminal Case Investigators

The clear and convincing evidence substantiated that Respondent accompanied Victim 1 to the District Attorney's Office for a meeting with Deputy District Attorney Ken Russell without informing the criminal case investigators. Respondent's attendance was unusual because Respondent lacked the investigative team's level of knowledge about the substantive details of the investigation and it deprived the criminal investigators of an important opportunity to present effectively their investigative findings to the Deputy District Attorney. Additionally, Respondent's decision to accompany Victim 1 to the Deputy District Attorney's office without the criminal investigators demonstrated undue influence and behavior that was outside the normal practice for KCSO's PSU lieutenant.

Respondent, Sergeant Weidenkopf, Victim 1, and Chief Deputy Levig provided me with information about Respondent's meeting with Mr. Russell. Respondent and Sergeant Weidenkopf also provided information about the meeting during Respondent's Internal Affairs investigation.

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[10] Attachment F (Weidenkopf Report of Interview).

[11] Attachment G (Respondent Report of Interview at 4).

[12] Attachment H (Respondent IA Case at 8, 22); Attachment G (Respondent Report of Interview at 4).

[13] Attachment A (Carpenter Report of Interview at 2).

[14] Attachment I (Respondent's Assignments). Respondent served as the commander of the Kern County Sheriff's Office Internal Affairs Unit ("IAU") from March 13, 2021, through May 8, 2021, and commander of the Professional Standards Unit ("PSU") from May 8, 2021, through December 4, 2021.

Respondent transferred from IAU to PSU on May 21, 2021. In his new role, Respondent oversaw criminal investigations and supervised Sergeant Weidenkopf. On May 4, 2021, Sergeant Weidenkopf referred the Suspect 1 case to the Kern County District Attorney's Office for a decision whether to prosecute. In a memorandum Sergeant Weidenkopf prepared in connection with Respondent's Internal Affairs investigation, he stated the process relating to PSU's submissions of cases to the prosecutor:

> PSU cases are filed directly with Supervising Deputy District Attorney Ken Russell. This process involves my investigators and I meeting with Russell, briefing him on the investigation, and then hand delivering the complaint package to him. [Victim 1's] sexually [sic] battery case was no exception.

PSU investigators met with prosecutors and the standard PSU practice up to May-June 2021 was that there was no instance where the PSU lieutenant met a prosecutor without involving or notifying the investigators. The standard practice was that the sergeant and detective met the prosecutor, not the lieutenant. There was one instance where the PSU lieutenant attended a meeting with the investigators. In that instance, the lieutenant sat in the corner and did not say anything.[15] In addition, although it was common for PSU personnel to meet with Mr. Russell, it was not common for the victim to attend meetings with Mr. Russell.[16]

At some point in early June 2021, Respondent stated that Deputy District Attorney Ken Russell called Respondent to let him know that he heard he oversaw PSU, and requested to meet with Victim 1 regarding the case.[17] Respondent stated to me that he did not recall informing the investigators about the meeting, but was "pretty sure" that he did.[18] Sergeant Weidenkopf, on the other hand, stated in a memorandum he prepared on December 10, 2021, during Respondent's Internal Affairs investigation that Respondent "took [Victim 1] to the DA's office to meet with Russell without involving me, my lead investigator, or PSU staff who were involved in the investigation." In addition, Sergeant Weidenkopf stated that Respondent "did so without [Sergeant Weidenkopf's] knowledge" and learned about Respondent's attendance at the meeting only weeks or months later.[19]

Victim 1 stated that she did not want to attend the meeting with Mr. Russell alone and asked Respondent to attend with her. She stated that she did not know in

[15] Attachment F (Weidenkopf Report of Interview at 3); Attachment J (Nord Report of Interview at 2); Attachment K (Levig Report of Interview at 2).
[16] Attachment K (Levig Report of Interview at 2).
[17] Attachment G (Respondent Report of Interview at 5).
[18] Attachment G (Respondent Report of Interview at 5).
[19] Attachment L (Weidenkopf Memorandum at 2).

what capacity Respondent attended the meeting, whether it was as her personal representative or as the PSU lieutenant.

During the Respondent IA case, Commander Carpenter asked Respondent if he felt that accompanying Victim 1 to the meeting with Mr. Russell was within the scope of his job at PSU. Respondent stated that he believed it was.[20] Respondent told me that he was at the meeting in his professional capacity.[21]

The information Respondent and Sergeant Weidenkopf provided about whether Respondent told the criminal investigators at PSU about the meeting is in conflict.

I find that there is a high probability that Respondent accompanied Victim 1 to the meeting with Mr. Russell without informing the PSU investigators and in his personal capacity based on the following:

- the practice of PSU up to that time was that the lieutenant did not attend meetings with the prosecutors;
- the practice of PSU was that the investigators provided case information to the prosecutor directly because they knew the case details in the event the prosecutors had questions;
- Sergeant Weidenkopf's statements relating to the meeting in both my interview and in his memorandum had a level of specificity that stands in direct contrast to Respondent's vague statements that he did not recall but was "pretty sure" he told the investigators in advance of the meeting;
- Respondent lacked direct recollection of the meeting;
- Respondent's statement that he attended the meeting in his professional capacity is not plausible. He lacked knowledge of the investigative details and would not have been able to answer any substantive questions from Mr. Russell. Had he told the investigators, they would likely have attended the meeting;
- Respondent's previous actions and level of personal interest in Victim 1's case is consistent with his attendance at the meeting and not informing the investigators;
- Victim 1 stated that she – not Mr. Russell – asked Respondent to attend the meeting[22] – which also demonstrated with a high degree of probability that Respondent did not attend the meeting in his professional capacity.

Respondent Engaged in a Personal and Intimate Relationship with Victim 1 While Being Significantly Involved in the Suspect 1 Criminal

[20] Attachment H (Respondent IA Case Report at 22).
[21] Attachment G (Respondent Report of Interview at 5).
[22] Attachment M (Victim 1 Report of Interview at 2).

and Internal Affairs Investigations and He Failed to Inform the Investigators of the Relationship

The clear and convincing evidence substantiated that Respondent engaged in a personal and intimate relationship with Victim 1 while simultaneously being significantly involved in the Suspect 1 criminal and Internal Affairs investigations. The clear and convincing evidence also substantiated that Respondent failed to inform the investigator of his relationship with Victim 1.

In late April to early May 2021, Respondent persuaded Victim 1 to wear a wire during the initial stages of the criminal investigation of Suspect 1.[23]

In April to May 2021, Respondent sought updates from Sergeant Weidenkopf about the progress of the criminal investigation. In early June 2021, Respondent accompanied Victim 1 to a meeting with the prosecutor in his personal capacity.

As early as June 2021, Respondent's and Victim 1's relationship progressed to something more personal. According to Respondent, his wife was suspicious of Respondent's relationship with Victim 1. He provided his wife with the code to his work cell phone.[24] Further, Respondent's wife, who had provided childcare to Victim 1's children beginning in approximately January 2021, stopped providing childcare in approximately June 2021. Respondent stated that his wife felt the relationship between Victim 1 and Respondent was too close and too casual.[25]

Shortly after Victim 1 asserted allegations against Suspect 1, Respondent effectuated her transfer to his unit. Initially after alleging that Suspect 1 sexually assaulted her, Victim 1 chose to remain assigned to the Detective Unit. After a short period of time, however, she felt uncomfortable remaining there and asked Respondent for a transfer to PSU.[26] Respondent effectuated a temporary transfer of Victim 1 to PSU in late May 2021 and a permanent transfer to PSU on June 28, 2021. In PSU, she reported to Sergeant Weidenkopf and also performed work tasks for Respondent in his capacity as lieutenant. The work she performed for Sergeant Weidenkopf was different than the type of work she performed for Respondent.

As early as August 2021, witnesses stated that Respondent and Victim 1 engaged in inappropriately flirtatious behavior in the office. Sheriff's Support Technician ("SST") [redacted] stated to me that she first noticed flirtatious behavior

[23] Attachment J (Nord Report of Interview at 2); Attachment G (Respondent Report of Interview at 3).

[24] According to Chief Deputy Levig, it was unusual for Respondent to have given his wife the passcode to his work cell phone. Chief Deputy Levig stated that employees are supposed to keep passcodes confidential and have gotten into trouble for sharing their information. Attachment K (Levig Report of Interview at 2).

[25] Attachment G (Respondent Report of Interview at 3).

[26] Attachment G (Respondent Report of Interview at 2-4).

within a few weeks of being assigned to PSU in August 2021.[27] SST [W1], SST [R2], and Detentions Senior Deputy Jose Hinojosa also each saw them spend long periods of time in Respondent's office with the door closed.[28]

By August 2021, Respondent told Sergeant Weidenkopf that he was assuming direct supervision of Victim 1 and that he was removing Sergeant Weidenkopf as Victim 1's supervisor.[29] The normal practice at KCSO was that a Sheriff's Aide like Victim 1 would report to a sergeant and the sergeant reported to a lieutenant. For Victim 1 to report directly to Respondent was aberrational.

Between August 2021 and November 2021, Respondent and Victim 1 openly flirted in the office. After expressing feelings for each other in early November, the relationship progressed to sexual intimacy by late November.

When she first started working in PSU in October 2021, Senior Deputy Rutter was suspicious that Respondent and Victim 1 were having an affair. She thought their relationship might have crossed a line. She observed Respondent and Victim 1 speaking closely and whispering to each other. She also observed Respondent enter Victim 1's cubicle and spend 15-30 minutes inside the cubicle at least once a week.[30]

As early as October 1, 2021, Respondent provided input to Sergeant Perez, the Internal Affairs investigator, while Sergeant Perez was developing questions to ask Suspect 1.[31] Respondent and Sergeant Perez each stated that Respondent provided input on questions that Sergeant Perez intended to ask Suspect 1 on November 23, 2021. Sergeant Perez stated that Respondent initiated contact with Sergeant Perez prior to Suspect 1's interview and asked if Sergeant Perez had drafted questions for Suspect 1. Sergeant Perez showed Respondent a list of questions and asked Respondent for input. Respondent suggested adding a question.[32] Respondent stated that he reviewed Sergeant Perez's questions for Suspect 1 because Sergeant Perez asked for input how to "'game plan'" the interview.

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[27] Attachment N ([W1] Report of Interview at 2); Attachment H (Respondent IA Case Report at 13).

[28] Attachment H (Respondent IA Case Report at 11, 13, 14). In addition, Victim 1 had well-known medical issues that caused her to faint frequently. KCSO personnel, including Respondent, took steps to ensure her safety when she fainted. Witnesses reported that Respondent carried Victim 1 on a couple of occasions over a time period dating to approximately 2019. Respondent stated that he carried her. Attachment G (Respondent Report of Interview at 2). Although Respondent stated that other people also carried Victim 1, I was not able to identify any other KCSO personnel who carried her. Sergeant Perez stated to me that he helped her by wheeling her in a desk chair. Attachment O (Perez Report of Interview at 3). Although Respondent's carrying Victim 1 preceded their intimate relationship by a number of years, I did find that Respondent's actions and behavior toward Victim 1 exhibited an inappropriate aspect of workplace relationships.

[29] Attachment F (Weidenkopf Report of Interview at 3); Attachment G (Respondent Report of Interview at 4).

[30] Attachment H (Respondent IA Case Report at 11). Victim 1 had erected makeshift doors on her cubicle and Senior Deputy Rutter's cubicle was directly across from Victim 1's cubicle.

[31] Attachment O (Perez Report of Interview at 3).

[32] Attachment H (Respondent IA Case Report at 12-13).

I find that Respondent and Sergeant Perez's information was consistent in that both confirmed that Respondent provided input on Suspect 1's interview on November 23, 2021. Respondent saw himself as, and Sergeant Perez perceived Respondent to be, Sergeant Perez's mentor.

About two weeks after helping Sergeant Perez formulate interview questions and an investigative strategy, on October 15, 2021, Respondent served as Victim 1's personal representative during her interview in the Suspect 1 Internal Affairs investigation.

By early November 2021, Respondent's and Victim 1's relationship had progressed to being physical and they openly acknowledged to each other having feelings for each other.[33] They held hands and kissed. Over the weekend of November 20, 2021, and November 21, 2021, they had sexual intercourse in Respondent's office. Senior Deputy Rutter was in the office over that weekend and saw the light on in Respondent's office. Based on her suspicions of an affair, she said she wanted to get out of the office as fast as possible.[34]

On November 23, 2021 – two days after the last sexual encounter between Respondent and Victim 1 – Respondent proactively sought information from Sergeant Perez about what Suspect 1 said during his interview. Sergeant Perez told Respondent that, among other things, Suspect 1 alleged that Respondent and Victim 1 were having an affair. Sergeant Perez further advised Respondent that Sergeant Perez may need to interview Respondent and re-interview Victim 1 in light of Suspect 1's allegation. During his conversation with Sergeant Perez, Respondent did not inform Sergeant Perez that he and Victim 1 had sexual intercourse over the previous weekend. Sergeant Perez stated that, if he had known that Respondent and Victim 1 were having an affair, he would not have allowed Respondent to have become involved in the Internal Affairs investigation of Suspect 1.[35]

After Learning that Suspect 1 Alleged that Respondent Had an Affair with Victim 1, Respondent Deleted Relevant Evidence

[33] Attachment G (Respondent Report of Interview at 4); Attachment M (Victim 1 Report of Interview at 3).
[34] Attachment P (Rutter Report of Interview at 2).
[35] Attachment O (Perez Report of Interview at 4).

The clear and convincing evidence established that Respondent deleted relevant information from his work cell phone after learning on November 23, 2021, that Suspect 1 alleged that Respondent and Victim 1 were having an affair. The clear and convincing evidence substantiated that Respondent deleted the following information:[36]

Dates	***Type of Deleted Data***
11/5/2021-11/17/2021	Calls
11/8/2021-11/17/2021	Texts
11/17/2021-11/30/2021	Calls
11/22/2021-11/30/2021	Texts

Respondent's statements to me during his Internal Affairs investigation that he did not delete any information after he was notified that he had to relinquish his work cell phone during the Internal Affairs investigation into the allegation are misleading. The relevant inquiry for me is whether Respondent had knowledge of the potential that the information was evidence in Sergeant Perez's investigation. Respondent did not inform his supervisor of the affair until December 4, 2021,[37] the day after Victim 1's boyfriend already reported the affair to KCSO. KCSO did not initiate the Internal Affairs investigation until December 6, 2021. If Respondent's statements are true, then Respondent deleted some or all of his work cell phone logs and texts at some point during the two-week period after he learned that Suspect 1 had alleged an affair between Respondent and Victim 1, and that Sergeant Perez may need to interview both Respondent and Victim 1 as part of the Suspect 1 Internal Affairs investigation.

The evidence showed that Respondent was an experienced investigator and ranking officer at KCSO who knew the significance of the data that he deleted and that he was likely to be asked to produce his work cell phone. Respondent had just learned that Suspect 1 accused Respondent of having an affair with Victim 1 and knew that any telephone logs and text messages between Respondent and Victim 1 could corroborate Suspect 1's claims. I find that there is a high probability that Respondent knew that the data from his work cell phone would be evidence in both the Internal Affairs investigation into Suspect 1's conduct and a likely future investigation into Respondent's own conduct due to the probative value the allegation had for Suspect 1's defense to Victim 1's allegations, as well as in the inevitable Internal Affairs investigation into Suspect 1's allegations and that he deleted the data intentionally to hide it from the Internal Affairs investigator.

[36] Attachment H (Respondent IA Case Report at 20).

[37] Victim 1 told her partner that she had an affair with Respondent on December 3, 2021.

A. Did Respondent Commit "Sexual Assault" against Victim 1 as that Term is Defined by California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)? If so, Did Respondent's Actions Constitute Sexual Assault and Therefore Violate California Penal Code Section 13510.8(b)(4) or POST Regulation 1205(a)(4)?

The clear and convincing evidence substantiated that Respondent engaged in sexual intercourse on November 20, 2021, and November 21, 2021, with an employee who was his direct subordinate while he was on duty.

Respondent and Victim 1 each stated that they engaged in sexual intercourse on November 20, 2021, and November 21, 2021 while Respondent was serving as Watch Lieutenant of KCSO and that they had sexual intercourse in Respondent's office.[38] Other evidence corroborated their admissions, including gate access records showing Victim 1's entry to the KCSO property, surveillance camera footage, and timecards.[39]

I find that there is not clear and convincing evidence that Respondent's actions in having sexual intercourse on November 20, 2021, and November 21, 2021, with an employee who was his direct subordinate while he was on duty violated California Penal Code Section 13510.8(b)(4).[40]

Section 13510.8(b)(4) defines serious misconduct to be "[s]exual assault, as described in subdivision (b) of Section 832.7." California Penal Code Section 832.7(b) states that "sexual assault" means:

> [t]he commission or attempted initiation of a sexual act **with a member of the public** by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault. (emphasis supplied)

My finding that there was not clear and convincing evidence of a violation of Section 13510.8(b)(4) is primarily based on the reason that the state of the law at the time of the acts was unclear as to whether Victim 1 was "a member of the public," as required by that section. Victim 1 was an employee of KCSO at the time.

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[38] Attachment H (Respondent IA Case at 8, 16, 19).

[39] Attachment H (Respondent IA Case at 26-27).

[40] Section 13510.8(b)(4) authorized me to conduct an analysis of the sexual assault allegations pursuant to California Penal Code Section 13510.8(g)(1)(A) and Section 13510.8(g)(1)(B)'s lookback provisions, which allow POST's initiation of proceedings to revoke or suspend a peace officer's certification for conduct that occurred prior to January 1, 2022, where the serious misconduct is sexual assault or if the employing agency makes a final determination regarding its investigation after January 1, 2022.

POST Regulation 1205(a)(4) became effective January 1, 2023, and does not apply to events occurring in 2021. The Regulation clarified California Penal Code Section 13510.8(b)(4) by adding the following language to Section 13510.8(b)(4)'s definition of sexual assault, which now specifies that Serious Misconduct includes: "Sexual assault, as described in subdivision (b) of Section 832.7, **and shall extend to acts committed amongst members of any law enforcement agency**." (emphasis supplied).

Therefore, I find that, although the clear and convincing evidence substantiated that Respondent and Victim 1 had sexual intercourse while Respondent was on duty, the evidence did not substantiate by clear and convincing evidence a violation of California Penal Code Section 13510.8(b)(4) at the time of Respondent's actions.

B. Did Respondent's Personal Interests and Relationship with Victim 1 Compromise His Judgment and Professional Obligations as a Peace Officer? If So, Did Respondent's Actions Constitute Abuse of Power and Therefore Violate California Penal Code Section 13510.8(b)(2)?

A peace officer's malfeasance in the performance of wrongful acts stems from the authority and power granted as a peace officer. Abuse of power occurs when a peace officer misuses the "position of power to take unjust advantage of individuals, organizations, or governments."[41] Abuse of power can take various forms and includes a single incident or acts that are part of a complex scheme of events. Acts of abuse of power depend on the particular circumstances and the responsibilities of the peace officer. A common theme among many forms of abuse of power is deceit. Where a peace officer acts knowingly – that is, being practically certain that his acts would cause a certain result – adds to the egregious nature of the abuse of power.

KCSO Policy C-100 sets boundaries on its peace officers' actions and defines the outer limits of wrongful actions: "I will never . . . permit personal feelings, prejudices, animosities, or friendships to influence my decisions."[42] The policy further states, "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

[41] Bernard Auchter, Jonathan Katz, and Mary Graham, "Crime and the Abuse of Power – Offenses and Offenders Beyond the Reach of Law?" at 3, United States Discussion Paper for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (National Institute of Justice 1980).

[42] Other jurisdictions follow KCSO and recognize conflict of interest as a core value of policing. *E.g.*, Attachment Q ("A Practical Guide to the Conflict of Interest Law for Police Officers," Massachusetts State Ethics Commission (3/23/1990)); Attachment R ("Conflict of Interest Policy," Office of the Police and Crime Commissioner Gloucestershire (v1.1, 2/27/2020)); Attachment S ("Conflict of Interest Policy," Office of the Police Ombudsman for Northern Ireland (3/2013)); Attachment T ("Corruption Prevention Concepts: Conflicts of Interest," Australian Commission for Law Enforcement Integrity).

performance of my duty."[43] KCSO's core values further provide that that "[h]onesty, credibility and ethical conduct should describe who we are and nothing less is acceptable."[44] Respondent himself acknowledged his awareness of these rules.[45]

The clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(2)'s proscription of Abuse of Power when he:

- Had sexual intercourse with Victim 1 while on duty and in his KCSO-assigned office while he served as Watch Lieutenant at KCSO on November 20 and 21, 2021;
- Contacted Sergeant Perez after having sex with Victim 1 and sought confidential information from Sergeant Perez about the Internal Affairs interview of Suspect 1's alleged sexual assault of Victim 1, and did not first disclose to Sergeant Perez his sexual relationship with Victim 1;
- Wrongfully acted based on information that Sergeant Perez told him about Suspect 1's Internal Affairs interview when he shared confidential information with Victim 1 that Respondent learned from Sergeant Perez concerning the statements Suspect 1 made during his Internal Affairs interview;
- Wrongfully acted based on information that Sergeant Perez told him about Suspect 1's Internal Affairs interview when he deleted work phone text messages and phone log records of communications between Respondent and

[43] POST Regulation 1013 also recognizes that peace officers will not "permit personal feelings, prejudices, . . . or friendships to influence . . . decisions." KCSO policy, therefore, mirrors the Law Enforcement Code of Ethics rule in POST Regulation 1013.

[44] Kern County Ordinance 2.02.010 applied to Respondent as "an appointed officer or employee of the county of Kern," the Ordinance applied to Respondent. The penalties of Kern County Ordinance 2.01.010 provide insight on how impactful violation of the ordinance is. The ordinance states that its violation is "sufficient grounds for immediate dismissal, suspension or reduction in rank or compensation of any appointed officer or employee of the county."

[45] Respondent signed a letter of expectations each year during his annual performance review that spelled out what KCSO expected of him in his position. Attachment U (Sheriff's Expectations Letters). By signing the letter, Respondent acknowledged receipt of the Sheriff's Expectations "which outline the conduct expected of all Sheriff's Office employees [and] I understand that I will be held accountable for my actions." Respondent signed the acknowledgement each year he from the time he was promoted to sergeant (2016-21). Respondent's role as a lieutenant meant that he was a ranking officer responsible for programmatic oversight of a section, management of personnel, and to ensure compliance with laws and policies. Respondent's role over the weekend of November 20, 2021, and November 21, 2021, as the Watch Lieutenant meant that he was the most senior law enforcement officer on duty in Kern County responsible in the event of a critical incident, major crime, or other significant event. A key element of Respondent's roles as a ranking officer was to ensure that investigations conducted in IAU and PSU were free of conflict of interest. A fundamental concept in policing is that supervisors should "never investigate sexual or other serious complaints against staff under their direct supervision." Attachment V ("Managing Conflicts of Interest," New Zealand Police Instructions at 9 (6/14/2022)).

Victim 1 after learning what Suspect 1 said about Respondent and Victim 1's relationship; and

- Interfered with the Internal Affairs investigation of Suspect 1 by providing input on the investigative strategy and interview questions of Suspect 1 while simultaneously serving as the personal representative to Victim 1 during her interview in the same Internal Affairs investigation.

Based on Respondent's level of experience, his rank, and his training, I find that Respondent reasonably knew that his actions were egregious. When I interviewed him, Respondent stated that he had "exponentially" more experience conducting investigations.[46] According to Respondent, he was the youngest sergeant at KCSO, the youngest lieutenant at KCSO, and his career was fast. According to then-Chief Deputy Nord, Respondent's appointment as lieutenant of IAU and PSU meant that he was a "shooting star" and had "made it" at KCSO. The next step after being a lieutenant at PSU was promotion to commander.[47] Commander Carpenter and Lieutenant Colbert corroborated then-Chief Deputy Nord's statements about Respondent's prestige at KCSO. Lieutenant Colbert stated that being lieutenant in IAU is considered a "steppingstone" to bigger things.[48] It was precisely because Respondent and his peers at KCSO saw Respondent as a strong candidate for upward advancement that Respondent was able to project his influence on the criminal and Internal Affairs investigations of Suspect 1 and further his personal interest in Victim 1.

1. Sex On Duty as Abuse of Power.

The clear and convincing evidence substantiated that Respondent was the Watch Lieutenant during the weekend of November 20 and 21, 2021. In this capacity, Respondent was the highest ranking law enforcement officer on duty at the time. It is undisputed that Respondent and Victim 1 had sexual intercourse twice in Respondent's office while he was on duty. Therefore, Respondent abused his power.

It is not disputed that engaging in sexual activities in a peace officer's work-assigned office during a time that officer is assigned to serve as Watch Lieutenant is an abuse of the powers assigned to that officer. Indeed, when Lieutenant Carpenter asked whether being involved in a sexual encounter while on duty would take Respondent away from his duties, Respondent equivocally stated:

> [T]he obvious answer is yes, as terrible as it sounds. I had my radio on. Um. I had my phones on. I was available, as needed. I was covering as a Watch Lieutenant. Um, so I would have been in my office anyways. It wasn't a normal day for me to work. I had

[46] Attachment H (Respondent IA Case at 22); Attachment G (Respondent Report of Interview at 4).
[47] Attachment I (Nord Report of Interview at 2).
[48] Attachment W (Colbert Report of Interview at 1); Attachment A (Carpenter Report of Interview at 2).

> already worked all of my time for that week and was working all of my time for the next week, so I was volunteering to be there. Um, I feel like I was, um, able to respond if anything, um, required my attention. Um, however, just purely by the nature of what was occurring, that is correct.[49]

Following Respondent's answer, Lieutenant Carpenter then pressed Respondent and asked whether Respondent was able to effectively manage KCSO operations as the ranking member at the time he was engaged in sexual intercourse with Victim 1 on November 20 and 21, to which Respondent stated:

> I feel like I was, um, able to respond to any situation which required my situation. However, I was not actively monitoring KCSO operations for the county at that time.[50]

The evidence showed the high probability that Respondent had cultivated a relationship with Victim 1 over a period of months leading up to November 20-21, 2021, and that Victim 1 was particularly vulnerable in the days before Suspect 1's Internal Affairs interview on November 22, 2021. As a result of Respondent's abuse of power, Respondent took unjust advantage of Victim 1 and her situation, even taking into account that both Respondent and Victim 1 stated it was consensual. For instance, when Respondent met with Victim 1 over the weekend of November 20, 2021, and November 21, 2021, he stated that she asked to speak with him and that he knew that having sex with Victim 1 was a possibility but not his intent.[51]

Respondent also stated that he was aware that Suspect 1 was going to be interviewed the Monday following the weekend he had sex with Victim 1.[52] I conclude that Respondent's relationship with Victim 1 not only directly compromised the job responsibilities KCSO assigned Respondent to perform, it constituted an abuse of the powers Respondent was given as a result of those responsibilities, and precluded his objective behavior as a peace officer.

2. Failure to Disclose Material Information as Abuse of Power.

The clear and convincing evidence also substantiated that Respondent abused his power when he sought and obtained information from Sergeant Perez about Suspect 1's Internal Affairs interview without first disclosing to Sergeant Perez that he and Victim 1 had a sexual relationship. Respondent had an affirmative obligation to disclose information material to an investigation pursuant to KCSO Policy No. C-100

[49] Attachment Z (Respondent IA Interview at 12:20-13:04).
[50] Attachment Z (Respondent IA Interview at 13:04-13:40).
[51] Attachment H (Respondent IA Case Report at 19).
[52] Attachment H (Respondent IA Case Report at 19).

(5/15/2020), which states: "Deputies will . . . not withhold information pertinent to effective law enforcement." In fact, had Sergeant Perez known that Respondent and Victim 1 were having an affair, Sergeant Perez would not have continued to involve Respondent in the investigation.[53] Respondent's failure to disclose information about his sexual relationship with Victim 1 impacted Sergeant Perez's decision to reveal information to Respondent. Respondent abused his position as the then-PSU Lieutenant within KCSO, and also his mentor-mentee relationship with Sergeant Perez when obtaining confidential investigative information without disclosing his sexual relationship with Victim 1, thereby threatening the quality and integrity of the investigation of Suspect 1.

3. Wrongfully Sharing Confidential Information as Abuse of Power.

The clear and convincing evidence substantiated that Respondent wrongfully acted based on information that Sergeant Perez told him about Suspect 1's Internal Affairs interview when he shared information with Victim 1 that Respondent learned from Sergeant Perez concerning the statements Suspect 1 made during his Internal Affairs interview and deleted work phone text messages and phone log records of communications between Respondent and Victim 1 after learning what Suspect 1 said about Respondent and Victim 1's relationship. Respondent, who was a superior officer within the KCSO organization, was able to obtain this information from Sergeant Perez because Sergeant Perez saw Respondent as a mentor.[54] It was because of Respondent's position of authority and his status as a mentor that Respondent gained access to confidential information. He abused that status by obtaining and then disclosing that same information to the Victim in the same investigation.

Respondent's disclosures to Victim 1 about Suspect 1's Internal Affairs interview also violated California Penal Code Section 832.7.[55] California Penal Code Section 832.7(b)(1) states that a peace officer's personnel records and other records maintained by KCSO pursuant to California Penal Code Section 823.5 are "confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code."[56] KCSO policies also recognized that Respondent was bound by confidentiality. KCSO Policy No. C-100 (5/15/2020) states: "Members of the Sheriff's Office will . . . treat as confidential the official business, reports and records of the Sheriff's Office in accordance with

[53] Attachment O (Perez Report of Interview at 4).

[54] Attachment O (Perez Report of Interview at 1).

[55] This also constituted serious misconduct as "acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with" Respondent's "obligation to uphold the law . . . ." California Penal Code Section 13510.8(b)(6).

[56] The California Attorney General and the California Court of Appeal have issued opinions that stand for the proposition that violation of Section 832.7's confidentiality provisions is a misdemeanor pursuant to California Government Code Section 1222. *Towner v. County of Ventura*, 63 Cal. App. 5th 761 (2021) The *Honorable Marsha Jones Moutrie*, 82 Ops. Cal. Atty. Gen 246 (1999).

applicable law." The policy further states that members of the department shall not "impart any confidential information regarding Sheriff's Office business to any person or entity unless directed by competent authority or legal process."

KCSO's Internal Affairs investigative records of allegations that Suspect 1 sexually assaulted Victim 1, including Suspect 1's statements made during his Internal Affairs interview, are records subject to Section 832.7(b)'s confidentiality protections.

Respondent acknowledged each year during his performance review that he had access to confidential law enforcement information by signing a "Kern County Sheriff's Department Employee Statement Form."[57] As noted above, California's Law Enforcement Code of Ethics rule provides, in part, that "[w]hatever 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." The clear and convincing evidence also substantiated that Respondent had a legal obligation to maintain confidentiality of the Suspect 1 interview information he learned from Sergeant Perez and that Respondent willfully disclosed to Victim 1 what Suspect 1 said during his Internal Affairs interview.

Respondent stated to me that he told Victim 1 what Suspect 1 said during his Internal Affairs interview. Specifically, Respondent told Victim 1 that Suspect 1 alleged that (1) Respondent and Victim 1 had an affair; (2) Victim 1 was crazy; and (3) Victim 1 had come onto Suspect 1. Respondent stated that he told Victim 1 shortly after he heard the information from Sergeant Perez on November 23, 2021.[58] Respondent stated during his Internal Affairs interview that the information he told Victim 1 was confidential and his release of information was outside the proper channels.[59] Victim 1 corroborated Respondent's statements.[60] Victim 1 also stated that Respondent told her at the time that he could not share the information with her because it was confidential.[61]

During both the Internal Affairs interview and my interview, Respondent stated that he did not have the intent to obtain or provide confidential information to Victim 1. He further stated that it was "splitting hairs" to take a certification action against him for what he told Victim 1 about what Suspect 1 said because he had previously represented Victim 1 during her interview, he would learn it anyway during any subsequent interview of Victim 1 in connection with Suspect 1's Internal Affairs

[57] The form (Attachment X) includes a statement that disseminating confidential information to any unauthorized party is a violation of the law.
[58] Attachment G (Respondent Report of Interview at 6); Attachment H (Respondent IA Case Report at 24-25).
[59] Attachment H (Respondent IA Case Report at 25).
[60] Attachment M (Victim 1 Report of Interview at 1-2).
[61] Attachment M (Victim 1 Report of Interview at 2).

investigation, and he disclosed the information to "support" her.[62] Respondent stated that he was in a state of panic and despair. I reject Respondent's statements that he did not have the intent to obtain information as irrelevant.[63]

I find that the clear and convincing evidence showed that Respondent's actions in sharing confidential information in violation of California Penal Code Section 832.7 were an abuse of power.[64] Further, that Respondent did so intentionally, knowing that sharing the information was wrong, supports the conclusion that his actions were the result of an abuse of power.

4. Wrongfully Deleting Evidence as Abuse of Power.

The clear and convincing evidence substantiated that Respondent's deletions of phone text messages and cell phone log records was an abuse of power. After Sergeant Perez revealed to Respondent that Suspect 1 alleged that Respondent and Victim 1 were having an affair, Respondent knew that the text messages and cell phone log records were relevant and material to Suspect 1's defense and the Internal Affairs investigation of Suspect 1. Yet, he deleted the evidence before Sergeant Perez could review it and analyze it in Suspect 1's Internal Affairs investigation and before the investigator in his own Internal Affairs investigation could review it and analyze it.

5. Insertion in Internal Affairs Investigation as Abuse of Power.

The clear and convincing evidence substantiated that Respondent interfered with the Internal Affairs investigation of Suspect 1 by providing input on the investigative strategy and interview questions of Suspect 1 while simultaneously serving as the personal representative to Victim 1 during her interview in the same Internal Affairs investigation. Respondent took advantage of his position of authority at KCSO as a lieutenant and mentor to Sergeant Perez. As a result of Respondent's abuse of power, he played two incompatible roles at the same instant: KCSO investigative team member and Victim 1's personal representative.

Respondent's insertion in Suspect 1's Internal Affairs investigation was an abuse of power because it was outside his responsibilities and authority as lieutenant of PSU and because he inserted himself in the investigation to benefit his personal relationship with Victim 1. In mid-October 2021, Respondent provided significant input to Sergeant Perez about the investigative strategy and interview questions. At the same time that Respondent provided advice and guidance to Sergeant Perez,

[62] Attachment H (Respondent IA Case Report at 25).

[63] Even if Respondent's intent were relevant, I did not find him to be credible on this issue: on one hand, he stated that he knew that he could not share the information because it was confidential; on the other hand, he stated that he did not have the intent to obtain the information.

[64] The exceptions stated in Section 832.7(b) do not apply to the evidence in this case.

Respondent also served as Victim 1's personal representative during her Internal Affairs interview. As early as June 2021, Respondent's and Victim 1's relationship had progressed to a highly personal level. Respondent's wife stopped providing childcare to Victim 1, stating to Respondent that the relationship was too close and too casual.[65] In August 2021, witnesses stated that Respondent and Victim 1 engaged in inappropriate flirting in the office, which continued through November 2021.

C. Did Respondent Fail to Disclose Material Information Related to Criminal and Internal Affairs Investigations about Suspect 1? If So, Did Respondent's Actions Constitute Dishonesty and Therefore Violate California Penal Code Section 13510.8(b)(1)?

The allegation that Respondent committed dishonesty is subject to my review and potential regulatory action by the Commission pursuant to California Penal Code Section 13510.8(g)(1)(B).[66]

The clear and convincing evidence substantiated that Respondent violated Section 13510.8(b)(1). Section 13510.8(b)(1) defines dishonesty as:

> 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 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.

Solely for purposes of deciding whether suspension or revocation is the appropriate action in this case, POST Regulation 1205(a)(1) directs the Commission to consider whether Respondent acted willfully, not based on mistake or accident. It is important to note that the question of willfulness is only relevant to the Commission's revocation or suspension decision; the question of willfulness is not relevant to the question of whether Respondent engaged in serious misconduct (*i.e*., dishonesty).

Evidence that Respondent would have been practically certain that his acts would cause a certain result is sufficient to establish that he acted knowingly. It is not

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[65] Attachment G (Respondent Report of Interview at 3).

[66] Pursuant to California Penal Code Section 13510.8(g)(1)(B), if an employing agency made a final determination regarding its investigation of serious misconduct after January 1, 2022, the POST Commission may initiate proceedings to revoke or suspend a peace officer's certification for dishonest conduct that occurred prior to January 1, 2022. In the instant case, Respondent is alleged to have engaged in conduct in 2021, and KCSO made its final determination of serious misconduct after January 1, 2022. In addition, California Penal Code Section 13510.8(g)(1)(A) provides that Dishonesty that occurred prior to January 1, 2022, is also subject to revocation proceedings.

necessary to establish that Respondent acted with evil intent or with a harmful motive in order to conclude that revocation is the proper action in this case.

Respondent's dishonesty manifested itself when he deleted text and phone call logs after knowing that it might be evidence in Suspect 1's Internal Affairs investigation and when he failed to inform KCSO command staff that his personal relationship with Victim 1 could be material to the criminal and Internal Affairs investigations in which he was becoming involved.

1. Destroying or Concealing Evidence: Respondent's Deletion of Text Messages and Phone Call Logs.

The clear and convincing evidence substantiated that Respondent was aware that text message and phone call logs could be evidence in Suspect 1's Internal Affairs investigation and that Respondent deleted those text messages and phone call logs. Sergeant Perez told Respondent that he may have to interview him and re-interview Victim 1 in connection with Suspect 1's Internal Affairs investigation based on Suspect 1's statements during his interview.

Respondent's deleted text messages and phone call logs were directly relevant to Suspect 1's statements during his Internal Affairs interview. The deleted text messages and phone calls cover the timeframe from 11/5/2021-11/30/2021. Respondent and Victim 1 stated that they spoke by phone on November 5, 2021, when she was in Florida. The phone conversation was one of the first times that they acknowledged that they had feelings for each other. Sergeant Perez interviewed Suspect 1 on November 22, 2021. Respondent and Victim 1 arranged prior to the weekend of November 20-21, 2021 – the weekend that they had sexual intercourse in Respondent's office – for her not to be in the office on November 22, 2021, due to her fragile state of mind leading up to Suspect 1's Internal Affairs interview. The clear and convincing evidence substantiated that Respondent was purposeful in deleting data that he knew was incriminating against him relevant to the investigation of Suspect 1 and also relevant to a future investigation into his own misconduct.

The clear and convincing evidence further substantiated that Respondent's deletion of data and failure to inform Sergeant Perez that he had an intimate relationship with Victim 1 materially impacted Sergeant Perez's Internal Affairs investigation of Suspect 1. On November 23 or 24, 2021, Sergeant Perez told Respondent that he might have to interview Respondent. Yet, not only did Respondent intentionally fail to disclose his relationship with Victim 1 to Sergeant Perez, he deleted data from his work phone directly relevant to his relationship with Victim 1. Sergeant Perez in fact conducted additional investigation after his interview of Suspect 1. I find that Respondent – knowing the evidence on his work cell phone was material to the Suspect 1 Internal Affairs investigation – destroyed relevant evidence. I further find

that Respondent waited from November 23 or 24, 2021, until December 4, 2021 to report the affair, substantiating the high probability that Respondent intentionally concealed information that his own department policy mandated he provide.

2. Respondent's Lack of Candor.

Lack of candor is a vital component of any criminal or Internal Affairs investigation. It is more than mere deceit; it is deceit by omission where the truth is intentionally concealed. Where there is a lack of candor by officers, witnesses, or other participants in an investigation, the investigation and/or its outcome may be corrupted. KCSO policy incorporates the important concept of candor: "Deputies will . . . not withhold information to pertinent effective law enforcement."[67] Under KCSO policy, Respondent was obligated to have candor while he was employed at KCSO.

The clear and convincing evidence substantiated that Respondent failed to disclose his personal relationship with Victim 1 to either the criminal or Internal Affairs investigators. The clear and convincing evidence further substantiated that Respondent engaged in lack of candor when he failed to disclose material information about his personal and intimate relationship with the victim while becoming involved in the criminal and Internal Affairs investigations. KCSO Policy No. C-100 obligated Respondent to have provided information that his personal relationship with Victim 1 was such that his failure to disclose it prevented effective law enforcement in connection with both the criminal and Internal Affairs investigations of Suspect 1.

Respondent's insertion in the criminal investigation was contrary to KCSO's policy and practice, as stated above. Further, his insertion in the Internal Affairs investigation was similarly contrary to KCSO practice. According to Sergeant Perez, Respondent did not become involved in other Internal Affairs investigations. Sergeant Perez stated that the investigation of Suspect 1's sexual assault of Victim 1 was the only case in which Respondent became involved.[68] Commander Carpenter also stated that Respondent did not insert himself in other cases even if there was no Internal Affairs investigation and did not insert himself in other criminal investigations while he was lieutenant of IAU.[69]

As a lieutenant, Respondent knew or reasonably should have known that his relationship with Victim 1 would matter to command staff and the investigators. As an investigator, Respondent knew or reasonably should have known that his relationship with Victim 1 would matter to the investigators.

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[67] KCSO Policies and Procedures, Rules of Conduct – Law Enforcement Personnel, No. C-100 (revised 3/1/2007)).
[68] Attachment O (Perez Report of Interview at 4).
[69] Attachment A (Carpenter Report of Interview at 3).

Both Respondent and Sergeant Weidenkopf stated that Respondent was visibly upset after learning that Suspect 1 had alleged to Sergeant Perez that Respondent and Victim 1 were having an affair.[70] Respondent's state of mind during and immediately after his meeting with Sergeant Perez showed me that he was aware of the impact of his relationship with Victim 1 on Suspect 1's Internal Affairs investigation. Even if Respondent's relationship with Victim 1 prior to November 2021 was platonic, after he had sexual intercourse with her twice over the weekend of November 20, 2021 and November 21, 2021, I find that he had an affirmative obligation to have told Sergeant Perez or at least stop Sergeant Perez from continuing to tell him information on November 23, 2021 about what Suspect 1 alleged about Respondent and that Respondent knowingly failed to disclose his relationship.

I find that Respondent should have disclosed the information for completeness, even if not directly questioned or asked about it.[71] At various points throughout his involvement in the criminal and Internal Affairs investigations, Respondent had opportunities to reveal his relationship and did not.

Had KCSO command staff known of Respondent's relationship with Victim 1, they would likely have taken more formal steps to ensure that Respondent was walled off from the cases in a formal fashion. Had Sergeant Perez known of Respondent's relationship with Victim 1, he would not likely have asked for help in developing questions for Suspect 1's interview, would not likely have allowed Respondent to serve as Victim 1's personal representative during her interview, and would not likely have continued to discuss Suspect 1's allegations against Respondent. Without the benefit of this information, Sergeant Perez was not able to develop alternate investigative strategies how to conduct the Internal Affairs investigation of Suspect 1. Instead, Respondent continued to gain access to the investigations and took advantage of his co-workers, his supervisors, and his subordinate. Therefore, I find that the clear and convincing evidence substantiated that Respondent committed dishonesty when he failed to inform KCSO command staff, Sergeant Weidenkopf, and Sergeant Perez of his personal relationship with Victim 1.

V. Supporting Evidence and Documentation

Evidence	**Attachment**
Commander John Carpenter, Report of Interview	A
EDI Profile of David Wesley Hubbard, Respondent	B

[70] Attachment F (Weidenkopf Report of Interview at 4); Attachment G (Respondent Report of Interview at 6).
[71] KCSO Policy No. C-100 (5/15/2020) states: "Deputies will . . . not withhold information pertinent to effective law enforcement."

Evidence	**Attachment**
Kern County Disciplinary Review Board	C
Letter entitled “Notice of Administrative Leave/Revocation of Peace Officer Powers, from Larry McCurtain, Chief Deputy, to David Hubbard	D
Letter entitled “Notice of Disciplinary Action – Termination,” from Sheriff Donny Youngblood to David Hubbard	E
Sergeant Justin Weidenkopf, Report of Interview	F
David Hubbard (Respondent), Report of Interview	G
Kern County Sheriff’s Office Internal Affairs Investigation Report	H
Hubbard (Respondent) Assignments	I
Then-Chief Deputy Damian Nord, Report of Interview	J
Chief Deputy Erik Levig, Report of Interview	K
Memorandum entitled Staff Misconduct, from Sergeant Justin Weidenkopf to Lieutenant John Carpenter (12/10/2021)	L
Victim 1, Report of Interview	M
W1 [redacted] Report of Interview	N
Sergeant Danny Perez, Report of Interview	O
Senior Deputy Bess Rutter, Report of Interview	P
A Practical Guide to the Conflict of Interest Law for Police Officers, Massachusetts State Ethics Commission (3/23/1990)	Q
Conflict of Interest Policy, Office of the Police and Crime Commissioner Gloucestershire (v1.1, 2/27/2020)	R
Conflict of Interest Policy, Office of the Police Ombudsman for Northern Ireland (3/2013)	S
Corruption Prevention Concepts: Conflicts of Interest, Australian Commission for Law Enforcement Integrity	T

Evidence	Attachment
Kern County Sheriff's Department Employee Statement Forms (9/9/2016; 9/18/2017; 9/11/2018; 9/25/2019; 8/6/2020; 12/1/2021)	U
New Zealand Police Instructions	V
Lieutenant Jason Colbert, Report of Interview	W
Kern County Sheriff's Department Employee Statement Form	X
POST Management Course Expanded Course Outline, Module B	Y
Respondent Internal Affairs Interview	Z

VI. Conclusion

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation pursuant to Penal Code Section 13510.8.