

# Detective sues city over suspension

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A Bakersfield Police detective who has been with the department for 22 years is either dependable and hardworking or incompetent and insubordinate, depending on which side of a recent lawsuit is being read.

The detective, Scott Miller, is suing the city of Bakersfield and City Manager Alan Tandy over a 120-hour unpaid suspension in 2010 that he says was unwarranted and carried out illegally.

The city is responding by saying Miller's suspension was the least punishment he deserved after botching several investigations and ignoring an order to refrain from working overtime.

Miller is asking that the suspension be removed from his record, which would also restore his pay from those days.

Outside counsel Chris Hagan, who is representing the city, declined to comment.

Court documents revealed Miller's suspension stemmed from a number of investigations the city said Miller compromised. Two murders, one attempted murder, a robbery, a felony driving under the influence and a child molestation case couldn't be properly prosecuted because of Miller, according to documents written by Hagan on the city's behalf.

Miller's "well documented performance deficiencies and insubordination," the city alleges, included failing to record witnesses' statements, forgetting to book evidence, being unprepared on the witness stand, accidentally recording himself making disparaging remarks about witnesses and failing to conduct follow-ups such as a shoe print comparison and gunshot residue test.

In regard to one of the cases where Miller allegedly did not record witnesses, Capt. Kevin Stokes was quoted as saying, "We have a case -- a murder case -- that was not able to be prosecuted because of mistakes and errors made by Detective Miller. We have a person who got away with murder because of that performance," according to Hagan's filings in court.

That one incident was enough to warrant the 120-hour suspension, Stokes added. But the suspension did not come until later.

Two supervising district attorneys, one of whom is now district attorney, Lisa Green, called Sgt. Joe Aldana, Miller's supervisor, to say multiple people in the District Attorney's office had complained about Miller's performance, according to Hagan's documents.

Since Miller's explanation for missteps in his investigations was fatigue, Aldana ordered him not to work any overtime until further notice.

But a few weeks later, Miller signed up for voluntary overtime working at a DUI checkpoint.

Someone saw him on a newscast about the checkpoint and alerted superior officers, according to Hagan's filings.

It was at that point Miller was suspended.

Now, Miller is saying he should not have been suspended because he did not break any department rules. Documents filed by Miller's lawyer add that BPD's investigation into his performance was not done lawfully under California's Peace Officer's Bill of Rights.

"They never should have initiated an investigation," said Miller's attorney, Alison Berry Wilkinson.

"When his sergeant first came to him about complaints, he said, 'This is no big deal.'"

Court documents written by Wilkinson assert that the department did not look at Miller's record as a whole in issuing the suspension.

Past performance evaluations called him "an 'outstanding' employee that exceeded standards, was experienced, dependable, hardworking, extremely motivated, cooperative and adaptable to changing conditions," the documents assert.

Furthermore, Wilkinson said in an interview that all but one of the cases cited by the city as ones Miller ruined were prosecuted or resulted in a plea deal.

The one that wasn't had nothing to do with Miller's performance, she said, but instead related to witnesses being scared to testify in a gang-related case.

Miller's mistakes, Wilkinson's writings say, amount to human error under stressful circumstances -- something that does not call for the action taken against him.

And when he was suspended, he had already voluntarily transferred out of the Crimes Against Persons Unit four months earlier so his fatigue would not affect future cases, according to documents filed in court on his behalf.

"Every hiccup in a fluid and rapidly evolving criminal investigation does not amount to conduct worthy of a finding of misconduct, let alone a 120-hour suspension," Wilkinson's documents say.

A hearing on the case took place Wednesday. The case has been taken under submission by Kern County Superior Court Commissioner Linda Etienne, who will issue a ruling in the coming weeks.

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