

Sergeant back after being cleared of wrongdoing

Arbitrator's decision sheds light on internal investigation

STOCKTON - A San Joaquin County sheriff's sergeant is returning to work after being cleared of accusations of mishandling video evidence in a rare criminal assault case brought against a fellow deputy in 2009.

By Zachary K. Johnson

Posted Dec. 30, 2013 @ 12:01 am

STOCKTON - A San Joaquin County sheriff's sergeant is returning to work after being cleared of accusations of mishandling video evidence in a rare criminal assault case brought against a fellow deputy in 2009. William Mitchell was not a part of the investigation into the alleged beating that failed to discover there was video shot from inside a Sheriff's Office car that was there. But when the video surfaced six months after the alleged beating took place, it fell to Mitchell to handle the evidence.

The Sheriff's Office accused him of lying about making copies for himself and attempting to inappropriately assist the defense team in the criminal assault case and dismissed Mitchell in 2010, according to interviews and court and personnel documents. But an arbitrator has overturned Mitchell's firing. It ends a drawn-out process, including a separate battle in court, and allows Mitchell to return to work after three years, be paid lost wages and have the disciplinary action removed from his personnel file, according to the decision from Oakland arbitrator Fred D'Orazio.

After hearing testimony from Mitchell and his accusers, the arbitrator sided with Mitchell's account of what happened, finding that he was upfront about how many copies he was making of the video from the start and that there was no evidence he intended to circumvent proper practices to provide a copy to a criminal defense attorney, according to interviews and the November decision obtained by The Record. Mitchell declined to comment for this story. But his attorney, Allison Berry Wilkinson, said the arbitration showed the county was wrong about Mitchell. "They thought he lied. It was a bad conclusion," she said. "He just happened to be the one on duty." The Sheriff's Office confirmed that Mitchell was returning to work after arbitration but declined to comment on the video or the reasons for his termination.

The details of a personnel investigation are confidential, said Deputy Les Garcia, a Sheriff's Office spokesman. "It would be inappropriate to comment."

The video in question had been recorded in a Sheriff's Office vehicle used by Deputy Marcus Smith on Feb. 20, 2009, during the arrest of parolee Charles Inderbitzen near Manteca, according to interviews with attorneys familiar with the case. Smith was indicted by a criminal grand jury on one felony count, but the charges were dropped before the case went to trial.

Smith's problems, however, were not over. The Sheriff's Office fired Smith for use of excessive force.

Smith declined comment for this story, but Christopher Miller, his attorney in both the criminal case and the arbitration that followed, published an account of the case and discussed it in an interview. Smith, too, was cleared of wrongdoing after arbitration. Like Mitchell, Smith was reinstated, paid lost wages and had his personnel file cleared of the accusation.

The Sheriff's Office confirmed that Mitchell and Smith went through arbitration calling for them to be reinstated. "They have been so. And now we move forward," Garcia said.

As for the video, that was "an essential piece of the evidence" for Smith in both the criminal case and arbitration, Miller said in an interview.

Miller said he was told initially that no such video existed, though prosecutors provided it to him promptly when it was discovered. "I think the existence of the video was concealed from the DA's Office," he said. "I don't know if it was hidden or if someone just didn't do a thorough search."

Miller, himself a former prosecutor, said he was "surprised, if not shocked" that it took so long for the video's existence to become known.

"The investigators from the Sheriff's Office should have sought that video out early on," he said. "That's fundamental." The video contradicted some of the testimony of one of the witnesses accusing Smith, Miller said.

But the video was not the reason prosecutors dropped the case. Whatever was on the video could not have captured the alleged assault, since it would have occurred on the opposite side of a 6-foot wall from where the in-car video was shot, said Mike Mulvihill, now chief deputy district attorney. "There were other factors with this case," he said. In the end, prosecutors decided not to pursue the case. "We knew we weren't going to prove it."

Months after the case would have gone to trial, Inderbitzen was killed when he crashed a stolen car outside Lodi in December 2009, according to news reports citing the California Highway Patrol.

In 2011, Smith was involved in another incident with a fleeing parolee. Smith was clinging to a carjacked truck and was in danger of being run over when he shot and killed 47-year-old Kevin Jackson, according to news reports. This time the Sheriff's Office did not discipline Smith. Instead, he was nominated as a candidate for Officer of the Year, an annual award given out by the Italian Athletic Club to area law enforcement officers. Smith was the recipient in 2012.

The standard multiagency investigation that follows officer-involved shootings has not been concluded in this case, according to the Sheriff's Office.

Mitchell's path back to his job was a long one. When he was fired in 2010, the veteran officer qualified for retirement, so he retired to provide for himself, according to his attorney.

When he tried to challenge his termination through arbitration, it started a drawn-out court battle. The county argued that he was no longer an employee, so he was no longer entitled to binding arbitration, according to court documents filed in San Joaquin County Superior Court. Mitchell argued he was forced into retirement.

The county prevailed at first. But Mitchell tried again after the county lost a similar case with another employee in appellate court. They settled, and the case was dismissed in January. An arbitration hearing took place in Stockton in July.

The decision describes what Mitchell did and who he informed as he made copies of the video for evidence, including a copy he made for himself for safekeeping. Mitchell had talked about that copy during a taped interview with a Sheriff's Office investigator, his attorney said. But that was missing from the tape provided to the arbitrator by the county, Berry said. The investigator had logged the interview at about 10 minutes, but the audio recording actually produced was not that long, according to the arbitrator's decision.

"It was four minutes short," Berry said. "I call that the mystery of the missing recording."

On the whole, Mitchell was treated differently because he was a union leader, she said. "No question about it."

Miller, Smith's defense attorney, also represents both the San Joaquin Sheriff Deputy Sheriffs Association and the Deputy Sergeant Association.

"It was the fact he was the Sergeant Association president that caused them to believe he was the conduit to (Miller)," she said. "I think they just made that leap."

But Mitchell never lost sight of his duty as an officer of the law, she said, blaming the investigators for his firing. "I actually think that Mitchell was the scapegoat."

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