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Maricopa County Attorney

RACHEL H. MITCHELL

June 6, 2022

VIA HAND DELIVERY

April Sponsel
[redacted]

Re: *Notice of Intent to Dismiss and Pre-Determination Hearing*

Dear Ms. Sponsel:

This letter serves as official notice of my intent to dismiss you from your position as a Deputy County Attorney of the Maricopa County Attorney's Office. This action is authorized under Section 15 of the Maricopa County Employee Merit System Resolution.

I. Merit Resolution and Policy Violations

Your conduct, detailed below, violated the following sections of the Maricopa County Employee Merit System Resolution:

15.A.2 Incompetency
15.A.3 Inefficiency
15.A.5 Neglect of Duty

II. Facts Supporting the Violations

On March 2, 2021, you were placed on administrative leave. This office initiated a formal investigation into your conduct and decision-making regarding your prosecution of CR2020-139581. Additionally, when you were placed on leave, your caseload had to be reassigned to other attorneys. During that reassignment process, we discovered several cases where your decision-making presented similar concerns to those discovered in the administrative investigation. In considering both the administrative investigation and based on my review of these additional cases, I find a disturbing pattern of excessive charging and a failure to review available evidence. I have concluded that dismissal is appropriate.

State v. [redacted], CR2020-139581-005

Indictment of an Innocent Person and Subsequent Failure to Review Available Evidence

On October 27, 2020, you sought and obtained an indictment against fifteen people who had participated in a political protest march in Phoenix on October 17, 2020. While there are concerning aspects about your entire approach to this prosecution and your charging decisions, the case you brought against [redacted] is the most illustrative as to why I intend to terminate your employment. While it is explained in detail below, my decision in this matter can be summarized simply: you wrongfully indicted an innocent person because you presented inaccurate evidence to a grand jury, you failed to review available evidence, and when you were made aware that you may have an innocent person under indictment you did little to ensure that your prosecution was just.

While other defendants you sought indictments against in this matter were committing criminal offenses during the protest march, [redacted] was unquestionably innocent of any wrongdoing on October 17. Nevertheless, you sought and obtained an indictment against him for Riot, a Class 5 Felony, Conspiracy to Commit Aggravated Assault, a Class 2 Felony, Assisting a Criminal Street Gang, a Class 3 Felony, Obstructing a Highway or Other Public Thoroughfare, a Class 3 Misdemeanor, and Unlawful Assembly, a Class 1 Misdemeanor.

The administrative investigation into your conduct revealed that in making your charging decision and in preparing for the grand jury presentation, you relied on police reports and a video compilation created by Phoenix Police. The event lasted roughly an hour and the compilation video you relied on was about eight and a half minutes long. In your administrative interview you stated that in your opinion that video pretty much told the whole story. [redacted] was not in that video at all. You did not review all of the available video evidence in deciding what charges to bring and against whom. Although that evidence was available days after October 17, you stated in your administrative interview that you still had not reviewed all of the available evidence by the time you were placed on leave four months later.

You presented the following evidence against [redacted] to the grand jury:

[redacted]

In your administrative interview you agreed that this statement was the only evidence presented to the grand jury of any illegal conduct committed by [redacted]. You also stated that for this case you were only looking to charge individuals "that were active, actively harming officers or actively destroying property." [redacted] was not doing any of those things.

[redacted]

The problem with this evidence is that it is unquestionably false and that fact was clear from the evidence you said you relied on for your grand jury presentation. The police reports you said you used did not contain any descriptions of [redacted] doing anything like what you presented to the grand jury. The police reports stated that [redacted] was not complying with announcements to get out of the street while he was taking pictures of the group. The reports stated that [redacted] "stayed with" and "near" the group after announcements were made to disburse. The reports indicated that when officers were instructed to arrest [redacted] he was walking away from the group that was being arrested. The reports did not state that [redacted] was doing anything to interfere with any arrests or that he impeded any officer's ability to take anyone into custody.

The video compilation you said you reviewed prior to the grand jury presentation focused largely on the arrests. [redacted] is not in that video. The video shows that no one "ran up on the officers" to attempt to prevent or interfere with the arrests.

The leading question you asked during your presentation, resulted in sworn testimony that [redacted] was actively involved in preventing these arrests. In your administrative interview you said that this statement was provided by a police officer when you were talking about the case prior to the grand jury presentation. But the statement is not true, and it was clearly contradicted by the video compilation you said you used to prepare for your presentation. Before presenting this obviously significant testimony to the grand jury I would have expected you to question the officer more—show the officer the video and ask, "Where is [redacted] in this video? Show me where he's doing what you've described." You had reviewed evidence that contradicted what the officer was telling you and what the officer said was not in any report. Any prosecutor would have an obligation at that point to clarify what they were being told before presenting it as fact.

Furthermore, in the months after the grand jury presentation, you did not do anything to verify that the information you believed about [redacted] was true. The body worn camera videos available at the time of the grand jury presentation show that [redacted] was not near the group when the officers were arresting them, he did not stay with the group, and he was not near them after announcements to disperse had been given. In addition, in your administrative interview, you showed little concern or regret about the fact that you presented inaccurate testimony and indicted an innocent person. The lack of any reflection or remorse more than a year after [redacted] case was dismissed with prejudice due to his innocence is shocking and wholly inconsistent with my expectations for any prosecutor.

Unfortunately, your lack of concern about whether [redacted] was innocent was also demonstrated when you were prosecuting the case. During your interview, you said that after the grand jury presentation when information was being "finalized" for the GMIC cards, there was some question that [redacted] may have been misidentified. You stated, "But we weren't still 100 percent certain, and we were trying to get that vetted out, but then the cases were dismissed." On January 29, 2021, defense counsel filed a motion to remand or dismiss and argued that [redacted] was "merely present" in the area and had nothing to do with this group. Even after receiving this pleading you still did not review the best available evidence—the body worn camera video showing what he did before he was arrested. In your interview you stated that after this motion was filed you "delved into" his case. You said you did so by assigning the motion to an

intern to review and by reaching out to Phoenix Police and asking them to speed up the processing of evidence. You did not personally review any evidence showing [redacted] conduct during these events. Instead, despite other concerns having been raised about the possibility that [redacted] had been misidentified, you said that you were not particularly concerned about the viability of the mere presence defense because Riley Behrens used [redacted] name when he told police that [redacted] was not part of the group. You put little credence into the idea that [redacted] was merely present because Riley knew [redacted] name. The fact [redacted] and Mr. Behrens had been held in the same area, near each other for hours, and that may be how Riley knew his name was apparently not a concern for you. When asked whether you talked to Sgt. Groat, who had directed officers to arrest [redacted] you replied that you "[n]ever got the opportunity." At your briefing on February 12, you still had not reviewed the videos of [redacted] arrest or involvement and you continued to defend your decision to file charges against him.[2] In that meeting you said his involvement was still under investigation despite the fact that he had been under an indictment for months. Despite the questions being raised from at least two different sources that [redacted] may have been misidentified and was merely present, you showed no sense of urgency to verify what you believed or what you had presented to the grand jury.

During your administrative interview, you expressed little concern that you had indicted a factually innocent person for extremely serious crimes. While you told the investigator that "we try to get it right the first time" your handling of this case shows very little attempt to do so. You also noted that if, in the course of a prosecution, you discovered that video or other evidence did not corroborate the information in a police report you relied on to charge a person, you could "just change direction" and dismiss a charge or case. As the investigator correctly noted, that is an extremely cavalier and unacceptable view of a prosecutor's duty when bringing criminal charges. The power to charge someone with a crime cannot be wielded in such a flippant manner. Additionally, it is true, as you noted, that a charge or case can be dismissed if additional evidence comes to light, but only if the prosecutor actually takes the time to review and assess that evidence. You did not do so in this case, and it resulted in an innocent person remaining under a felony indictment for months. Without intervention from others in this office, it is unknown how long he would have been indicted before you got around to reviewing the exculpatory evidence you had. Your handling of this prosecution against an innocent person, standing alone, would be cause for dismissal.

Conduct Before the Grand Jury

Your conduct before the grand jury in this matter is also concerning. I expect a Prosecutor IV to be able to fairly present a case and evidence to a grand jury. Although you acknowledged in your administrative interview that a prosecutor should not try to influence a grand jury or give an opinion as to any facts, your presentation in this case reflects the opposite. Your "media advisement" was filled with argumentative statements and was little more than a closing argument. Some illustrative examples of your argumentative statements include the following. [redacted]

[2] After the motion to dismiss this case was filed on February 12, this case and the co-defendant cases were reassigned for a complete review to determine what, if any, criminal charges should be filed. In seven days, that attorney had reviewed the evidence against [redacted] obtained additional information from the Phoenix Police Department on this matter, and filed a motion to dismiss the charges against [redacted] with prejudice.

[redacted] You said that the group [redacted] You told the grand jurors that [redacted] Even if each of these statements were provable, this "media advisement" was simply your opinion of the case and it went far beyond what was needed to allow a juror to determine if they had been exposed to any media coverage of these events.

Unfortunately, many of your stated conclusions were exaggerations or were unsupported by the evidence. For example, you presented little evidence establishing that [redacted] Your statement was simply your opinion of the evidence, and you were stating as fact something the grand jurors needed to determine from the evidence. Likewise, no evidence was presented to the grand jury that [redacted] Again, that is your opinion of the evidence. You said that [redacted] There is a big difference between smoke bombs being used as a weapons and them being used to create a visual impediment. While it is true that the group pulled A-frame barricades into the street, your description of them throwing the barricades was not supported by the video compilation you had reviewed. A police Tahoe did become temporarily disabled by one of those barricades, but it was only disabled for a minute or two while officers removed the barricade from the wheel well. That barricade was not thrown at the Tahoe. The Tahoe drove directly over that downed barricade instead of clearing it from the street first. The officer's testimony, that [redacted] was far more accurate than the statement in your media advisement. While you showed the grand jury the police compilation video that refuted some of your descriptions in your media advisement, your comments could not help but shape and color their view of that evidence.

Your statement also presented as an established fact that [redacted] yet there was no evidence of any such technique. The police report noted, "As [redacted] was being arrested by Sgt. McBride he was holding an umbrella and linked arms with another subject. As he was being pulled away, [redacted] dug his fingernails into his left thumb causing a small laceration." There is no evidence that what [redacted] did was a "technique" used by "this group." At the grand jury, Sgt. McBride testified as follows:

[redacted]

[redacted]

[redacted]

You made no attempt to clarify who "they" were or how the witness knew about this technique "they" use. Consistent with what you said in your media advisement, this answer also left the impression that these specific defendants used this technique by sharpening their fingernails to points specifically to use them in the manner described. The photographs taken the night of the arrest show that none of these defendants had sharpened fingernails. Your statements about this in your administrative interview also show a concerning attitude toward your presentation of this evidence. When asked about this question and answer, you showed no concern about presenting this evidence despite admitting that you have no idea to this day whether [redacted] or any of the other defendants, actually had sharpened fingernails the night of this event. In fact, you defended the answer. Your presentation of this irrelevant evidence that was not linked to the specific people the grand jury was considering and your lack of concern at having presented misleading testimony of this nature to a grand jury is unacceptable.

Inaccurate Information Presented to MCAO Leadership and Prosecutors

In your administrative interview you correctly pointed out that supervisors rely on what the assigned attorney tells them about the evidence. In this case, you presented inaccurate information to the grand jury and to MCAO leadership and prosecutors. After this grand jury presentation on October 27, you briefed senior members of this office on this case on October 30. During your administrative interview you noted that after this meeting no one directed you to dismiss the charges. While that is certainly accurate, what you did not note for the investigator is that much of the information you presented during this meeting was the same misleading information you presented to the grand jury a few days before. Although the virtual meeting was not recorded, a chat log of some questions typed into the platform during the meeting was retained. In that chat log, Division Chief Ryan Green asked a series of questions. Specifically, he asked if you had pictures of sharpened fingernails and the sharpened umbrella. These questions were obviously in response to statements you made during the meeting about this group using fingernails and umbrellas as weapons. He asked "[i]s it obvious that the umbrella has been converted into a weapon and that the nails are unnaturally sharp?" You later responded in the chat, "yes we have photos of their hands," and "[w]e have the umbrella with the sharpened tip." These statements, combined with what you were saying during that meeting, left the same type of false impression that you gave the grand jury that these defendants had sharpened their fingernails into weapons and were using sharpened umbrella tips as weapons against the police. None of that was true. As already mentioned above, the photographs of these defendants' hands did not show any sharpened fingernails. The photos of the umbrellas these defendants had that night showed that none had manipulated or sharpened tips and most did not even have tips that could have been modified.[7] Even if you believed this evidence existed on October 30, given the

[redacted]

[7] During the meeting you also referenced a separate case against one of the same defendants where it was alleged in the police reports that she used a sharpened umbrella to stab an officer who was attempting to arrest her. In your interview, you stated that your response to the umbrella part of the question in the chat was about this other case. You stated in your interview

questions you were asked and the importance of the information you gave, it is alarming that you took no steps in the days immediately after that meeting to actually review the photos you said existed to confirm, and then correct, the information you provided.

For no justifiable reason, you rushed this case to the grand jury. You could have taken the time to review all the available evidence before deciding what criminal charges were appropriate and who should be charged. You acknowledged in your interview that your approach to this case was "novel." This realization should have caused you to be more cautious, more thorough, and more circumspect. If you had carefully reviewed the available evidence before presenting the case to the grand jury, you would have been able to prevent or correct testimony that was not accurate. Most importantly, you would have avoided indicting an innocent person. Having rushed this novel case to indictment, it was crucial for you to thoroughly review all the evidence as soon as possible after the indictment was issued, but you did not do so. If you had, [redacted] case would have been rapidly dismissed. Having failed to do that, I would have expected you to react with greater diligence and with a higher sense of urgency when defense counsel alerted you to the possibility that you had indicted an innocent person. But you did not do so.

State v. Fernandez, CR2020-136257-001.

In this case officers made contact with Mr. Fernandez in a store relating to a call stating that he attempted to enter a stranger's car in a parking lot. As the officers talked to him, Mr. Fernandez was moving his hands toward his pockets. An officer asked him to put his hands on his head to conduct a quick pat down to ensure there was nothing dangerous in his pockets. When the officer got close to him, the reports state that Mr. Fernandez pulled out a gun and pointed it at the three officers. Based on this information you appropriately charged Mr. Fernandez with three counts of Aggravated Assault, Class 2 Dangerous felonies for pointing the gun at the officers.

The body worn camera videos, however, did not clearly show that Mr. Fernandez pointed the gun at the three officers. The events happened extremely quickly. It took roughly a second for the gun to go from his pocket to the floor. Only with a frame-by-frame viewing of the video is it even possible to see the weapon. In that second, it is possible that he pointed the gun toward one officer, but he certainly did not "muzzle" all three as was stated in the report. This fact alone should have at least made you question the fact that you had charged three counts. The only issue was what his intent was because you alleged that he used the gun to intentionally place all three officers in reasonable apprehension. In his interview, he said his intent was to get rid of the gun. Based on the video, his statement of his intent was certainly plausible. That fact should have alerted you to the possibility that you did not have a reasonable likelihood of conviction for all of those charges.

But the biggest concern with this case is your lack of responsiveness to this issue. You filed charges on September 28, 2020. An indictment was issued on October 1. You had the case for five months before you were put on leave and yet there is nothing in the file that indicates you

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that you did not recall ever seeing that umbrella or a photograph of it before you were placed on administrative leave and you were relying on the information in the police report. That umbrella was impounded on August 23, 2020. That umbrella had a tip, but not one that had been manipulated or sharpened to be a weapon. Even if your chat comment was referring to this other case, the information you gave about a sharpened umbrella was not accurate.

identified any weaknesses in the case given the video evidence. On December 21, 2020, the defense attorney sent you an email claiming that the videos showed the gun was not pointed at anyone. According to the defense attorney you never responded to this email in writing, but in a subsequent conversation a few weeks before you were placed on leave, you told him you saw his point and would talk to the officers. There is nothing in the file to indicate that any such conversation occurred. In the three months between December, when this problem was brought to your attention, and March, when you were placed on administrative leave, you should have consulted with the officers and decided whether there was a reasonable likelihood of conviction for all the crimes you charged. This lack of follow up is unacceptable, particularly when a person is facing the extremely serious charges Mr. Fernandez was facing.

State v. Shahbaz, CR2021-103912-001.

Mr. Shahbaz approached officers working an officer involved shooting scene. They asked him to leave the area. He was immediately aggressive and yelled at the officers. An officer pushed him and, according to the reports, he "took an aggressive stance." The video shows that Mr. Shahbaz swung his arm at an officer's arm after the officer had shoved him backwards a second time. Mr. Shahbaz did not hit the officer's arm. Mr. Shahbaz was then tackled to the ground and arrested.

The case was submitted on February 1, 2021 and directed to the First Responder's Bureau where you were assigned. MCAO's practice at that time was to direct low-level, non-injury assaults against police officers, like this one, to the trial division, a fact you acknowledged in your administrative interview. This case should have been assigned to the Trial Division and you should have reassigned it to them either before you reviewed it for charging or after it was charged.

Instead, you charged Aggravated Assault, a Class 5 Felony, alleging that he intentionally placed the officer who pushed him in reasonable apprehension of imminent physical injury. It is difficult to understand how any prosecutor, much less one with your experience, would believe that the video evidence supported that charge. The relevant video was uploaded to evidence.com on January 30, 2021. You filed the charge on February 2, 2021. According to the audit log, the relevant video in this case was not reviewed by you or anyone from this office until after you were placed on leave and the case was reassigned. You had sufficient time to review the few videos in this case before you made your charging decision and certainly you had time to do so in the weeks that followed. The relevant events occur in less than one minute. When that evidence was reviewed after the case was reassigned, the case was dismissed.

Your decision-making and judgement in charging the second count in this case is equally concerning. In addition to the aggravated assault charge, you also filed a felony against Mr. Shahbaz for Obstructing a Criminal Investigation or Prosecution, a Class 5 Felony. As stated in your charging document, this charge would require you to prove beyond a reasonable doubt that Mr. Shahbaz knowing tried to obstruct, delay or prevent the communication of information about an aggravated assault to a peace officer by using force or the threat of force. By its terms the statute is clearly intended to prohibit one person from trying to prevent another from giving information to law enforcement. By walking down a side walk, refusing to leave, and aggressively questing the officers there, Mr. Shahbaz did nothing that would violate this statute. Prosecutors

are given great latitude and discretion when deciding what charges to bring. However, twisting and stretching a statute to try to make it fit a situation it was clearly not designed to cover is an abuse of that discretion and it does not serve the prosecutors' goal to seek justice. This statute does not apply to the facts of this case, there was no reasonable likelihood of conviction for this offense, and you should not have filed it.

State v. Richard Villa, CR2020-130075-002.

This case involved the activities of a protestor at Phoenix Police headquarters at 620 West Washington on August 9, 2020. The Phoenix Police submitted the case against Mr. Villa on August 11, 2020, requesting several charges but the one relevant here is their request for four counts of Aggravated Assault on an Officer, all Class 6 Felonies. Although the classification of the crime was obviously an error because the legislature had previously elevated the class 6 assault on an officer to a class 5, the information in the Form 4 made it clear that this was a non-injury assault on an officer. Specifically, as described in the Form 4, the defendant "shoved" some fencing so that it hit some officers with force.

The police reports that were submitted included some officers describing that the fencing was "thrown" at the officers. You did not conduct the grand jury presentation in this matter, but when you charged the case you prepared a grand jury checklist to inform the presenting attorney about the facts of the case. Regarding this defendant you wrote:

[redacted]

It is clear from the transcript that the image presented during that testimony was what you included in your checklist. Specifically, the grand jury was told [redacted] Further testimony included that [redacted]

This testimony was important because in deciding what charges to seek, you included a charge for Aggravated Assault, a Class 2 Dangerous Felony. To prove this charge, you had to prove that the metal fencing was a "dangerous instrument" which is "anything that under the circumstances

[redacted]

in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury."[10] There is a concerning exchange in your administrative interview where you demonstrate a lack of basic knowledge about what a dangerous instrument is under the law. When asked what a dangerous instrument is, you responded, "Dangerous instrument can be anything in the manner in which it is used to cause physical injury. It doesn't have to be substantial death or whatever." You continued, "I don't think it even has to be serious. The word 'serious,' I don't recall it being there." But it is there and there is a tremendous difference under the law between a physical injury and a serious physical injury. While anyone could misspeak when talking about legal definitions, the charges you sought in this case and the case that follows, lead me to conclude that you have a significant misunderstanding about the legal definition of dangerous instrument. This lack of understanding of an important legal term is not acceptable for an attorney with your experience who has charged and prosecuted many violent crimes. At the very least, I would expect you to review and understand the definitions of the crimes you charge and suggest to the grand jury.

Based on the charges you brought, you were asserting that the metal fencing, the way Mr. Villa used it, was capable of killing the officers or at least seriously injuring them. You knew that, although Mr. Villa actually used the fence against the officers, none of them were injured, much less seriously injured. You also knew that just comparing the charge submitted and the charge you brought, without considering criminal history or other factors, the charge the law enforcement agency requested was a probation eligible offense and, if a court imposed a prison sentence, the range was only six months to two and a half years. Your charge was far more serious and, if convicted, would result in a mandatory prison term of no less than ten and a half years to a maximum of twenty-one years with no possibility of early release.

While there was some discrepancy in the reports about exactly how Mr. Villa used this fence, the video was clear. Mr. Villa pushed a piece of fencing toward the officers and it hit at least one of them on the leg. The fence never left the ground; it was clearly not thrown, and there was no good faith basis with the evidence on that video to believe that anyone was in danger of being killed or seriously injured by what Mr. Villa did. Your charging decision—to significantly increase the charges requested by law enforcement—should have been carefully considered due to the magnitude of that allegation and the sentencing consequences. Having sought and obtained such significant charges it was imperative for you to review the available evidence to ensure there was a reasonable likelihood of conviction for that offense. At the very least, you had an ethical obligation to ensure that the charge was supported by probable cause. When you received the video evidence, it should have been obvious that you did not have any good faith basis to pursue a charge for Aggravated Assault, a Class 2 Dangerous Felony, and you should have immediately dismissed the charge because Mr. Villa was innocent of that offense. Alternatively, you could have moved to amend the indictment to lesser offenses supported by the evidence. You did neither. Although you had the video evidence since at least October 2020, at the time this case was reviewed by additional attorneys in February 2021, you had either failed to review the evidence in your possession or failed to take action on it. Either way, you failed to appropriately perform your duties as an experienced Deputy County Attorney.

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[10] A.R.S. § 13-105(12).

State v. Charles Walker, CR2020-125073-001.

This case involved an individual who shoplifted from a CVS on June 24, 2020. Later in the day officers tried to contact him and he fled. They ran after him and attempted to arrest him, but he resisted. During the resist, one officer suffered an injury to his hand that was described as a "puncture wound" in the police reports. Exactly how he was injured in the struggle that lasted about two minutes, is not clear. As relevant to the assault on the officer, the Form 4 erroneously listed the booked charge as "13-1204A8A Agg Asslt-Officer F2" but the statutory reference to A.R.S. § 13-1204(A)(8)(A) would be a class 4 felony or a class 5 felony depending on whether there was an injury. The probable cause statement on that document to support that charge states "During the struggle, plain clothes [redacted] was stabbed in the hand. The suspect had a pen in his hand as the fight started." Later the Form 4 contains the following description:

> Sergeant Ranck applied the handcuff to the right wrist and at the same time, the suspect pulled his right hand under his body, pulling [redacted] hand with it. A few seconds later, [redacted] yelled and pulled his arm out quickly. There was now a small puncture wound on his hand. This required [redacted] to seek medical attention.

The statement in the Form 4 supports probable cause for a charge under A.R.S. § 13-1204(A)(8)(A), Aggravated Assault on an Officer, and under § 13-1204(F) this crime would be a class 4 felony due to the injury described in the Form 4. Consistent with those factual statements, when law enforcement submitted the case to MCAO five days after the crime, they submitted it for consideration under A.R.S. § 13-1204(A)(8)(A), which, assuming there was an injury, would be a class 4 felony.

The reports, however, added additional uncertainly to what actually happened to [redacted] The detective was interviewed by Deputy Parwa and he reported the following information from that interview: "At some point, [redacted] experienced pain in his left hand above the thumb area. He was not sure if he was bitten or stabbed by the suspect. [redacted] claimed he did not have a clear view of his hand and that the suspects [sic] head was blocking his view." The injury was described in the report as "red, slightly punctured skin" that "appeared about .5mm in diameter."

Detective Ward in another report wrote, "During the attempted arrest, [redacted] stuck his hand underneath the suspects [sic] stomach to grab his arm. While his hand was under his stomach, the suspect stabbed him in the hand with a pen. The Detective received a small puncture wound to the hand." No information is provided regarding the source of this information.

In a report authored by Deputy Merritt, he writes, "At one point, [redacted] had his hand pulled by the suspect underneath his body and [redacted] was stabbed with a hard object, we later learned was a pen (see IR20-017929 Detective Ward #1748 for further)."

[redacted] was interviewed a second time the day of the crime by Detective Thompson. His statements were summarized as follows:

[redacted] said he felt a pain to his left hand and pulled it up and looked at it. He said a Deputy said "did he bite you" and saw a pen next to the suspect's head.

Upon examination of [redacted] hand I could see a puncture wound to his left exterior hand, in the purlicue of his thumb and forefinger, with a following scratch extending approximately one and a half inches in the direction of his forefinger. This wound was photographed and placed into evidence.com.

The fact that the photos were uploaded into evidence.com is significant because you could have obtained and viewed those photographs very quickly and certainly before the case was presented to the grand jury or in the months after, but you did not do so. The photograph of the injury is attached as Exhibit A.

On June 30, 2020, the day after MCAO received the case, you filed a complaint charging Mr. Walker with several crimes including Aggravated Assault, a Class 2 Dangerous Felony alleging that Mr. Walked "intentionally, knowing, or recklessly" injured [redacted] using "a pen, a deadly weapon or dangerous instrument." Your charging decision treated Mr. Walker the same as a person who shoots an officer or stabs an officer with a knife. If convicted, your charging decision subjected Mr. Walker, a defendant with no prior felony convictions, to a mandatory prison term of no less than ten and a half years—with no possibility of early release—for causing a minor injury to an officer's hand.

What was absolutely clear from the reports you had when you made this decision was that during the struggle, [redacted] slightly injured his hand, and he did not require any medical treatment for that injury. No one, not [redacted] or any other officers involved in this arrest, said they saw Mr. Walker use a pen, or any other instrument to stab anyone. Whether that injury was caused by a bite, a stab with an ink pen, or as a result of the general struggle was unknown and, based on the victim's statements, it was unknowable. A pen was found near Mr. Walker and [redacted] had a small injury on his hand that could have been caused by a pen. While it is a possible inference from the circumstantial evidence that Mr. Walker stabbed [redacted] with the pen, that evidence did not create a reasonable likelihood of conviction for the extremely serious offense you chose to charge.

Even if the circumstantial evidence had shown that Mr. Walker stabbed [redacted] with a pen, no reasonable person, and certainly not a prosecutor with nearly two decades of experience, could conclude that the pen was a dangerous instrument in the way it was used in this case. Assuming [redacted] was injured by that pen, the pen was clearly not readily capable of causing death or serious physical injury in the way it was used because it only caused a very minor injury. [redacted] was never in any danger of being killed or seriously injured by that pen even if Mr. Walker did stab him in the hand with it. Like the case above, your charging decision here represents either an incompetent understanding of what a dangerous instrument is or an unacceptable, reckless disregard for the facts of the case.

You did not present this case to the grand jury, but it was presented based on the information you provided and the draft indictment you created. The facts you prepared for the grand jury attorney provided, in relevant part:

You did not mention to the grand jury attorney covering for you that the victim detective could not say how his hand was injured. You did not ask the grand jury attorney to present the circumstantial evidence addressed above to allow the grand jurors to decide the weight to be given to it. Instead, the information you provided and omitted, made it appear to be a proven fact that Mr. Walker used the pen to stab the detective, yet that was not consistent with the reports you had.

Equally concerning is the fact that you had this case from June 29, 2020 and the grand jury presentation did not occur until August 21, 2020. Despite having the case for nearly two months, you did not review the available evidence, most importantly, the photographs of the injury. Given the novelty of your charging decision in this case—to assert that an ink pen is a dangerous instrument—combined with the minor injury described in the reports, you should have quickly obtained and reviewed the available evidence to ensure your charging decision was sound. You did not do so before the grand jury presentation and you did not do so before you extended a plea offer to the defense on December 10, 2020. Your plea offer required Mr. Walker to plead to the class 2 felony offense and, while it stipulated that the offense would be treated as non-dangerous, your stipulations allowed the judge to determine whether prison or probation was appropriate and, if the judge chose probation, required a six-month jail term. Not only had you not reviewed the photographs of the injury in this case when you extended this significant offer, you also had not disclosed that evidence to the defense at that time. In fact, photos of the injury were not provided to the defense until after you were placed on leave and the case was reassigned to another prosecutor who appropriately dismissed the class 2 charge because Mr. Walker was not guilty of it.

III. Conclusion

I do not make the decision to terminate your employment lightly. Your evaluations over your years at MCAO reflect a skilled prosecutor and your work has held many violent offenders accountable. Unfortunately, we have now discovered a continuing pattern of deficient performance. Your exercise of the discretion given to prosecutors to bring criminal charges does not reflect the judgment and considered contemplation we expect from all prosecutors but particularly from a very experienced prosecutor. Furthermore, these cases show a concerning neglect of your duties to review all the evidence in your cases and to reassess your initial decisions. Taken as a whole

these cases demonstrate a disturbing pattern that cannot be ignored. As a Prosecutor IV you are trusted with handling complex prosecutions competently and professionally. Based on your extreme overcharging and lack of appropriate follow-up and review in the cases discussed above, I cannot trust that you are able to do the work of a Prosecutor IV. The fact that your administrative interview demonstrated no self-reflection or any recognition that you made mistakes, even knowing that you indicted an innocent person, reaffirms my decision that termination is the only appropriate option.

Your actions in these cases have undermined public confidence in the criminal justice system. You failed to exercise sound judgement in these matters, and you failed to perform your essential duties to this office and this community. For all these reasons, it is my intention to dismiss you from your position.

You have the right to respond to these allegations. Accordingly, I have set a time for you to meet with me on June 14, 2022, at 10:00. The meeting will be held at 225 W. Madison, Phoenix, AZ 85003. During this meeting, you may present your explanation of the reasons why the proposed dismissal is not appropriate. You may do so orally, in writing, or both.

If you intend to participate in your pre-determination hearing, please contact Melissa Horning at (602) 506-1882 to confirm the date and time. If you choose not to participate, you may still respond in writing by the above date and time, by emailing your correspondence to Deborah Serrata, at Serratad@mcao.maricopa.gov. If you do not appear or reply in writing, you will be deemed to have waived your right to a pre-determination hearing, and I will decide on the record available to me.

Sincerely,

Paul W. Ahler
Chief Deputy

cc: Employee Personnel File

Exhibit A