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Maggie Fleming
District Attorney

TO: ADRIAN KAMADA
FROM: MAGGIE FLEMING
DATE: MAY 8, 2020
RE: DISCUSSION OF PROSECUTORIAL ETHICS

Your memo of April 13, 2020 went well beyond my request that you document your off-the-record conversation with a confidential informant for the trial prosecutor in case the issue becomes relevant at trial. It indicates the need for additional communication between us concerning your conduct.

1. The conclusion of your memo identifies two of your mistakes:

A. Attempting to direct the use of resources and personnel of the Sheriff's Department.

The April 13 memo fails to flesh out that your experience is actually very limited and thus your idea of finding buried bodies with a shovel and a dog was not taken seriously by those with experience – which was one of the reasons I told you prior to you serving a warrant that we needed to involve our investigators. Our investigators have decades of successful experience in handling such fieldwork; you have 5 years in the Office primarily handling environmental crimes and fish and game violations.

B. Your unprofessional behavior in communications with the Sheriff's Department.

2. Unaddressed in the conclusion of the memo and inadequately covered elsewhere are the two mistakes at the core of the current problem:

A. Potentially making yourself a witness in your own cases through one-on-one communications with confidential informants. I understand your explanations in the case at hand, which look reasonable after the fact. But the key to this issue is the general point that – if indeed the person has the potential to provide useful information - you cannot know what confidential informants will say and therefore cannot place yourself in one-on-one situations with them. The availability of a 3rd person nearby does not fully address this issue, because you also cannot be sure that the witness will be willing to repeat the information they provided to you.

I have discussed this situation with a variety of state level ethics experts and experienced prosecutors. Your position remains unsupported: one-on-one confidential communications between prosecutors and potential witnesses or informants is never appropriate. Our Office does not engage in "gray area" behavior that might look OK after the fact. Our high level of success as an Office includes maintaining the highest ethical standards.

B. Going out on a search warrant that did not cover attendance by a witness. This action demonstrated a lack of professionalism and competence. Attempting to explain away the issue post facto by suggesting the witness could be characterized as a, "professional or expert assistant or consultant" only compounds the error.

3. That you suggest in the April 13 memo Chief Investigator Cox and I were defensive on behalf of HCSO is shocking and inaccurate. Chief Investigator Cox and I both expend a great deal of effort providing constructive criticism to law enforcement agencies. Our efforts are generally well-received because we have worked hard to establish good communications with law enforcement and we have repeatedly demonstrated our professionalism and competence. We will never provide cover for other agencies or expect to be protected from exposure of our mistakes. We have addressed the issues you raised concerning HCSO conduct in depth with the leaders of the agency – just as we have addressed the issues they raised concerning your conduct.

4. I can also assure that our Office has and will continue to share all appropriate actual and prospective Brady issues with the defense. For example, in the Manila 5 case we advised each defense attorney that our Office had received information, albeit unofficially, that a Deputy/Investigator involved in the case was currently being investigated for allegations of misconduct.

5. Of course our Office needs to be most concerned with our own conduct. In this case I needed to be particularly concerned with the issue of your off-the-record conversation with a confidential informant because unfortunately, this is not the first time you have engaged in ethically questionable behavior. In May 2019, you told me you were aware from a separate case that there may be a witness who knew where the firearm used in the Holtsclaw homicide might be located. I asked you to provide that information to the Sheriff's Office so they could follow up on that information. We then learned that the witness had already been sentenced to San Quentin and the HCSO Detective was planning to go interview that witness. We discussed you going with the HCSO Detective to interview that witness. DDA Max Cardoza was present for this discussion and we agreed that you should be present for the interview as you were assigned the Zachary Harrison murder trial and you were most familiar with the factual details. Shortly after you went to San Quentin on June 10, 2019 to interview Marshall Kent, Lieutenants from the HCSO visited me to advise me that Detective Peterson shared with them that when Mr. Kent asked if the interview was going to be "on the record" or "off the record" you told him it was going to be "off the record" and then told Detective Peterson not to record the interview. This was very concerning to the Lieutenants; this was not something they would ever do and did not think it appropriate that a DDA in a homicide case would be asking a detective to keep a statement about the possible recovery of a murder weapon "off the record." I let them know I was surprised and did not approve of your conduct and asked them to direct Detective Peterson to document the statement made by Marshall Kent so that it could be discovered in the Harrison case.

Shortly after that meeting I met with you and Chief Investigator Wayne Cox. I told you of the concerns raised by HCSO and that we could not keep the statement a secret as we were required to provide it under Brady. You disagreed and said it was not exculpatory. We reviewed the fact that as you did not know what direction the defense might choose to go it could end up being relevant and thus a violation of law and our ethics to keep it from the defense. You became very angry and took the position that I was wrong and that your behavior was allowed. I advised you specifically not to speak to witnesses "off the record" or "in confidence" again. I told you once the report was written by the detective I wanted you to discover it immediately. (That report is attached to this memo.)

6. The April 13 memo suggests that you, "will always follow" my "lawful directions in the handling of all cases." Unfortunately your behavior says otherwise. In our meetings on the ethics of your conduct, you have not shown remorse or even admitted mistakes, but rather argued and dismissed my warning to you not to do it again. Your most recent memo continues with this same pattern of denial and deflection (to the mistakes made by HCSO). If you are in fundamental conflict with my requirement to maintain the highest ethical standards – and the requirement to justify your conduct beforehand rather than hoping it works out or trying to justify it after the fact – then a change needs to be made. To be clear: under no circumstances are you to violate the ethical standards all prosecutors must follow again.

Because the April 13 memo does not well-capture all that has transpired (the inclusion of inaccurate quotations is an example), I will provide a description below.

On Friday, February 28th, 2020 you shared with me your concerns that you learned the HCSO, while serving a warrant in the Ryan Tanner homicide case, failed to collect a sawed-off shotgun. You pointed out to me that although it was not part of the homicide it was still illegal and should have been seized. You told me you were going to go see the Undersheriff to complain about that and I told you to instead report it to Senior DAI Steve Dunn as Chief Investigator Cox was not in the Office. I told you that it was best for the Chief or Senior Investigators to handle it and not you. You said you would reach out to Senior Investigator Dunn. You also later told me you were concerned as you had learned HCSO was hearing rumors that Tanner had assaulted and possibly buried others on the property. We discussed the seriousness of that possibility and I said that Chief Cox had handled other similar cases in setting up a large search warrant search and used cadaver dogs and we would discuss that with him upon his return the next week. I explained to you that a search of that kind required preparation and a large-scale operation and that Chief Cox was best able to handle coordinating a search of that magnitude with multiple agencies.

On Monday, March 2nd I heard from Chief Cox that late Saturday night he received a call from Lt. Williams of the HCSO regarding your involvement in their investigation and that you were reaching out to the HCSO evidence tech and others to conduct a search at the property over the weekend and you were told it was not possible to do what you wanted to do over the weekend due to other crime scenes they were dealing with at that time.

When I saw you I said that I had heard from Chief Cox and that we would talk about doing the warrant later and you told me it had occurred on Sunday and you attended the service of the warrant. As it was the first I had heard of your involvement in serving a search warrant over that weekend, I asked you to prepare a memo.

Before I received your memo I was at a meeting with the Sheriff and we discussed the issues in the case. On Thursday, March 5, 2020 I met with Lt Williams and Chief Cox. Lt. Williams let me know they had addressed the issue with the failure in the first warrant to collect the sawed off shotgun and were moving forward with Investigating other issues in the case. He let me know that the two of you spoke as you were reaching out to the HCSO Evidence Technician and requesting a cadaver dog for the service of the search warrant to retrieve the sawed off shotgun. He let you know that was not possible and that the Sheriff's Office was involved in a crime

scene investigation over that weekend and that the Tanner investigation would be resumed in the following weeks. Lt Williams said he told you it was not up to you to decide where HCSO personnel would be assigned over the weekend. You then said to him that he was not in your chain of command and you would write your own "F---g warrant, bring your own dog and shovel and find the bodies yourself." Lt Williams notified the Sheriff of your conversation and told me they were both surprised at your attitude and did not believe I would sanction it. I apologized to Lt Williams for your conduct and lack of understanding of the staffing issues over the weekend (there had been attempted murder case in Orleans and the suspect fled which involved multiple deputy sheriffs, Hoopa Valley Tribal Police and the CHP.)

You, Chief Cox and I then met and reviewed your memo. What was significant to me and the focus of my attention in the meeting was that you had spoken to a confidential informant out of the presence of any law enforcement officers. I again reminded you that receiving information we promise never to disclose to the defense creates a risk of violating our Brady responsibilities. You argued this point and became very angry. You said that since the CI had nothing to offer it was OK for you to speak to him in confidence. I reminded you that the case was in the early stages and you could not know if the CI's information was going to be relevant to the defense case or possibly exculpatory. Your view was that because the HCSO was not handling the case as you thought appropriate it was your job to take it over.

I also raised concerns with you that you went out and served a warrant with a civilian witness present who was not listed on the warrant. I asked if you had approved the warrant before it was submitted to the judge and you said no, you assumed someone else had. At that point I asked you if you read the warrant before you went to the property to participate in the service and you said no, not all the way through. When I raised the issue that a civilian is not allowed to go onto another's property without being named in the warrant you argued with me and said you defend warrants all the time and this was not going to be an issue. I pointed out to you that it was inconceivable to me that you would attend the service of a search warrant without knowing the specific details of the content of the affidavit.

You repeatedly wanted to deflect the conversation away from the purpose of our meeting to discuss the failings of the HCSO investigation. Chief Cox and I both discussed that we were reviewing the issues with HCSO and offering additional help on the case. You said the fact that some deputies serving warrants were not aware of what another deputy knew about Tanner's other criminal behavior was a sign of their incompetence, lack of communication and showed a failure to care. I advised you that Chief Cox and I had already discussed that with the Sheriff's department but that I was hard pressed to tell them how to deal with their lack of communication given that I had a deputy who disregarded my direct orders to him and went out on a service of a search warrant on a Sunday without telling me anything about it. You agreed.

When you again raised the fact the Sheriff's office did not see the need to go search for additional bodies on the property I reminded you that we discussed this was a major undertaking and not one to be done quickly without preparation over a weekend. You disagreed. When Chief Cox and I raised the concern that doing an inadequately prepared search for human remains and not finding anything could affect the ability to later return and do a complete search (since the lack of anything being found during the first search must be disclosed) you disagreed and became angry that we were suggesting you going to an open field with limited resources "to search" was a bad idea. As Chief Cox tried to explain to you how we had worked to restore relationships with law enforcement so that we could assist and be present during searches you became increasingly angry and

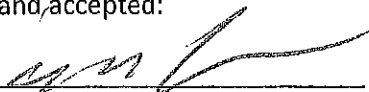
dismissive. Ultimately, I ordered you to leave my office since it was clear you were refusing to accept direction in the case and repeatedly denied your ethical breach was an issue.

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A final note: I think I also need to remind you that when I first established the environmental crimes unit I asked you if you wanted to be assigned those cases. You said absolutely and I shared with you then I anticipated it would be a 3 to 4 year assignment. Last summer when I reassigned the DTF caseload I asked you if you were also ready to rotate to a new assignment and you told me you were and you looked forward to handling more serious and violent cases. Due to the number of people out on family leave I did not transfer you at that time. In a recent email to law enforcement following your reassignment that we discussed last year, you stated that, "it was not your choice," and you were, "disappointed." Yet you did not share that information with me. Almost everyone in our Office communicates and collaborates to positively represent the Office and achieve the best possible overall results. Viewing our work from an individual perspective (for example by seeking to retain cases based on personal preference rather than what best serves our overall effectiveness) is not the way to maximize our success in achieving justice. I encourage you to take a less individualistic approach.

This memo will be placed in your personnel file.

Read and accepted:



5/8/20

Adrian Kamada

Date

AS DISCUSSED, I disagree with certain factual and legal claims in this memo. My signature only indicates that I read and understood the memo, but I do not agree with everything contained within.