

**ARBITRATOR'S DECISION AND AWARD**

IN THE MATTER OF ARBITRATION )  
BETWEEN: )  
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Deputy Sheriff's Association of Bexar Co., )  
Association )  
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and )  
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The Bexar County Sheriff's Office, )  
Agency )

**Issue: Dismissal for Violation of Any Statute, Civil Service Rule, Regulation or Commission Order; Conduct Which Has Proven to Be Detrimental or Has an Adverse Effect on the Sheriff's Office Conduct Detrimental to Sheriff's Office; Conduct Unbecoming an Officer; Conduct Bringing Upon the Sheriff's Office; and, Policy and Procedure Violations Involving Reporting Crimes, Incidents, Non-Compliance the Scope of Utilizing Social Media**

**Grievant: Lt. Roxanne Mathai**

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DATE OF DISMISSAL: May 28, 2021

DATE OF HEARING August 25 & 26, 2021

DATE OF CLOSING OF THE RECORD: November 19, 2021

DATE OF DECISION: December 22, 2021

APPEARANCES:

AGENCY EMPLOYER: Susan A. Bowen, Esq.

GRIEVANT/DSABC Morris Munoz, Esq.

ARBITRATOR: Thomas A. Cipolla, Esq.

## **I. BACKGROUND**

Bexar County, Texas and the Sheriff of Bexar County (or, collectively referred to as “Employer” or “Agency”) and the Deputy Sheriff’s Association of Bexar County (or “DSABC”) are parties to a collective bargaining agreement (or, “CBA”). Roxanne Mathai (or, “Grievant”) was a Lieutenant with the Agency and as such is covered by the CBA

The Grievant was terminated on May 28, 2021 for allegedly violating rules of the Bexar County Sheriff’s Civil Service Commission regarding conduct or action that would seriously impair job effectiveness and conduct which has proven to be detrimental or has an adverse effect on the Sheriff’s Office. She was also alleged to have violated Bexar County Sheriff’s Policies and Procedures in regard to reporting crimes; conduct unbecoming an officer; bringing discredit upon the Agency; and, social media scope The DSABC requested arbitration and the matter went to arbitration on August 25 and 26, 2021 in a conference room at the Bexar County Office Building located at 101 W. Nueva in San Antonio, Texas.

The parties were represented as indicated on the cover sheet. They made argument, examined and cross-examined witnesses, introduced documentary evidence, filed post-hearing briefs and otherwise presented their cases in full.

## **II. ISSUES**

Did Lt. Roxanne Mathai violate the Civil Service Rules? If so, was there just cause to support the disciplinary action imposed upon Lt. Mathai?

## **III. RELEVANT DOCUMENTS**

### **EXCERPT FROM THE AGREEMENT - (Joint Exhibit No. 1)**

#### **ARTICLE 13**

#### **CONTRACT DISPUTE RESOLUTION**

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#### **Section 4. Arbitration**

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The Arbitrator shall not have the power to add to, amend, modify or subtract from the provisions of this Agreement in arriving at his decision on the issue or issues presented and shall confine his decision to the interpretation of this Agreement. The Arbitrator

shall confine himself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not submitted to him. The decision of the Arbitrator shall be final and binding upon the Sheriff and/or County and the Association. The County shall bear the expense of any witnesses called by the County and/or Sheriff. The Association shall bear the expense of any witnesses called by the Association. The losing party shall pay the fees and expenses of the Arbitrator wholly or partially, to the extent that any grievance unreasonably advanced or unreasonably denied as may be found by the Arbitrator. In the absence of such a finding the parties shall split the Arbitrator fees and expenses equally.

## ARTICLE 19

### DISCIPLINE/INVESTIGATIONS

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#### **Section 3. Cause Required for Discipline**

A non-probationary Member may be disciplined only for "just cause" as defined herein. Disciplinary actions include suspension, demotion, termination, and written reprimand. "Just cause" means the violation of a legitimate rule, policy, or standard of conduct as alleged and that the action taken was appropriate. The burden of proof rests on the employer by a preponderance of the evidence."

\* \* \* \* \*

#### **Section 6 Appeals**

A. No provision of this Article may be grieved under the Contract Dispute Resolution Procedure of this Agreement as stated therein it being the intention of the parties to confirm that all matters related to disciplinary action may only be brought in the disciplinary appeal before the Bexar County Sheriff's Civil Service Commission or Arbitrator under Section 7 herein, as applicable.

\* \* \* \* \*

D. A Member's appeal of his/her dismissal or demotion may be heard by an Arbitrator as set out below. A Notice of Appeal requesting arbitration by the Member stating the grounds for the appeal and a request by the Association that the Member's appeal be heard by an arbitrator must be filed with the Bexar County Sheriffs Civil Service Commission and the Sheriffs Human Resource Office within ten (10) business days of the Member's receipt of the final Order of dismissal or demotion. Failure by the Association to meet the time limit shall forfeit the appeal to arbitration, and any timely filed Notice of Appeal by the Member shall automatically constitute an appeal to the Sheriffs Civil Service Commission. A Member who initially files an appeal to the Sheriffs Civil Service Commission automatically waives any appeal to arbitration.

\* \* \* \* \*

#### **Section 7 Arbitration Process**

\* \* \* \* \*

D. The award of the Arbitrator shall state which particular factual charges he/she finds to be true, if any, and the particular rules he/she finds such conduct to have violated, if any. Where the charges are upheld, the award shall state whether the termination/dismissal or demotion is upheld, or whether some lesser discipline is substituted.

E. The following rules shall govern the conduct of the arbitration hearings under this Section and of certain preliminary matters.

\* \* \* \* \*

4. In all hearings under this Section, the Sheriff's Office shall prove its case by a preponderance of the evidence.

**Section 9. Preemption**

It is expressly understood and agreed that this Article shall preempt any statute, Sheriff's Civil Services Rules or Departmental policy to the extent of any conflict with this Agreement and the procedures developed hereunder. This preemption provision includes, by way of example and not by way of limitation, any contrary provisions of Chapter 158 of the Texas Local Government Code. This does not prohibit an officer from arguing principles of progressive discipline made to current written policies or directives of the Sheriff. This article is applicable to acts of misconduct, disciplinary investigations and actions that occur after the date of this Agreement and acts of misconduct. Disciplinary investigations and actions that occurred prior to the date of this Agreement are governed by the terms of the prior Agreement.

**EXCERPTS FROM SHERIFF'S POLICY MANUAL**

**5.24 Conduct Unbecoming an Officer**

A Deputy Sheriff shall always conduct himself/herself in a manner which reflects most favorably on the Sheriff's Office, whether on duty or off-duty status. Unbecoming conduct includes unjustified behavior which brings the Sheriff's Office into disrepute, discredits a member of the Sheriff's Office, impairs the operation of the Sheriff's Office, or has an adverse effect on the Sheriff's Office.

**5.45 Bringing Discredit**

No employee of the Sheriff's Office shall act or behave publicly or privately in such a manner as to bring discredit, distrust, or lack of esteem upon themselves personally as a peace officer or corrections officer, or upon the Sheriff's Office as a whole

**6.11: Reporting Crimes**

It is the responsibility of all employees of the Sheriff's Office to report to their supervisor any information relative to a criminal offense, which they have direct or indirect knowledge. Employees with personal knowledge of, or having information relative to a criminal offense shall not conceal, ignore, distort or retain such facts. This paragraph is equally applicable; if the employee is personally implicated or if knowledge is specifically about another employee.

## **6.12 Reporting Incidents**

Employees of the Sheriff's Office shall immediately report the following categories of incidents, in addition to the other incidents covered in this Manual to their supervisors:

\* \* \* \* \*

G. Any condition which might endanger the public health or safety:

## **6.16 Reporting Non-Compliance**

Employees or individuals who have actual knowledge of, witness or reasonably perceive any form of non-compliance with law or unethical behavior shall report such behavior as soon as possible, but in no case later than the close of business on the day of such actual or perceived knowledge, to a supervisor. Employees shall make such report(s) without fear of retaliation regardless of who commits the act or engages in the conduct or behavior. If there is uncertainty as to whether an act constitutes a violation, the concerned individuals shall discuss the matter with their supervisor. The Sheriff's Office will conduct a prompt and thorough investigation in the response to an identified concern.

## **37.07 Media Scope**

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D. Personnel are strongly encouraged to show discretion involving the content, message, and information posted on their personal social media accounts. All information posted is open to the public and may be used against the BCSO employee or agency to bring discredit. Posted content that is found to be derogatory or which may have an adverse effect on the Sheriff's Office may result in disciplinary action up to and including termination.

## **Excerpts from the Rules of Bexar County Sheriff's Civil Service Commission**

### **SECTION 1, GENERAL**

9.00 Any employee shall be subject to disciplinary penalties for any action that is determined not to be in the interest of or benefit to Bexar County Sheriff's Office. The Commission recognizes the rules of conduct, regulations, general orders, policies and procedures as set forth in the Manual of Policy and Procedure of the Bexar County

Sheriff's Office insofar as those provisions do not conflict with any establish rules, procedures, polices or practices of the Civil Service Commission. The various rules and regulations of the Sheriff's Office Manual can easily be categorized under the enumerated violations of Rule 9.02. Discipline is intended to be corrective in nature. It shall be progressive and administered with the intent of assisting the employee to learn. However, certain rule violations or degrees of transgression may require that the maximum penalty be assessed without first resorting to progressive disciplinary Actions.

\* \* \* \* \*

9.02 Cause for written reprimand, suspension, demotion or dismissal shall include the following:

\* \* \* \* \*

- O. Conduct or action that would seriously impair job effectiveness.
- P. Conduct which has proven to be detrimental or has an adverse effect on the Sheriff; Office.

**SECTION 2. – PROCEDURE FOR DISCIPLINARY ACTION**

9.13 The "Notice of Proposed Disciplinary Action" and the subsequent "Order of Disciplinary Action" shall advise the employee of the following:

- A. The alleged action of conduct that caused the need for discipline. Such narrative shall include the time, date and place of the conduct as well as a description of the conduct. Included shall be the names of the accusers and witnesses.
- B. The specific Civil Service Rule and Sheriff's Office policies or rules violated by the action or conduct.
- C. Statement of corrective action required, unless it is unnecessary considering the nature of the violation.
- D. The nature of the discipline being enforced.
- E. Except in the case of dismissal, a statement of discipline or action will be taken if any further violations of the rules occur.
- F. A statement as to the conditions and rights to grieve/appeal the disciplinary action to include the time limits in which to respond and the authority

**EXCERPTS FROM THE ORDER OF DISMISSAL**

On or about January 7, 2021, the Bexar County Sheriff's Office learned from your Facebook page that on January 6, 2021, you participated in a political rally in Washington, D.C. You willingly took part of the protest that later evolved into a riot. A group of these protesters were seen on television entering the U. S. Capitol and bypassed

law enforcement and barriers which resulted in the destruction of Federal property, endangering the public's safety, and leading to loss of life.

You posted pictures and videos of rioters climbing the walls of the U.S. Capitol building. This building is not open to the public or a public platform and entering it is considered unlawful entry. When questioned if you had witnessed any crimes committed, including but not limited to unlawful entry of the U. S. Capitol or property of U. S. Capitol, you stated that you were not a peace officer and did not possess a complete understanding of the law in your own jurisdiction much less in Washington D. C. However, you posted " ... .. *And we are going in ... .. in the crowd at the stairs ... not inside the capitol like the others. Not catching a case lol*" on of your Facebook. You also failed to report this information to your supervisor.

The posts and pictures of you at the insurrection on your Facebook page had comments like *"terrorist who works as a lieutenant at the Bexar Co sheriff's office"* and *"Why is there a BCSO Lt participating in that mess in DC"* brought the Sheriff's Office into disrepute and had an adverse effect on the agency. You also had photos of yourself in the Bexar County Sheriff's Office Deputy uniform on your Facebook page and viewable to the public. The photos were viewed and used against you by the public and brought discredit to the Sheriff's Office.

You failed to report any of the events that took place at the insurrection to your supervisors as required in policy. You endangered the public's health as a world-wide pandemic was still in effect and several people including yourself were seen not practicing safe social distancing.

Your conduct violates the Bexar County Sheriff's Office Policies and Procedures and the Bexar County Sheriff's Office Civil Service Rules as follows:

- a. Your participation in the political rally that evolved into a riot is a violation of any statute, Civil Service rule, regulation of Commission order;" is "conduct which has proven to be detrimental or has an adverse affect (sic) on the Sheriff's Office;" is "conduct unbecoming an officer;" brought discredit to you and the Sheriff's Office. (CS:9.02- M; P; and AP 5.24; 5,45)
- b. The posts and pictures of you at the insurrection on your Facebook is a violation of "conduct which has proven to be detrimental or has an adverse affect (sic) on the Sheriff's Office;" and is a violation of social media policy. (CS:9.02 – P and SP: 5.24; 5.45; 37.07)
- c. Your failure to report any of the events that took place at the political rally is a "violation of any statute, Civil Service rule, regulation or Commission order;" is a "conduct which has proven detrimental or has an adverse affect (sic) on the Sheriff's Office;" is a "failure to report crimes;" is a failure to report incidents that might endanger the public health or safety; and is a failure to

report non-compliance with the law or unethical behavior. (CS:9.02 M; P ad SP: 6.11; 6.12; 6:16)

On May 25, 2021, you were served a Notice of Proposed Dismissal. You were made aware of your rights regarding the said discipline and you requested a hearing. A hearing was conducted on May 28, 2021

#### **IV. SUMMARY POSITIONS OF THE PARTIES**

##### **A. EMPLOYER**

In the weeks after the January 6<sup>th</sup> event, various news articles across the United States raised the question that Law Enforcement agencies considered concerning the activities of their officers in the January 6, 2021 insurrection:

How does a department balance an officer's free speech rights with the blow to the public trust that comes from the attendance of law enforcement at an event with far-right militants and white nationalists who went on to assault the seat of American democracy?<sup>1</sup>

Former Bexar County Sheriff's Office Lieutenant Roxanne Mathai remained in the crowd surrounding the Capital for an event that was protesting the orderly transition of government. She remained in the crowd even after indicating in her posts that people were unlawfully entering the capital and after stating there was tear gas in her area. The Grievant witnessed people climbing walls and scaffolding. She saw that barricades had been pushed down. The Grievant's comments, pictures and video on Facebook supported an event that was negatively viewed by the public and supported conduct that was damaging to the Bexar County Sheriff's Office and her fellow Deputy Sheriffs. Bexar County and the Bexar County Sheriff's Office would pray that the termination of employment be upheld.

##### **B. GRIEVANT/DSABC**

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<sup>1</sup> Associated Press, January 25, 2021. See also Joint Exhibit 10.



The burden of proof is borne by the County of Bexar, Texas and the Bexar County Sheriff's Office. The standard is a preponderance of the evidence as to the propriety of the decision to dismiss the Grievant for the allegedly improper acts she allegedly committed. The Sheriff's Office must support by a preponderance of the evidence that the discipline enacted was reasonable and consistent, under a totality of the circumstances and evidence, with prior discipline within the department and its rules and regulations and consistent with the policy of progressive discipline. If discipline is appropriate, the Grievant should be disciplined consistent with the prior discipline in the department taking Grievant's past disciplinary record into account. If not, the Arbitrator should replace the existing discipline with a more appropriate form of discipline in the judgment of the Arbitrator, given the facts as the Arbitrator finds them.

The Grievant asserts the entirety of the Respondent's case against her rests upon the foundation of her attending the January 6 protests that culminated in a riot at the U.S. Capitol. The Sheriff unequivocally condemned Lt. Mathai's presence at the Capitol. This is conveyed throughout the testimony of the Sheriff:

*"...I think anybody that saw what happened on the media coverage on January 6<sup>th</sup> that knew any of one of the people there was a law enforcement officer of any sort – I think anybody would be hard-pressed to go, oh, yeah, no, I think it's fine that one of our first responders is there in any capacity. And I think that people are shocked by that; that not only did this occur, but – so, you know, you mean to tell me that people that wear a badge for a living were there, and that's just going to be okay with their boss. I think that – I absolutely think that this brought reproach and discredit, disrepute on this agency. And I think that her presence there brings that on. **But allowing her to remain employed by us, I would be basically acquiescing and saying that that's okay.** And it's not." (emphasis added)*

Tr. V-1, Pg. 121, Ln. 16 -25, Pg. 122, Ln. 1 – 8.

*"...I believe that by the time people were there and actively participated and remained on scene after tear gas started flying and what not – I certainly think that everybody there was an active participant in what I believe to be an unlawful assembly at that point that went beyond just supporting your favorite politician. At that point, people were actively trying to hunt down and lynch members of Congress. And so by my estimation, **everybody that was there** and supported that activity supported it." (emphasis added)*

Tr. V-1, Pg. 131, Ln. 11 – 21.

*“I believe anybody that stayed and cheered it on and encouraged and watched without reporting is an active participant.”*

Tr. V-1, Pg. 132, Ln. 1 – 3.

There have been various inaccuracies, misimpressions, and false innuendo regarding the Grievant’s attendance at the Trump rally held on January 6. However, the following are significant and accurate truths.

The Grievant never came close to going inside the U.S. Capitol. The closest she got was approximately one- to two hundred (100-200) feet from the steps of the U.S. Capitol. She never observed any law enforcement officers being assaulted, any tear gas being deployed toward the crowd or herself, and she did not violate any laws.

The Grievant posted numerous posts<sup>2</sup> that night condemning the rioters. Her posts were not derogatory in nature. The Grievant posted selfies, expressing that she felt uplifted by virtue of her participation in a peaceful rally and wanted to explain her participation to those who had not attended what she reasonably perceived was a peaceful rally.

Given the aforementioned facts and failures of the Sheriff’s Office, Grievant asserts the Sheriff did not have just cause to dismiss her. There is no foundation on which the Sheriff’s Office may rely, with the testimony and evidence as presented at this hearing, to uphold the termination.

Grievant prays that this Honorable Arbitrator grant her appeal and, in all respects, reinstate her to her job with the Bexar County Sheriff’s Office; assign her to her previous position as a Detention Lieutenant; the records of Grievant shall show no break in service as a jailer with the Bexar County Sheriff’s Office; award her all back pay from the time she was placed on Administrative Leave Without Pay on January 6, 2021<sup>3</sup>, vacation time, sick time and all other attendant benefits and emoluments of her position as a Detention Lieutenant that she would have enjoyed had she not been terminated, including health benefits; and order the Bexar County and the Bexar County Sheriff’s Office to remove from her personnel files with the Bexar County Sheriff’s Office, all documents relating in

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<sup>2</sup> See App. Ex. #GR – 0008, GR – 0012, GR – 0014 - 0015

<sup>3</sup> See Jt. Ex. #2, BC000494 – 496. Notice of Proposed Dismissal.

any manner to this matter giving rise to the arbitration concerning the Grievant. Finally, the Bexar County Sheriff's Office should be ordered to submit the required documentation to TCOLE showing Grievant has had continuous service with no break in service and all other relief, at law or equity, which the Grievant has shown to be justly entitled.

In the alternative, Grievant respectfully requests an order removing those charges which the Grievant finds the Bexar County Sheriff's Office did not meet their burden and/or the evidence of this matter does not support. Grievant prays that the Arbitrator order the reduction of discipline in this matter from a termination to such amount which, in the judgment of the Arbitrator, is more appropriate to the facts as the Arbitrator finds to exist in this matter. That such reduced discipline be ordered to replace all documentation of the termination of the Grievant in the files or otherwise in the possession of the County. The records of the Grievant shall show no break in service as a jailer with the Bexar County Sheriff's Office; award her all back pay to commensurate with the Arbitrator's decision, vacation time, sick time and all other attendant benefits and emoluments of her position as a Detention Lieutenant that she would have enjoyed had she not been terminated, including health benefits. The Bexar County Sheriff's Office should be ordered to submit the required documentation to TCOLE showing Appellant has had continuous service with no break in service and all other relief, at law or equity, which Appellant has shown to be justly entitled.

#### **V. DISCUSSION AND DECISION**

(Some of the evidence and some of the argument may not be set forth where it is not necessary for the disposition of the case.)

The gravamen of this case is what to make of the Grievant's attendance at the January 6, 2021 demonstration at the Capitol and her words and actions while there. While the Grievant has First Amendment rights, those rights as member of law enforcement are somewhat narrower than the rest of us according to case law dating back to the 19<sup>th</sup> century.

Some of the facts of this case are not in dispute. The Grievant, while on a 120-day suspension, asked permission to attend the rally in Washington, D. C. on January 6<sup>th</sup> and was granted that permission. The Grievant posted some videos and pictures while

there on social media. She was also interviewed by the press and identified as a member of the Bexar County Sheriff's Department.

There is no evidence whatsoever that the Grievant was arrested or detained by law enforcement in D. C. There is no persuasive evidence that the Grievant went beyond the perimeters of cordoned off by law enforcement, trespassed on government property or otherwise committed a criminal offense while there. However, she saw people trespassing (climbing on walls and scaffolding at the Capitol building, barricades knocked down and she ascertained that teargas had been employed by local law enforcement and despite this she continued to linger at a location that appeared to escalating in its lawlessness. Moreover, she later returned to the location after seeing reports of what had occurred and had notice of a 6:00 p.m. curfew that evening.

Finally, from the time of her attendance at the rally through her return to Texas and afterwards, she never contacted any of her supervisors to inform them what she saw and what she heard. Moreover, it is clear from her own testimony that she witnessed and in some cases photographed or videoed numerous people committing acts of trespass and destruction and possibly violence in violation of the law.

Her rationale for going to Washington, D. C., in her own words, was as follows:

(Page 253, lines 17-25 and Page 254, lines 1-9 of the Day 2 Transcript)

I wanted to go because I knew that there was going to be a rally there. My friends have also gone to, you know, some of the rallies. And when I say "friends," it was just a bunch of mutual friends that we had there. And in a sense, I guess -- I know it sounds silly, because I was kind of jealous because I wanted to go to rallies, too. They looked like a lot of fun. Everybody just got along. Everybody would always go out to dinners and, you know, just have, like, fun get-togethers. And I was, like, wow, that looks like so much fun, I would love to go. And it sucks that I haven't been able to go to one because I was always working. So being that I was on leave, I figured, well, you know, maybe I can go to this one. So I asked for permission to go just for the purpose of, you know, going to a rally.

Further colloquy ensued in her testimony:

(Page 254, lines 1-25 and Page 255, Lines 1-10)

A. Now, a lot of people may have gone for other different reasons. Not everybody went for the same thing. I personally wanted to do sightseeing as

well, so I figured, well, I can do two at the same time, which is why I stayed a day later.

Q. And what kind of rally is it? Was it for a certain president or --

A. It was for President Trump.

Q. Okay. Are a Trump supporter?

A. I am. I am a huge Trump supporter.

Q. Okay.

A. Do I agree with anything and everything he says? Absolutely not. Okay. But that's -- I mean, you've made it known -- because I know there's posts that you say I'm a Trump supporter?

Q. Correct. Okay. So you wanted to go to see Trump at this rally; is that correct?

A. I wanted to see him talk.

Q. Okay.

A. It had absolutely nothing to do with any election or anything like that. I just wanted to see him talk. Unfortunately, we were way too far, and I couldn't even see him anyways.

The Grievant later opined in her testimony about the park where the President was going to speak that day:

(Page 257, lines 21-26 and Page 258, lines 1-18)

“The amount of people was -- it was unbelievable. I didn't expect it. I had seen the other rallies on TV, and there was -- there were tons of people, but nothing like -- it still wasn't anything like what I was, you know, imagining. I thought the patriotism was amazing. I thought everybody that came -- like, like-minded people that had come together was amazing. I -- I had a lot of mixed feelings, you know. I think I see a lot of people -- and it will reflect in my posts -- people that just look like - - and I'm not trying to be ugly, but they look like idiots, you know, whether they're just standing there in their underwear or whether they're, you know, dressed in weird costumes. And so I had different emotions. I thought that the patriotism was an amazingly beautiful thing. But I'm kind of, like, thinking, wow, there's a bunch of weirdos out here as well, you know. But I was with my friends, so I really didn't care if this guy was dressed in underwear or this guy was walking around on stilts. I didn't care because I just thought the patriotism itself was amazing.”

The Grievant who arrived (7:00 or 8:00 a.m.) and observed all this said she left the park area (around 1:30 or 1:45 p.m.) after the President spoke and walked to the Capitol. There she took pictures and described them in this colloquy:

(Page 266, lines 10-25 and Page 267, lines 1-3 and lines 7-17)

Q. Okay. And why did you take this picture?

A. For several reasons. Again, documenting history and I thought it was stupid. Again --because if you just walked literally three feet over to the side, you could walk onto the lawn. You know, the lawn actually goes up in a hill, and you're literally in the exact same place that you end up right there. I was, like, why is everybody climbing over this retarded barricade when they can just walk around?

Q. Okay.

A. I thought it -- you know, it was just silly to me.

Q. Okay. Because you can see this rail comes -- I mean, it comes down, and it's right here?

A. Right.

Q. And it's not -- so it's not a very tall wall?

A. No.

\* \* \* \* \*

Q. Okay. Hold on a second. Let me -- I've got to write this down, 43842. And what is this a picture of?

A. I guess somebody had brought this jumbo flag, as you can see. And everyone was standing on the scaffolding that was sitting there in preparation for Joe Biden's inauguration. And obviously, they took it upon themselves to climb up the scaffolding and go to the top of it, at which point they were in the process of draping the flag across the scaffolding.

The Grievant also posted a short (35-second) video while she was at the Capitol and posted it on social media. (Joint Exhibit #7) In that video, the Grievant has on a red, white and blue mask and is heard saying words to the effect, "We're going in -- teargas and all."

The Grievant further testified that she and her friends left the Capitol around 3:00 p.m. and headed towards the Washington Court Hotel to get something to eat. They later planned to return to the Capitol. Her testimony indicated the following:

(Page 287, lines 6-25, Page 288, lines 1-3, 17-25, Page 289, lines 7-25, Page 290, lines 1-9 and 222-5, Page 291, lines 1-25 and Page 292, lines 1-12)

A lot of that was just, I want to go take pictures of the Capitol in the nighttime, you know, because that was what I was kind of going there for, right, was the sightseeing. I wanted to take pictures of that. Other people just wanted to see, you know, new -- when I say "other people," I mean my mutual friends -- wanted just to see, you know, what else was going on. We were allowed to be outside as long as it wasn't 6:00. There was nothing going on, in my opinion, as far as -- there were no deaths that I knew of. There was no police violence that I knew of, nothing. The only thing that I could see on the TV, again, was it looked like people were inside the Capitol. I didn't see anything, as far as police getting assaulted or anybody getting assaulted, for that matter. The only thing that we thought to ourselves was that is the most stupidest thing. Like, who in the hell would go in there? That is -- that's absolutely stupid. Like, who would do that? So, you know, we go back outside just to take some more pictures real quick, and then we came back before the curfew.

A. As I stated, I wanted to take pictures of the Capitol at night. I know it looks different, I mean, with the lights and so forth. So I wanted to take pictures of, you know, nighttime. Other people in my, you know, party, if you would, wanted to go and just see if anything different was happening or -- you know, you've got some of them that want to act like super heroes, oh, let's make sure everything is okay and, you know, things of that nature.

\* \* \* \* \*

Q. So what did you observe when you reached the Capitol grounds again?

A. What did we observe? When I first got there, I saw that almost everybody was cleared out. There was hardly anybody there. You were able to freely walk, as opposed to earlier in the day. We didn't -- we saw officers lined up. I don't -- I don't want to call it a second level of the building because I'm not quite sure of the engineering of that building. But there was officers lined up along the top of a stairway. And you know, we're sitting there, and we're taking pictures of that situation. And there was some guys that were there saying, like, you know, thank you for your service and so forth. And then there was, you know, some other guys standing there talking to them. But they, in no way, were telling these people to leave. They were actually talking, you know, to each other. I didn't know what that was about, but I wanted to get a closer picture. So again, I'm trying to document everything, and I'm just being picture crazy and go up a little bit closer to take pictures. And that was when UK Sky, which is the name of that news station, had asked me to do an interview when she complimented, quote, unquote, my outfit and asked me if I would do an interview.

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A. They asked me if I would do an interview. I told them -- I kindly told them no because I did not want to be interviewed at that time. And she was, like, you know, Well, why, why can't you just do a quick interview? I just want to know why you came to Washington, and that's all I'm going to ask, I swear kind of thing, you know. And you know, we all kind of know how media can be. So I said, well, as long as that's the only thing that you ask me, I guess it's okay, you know. And so I proceeded to do that interview there on top of those little stairs. That's where all the media was kind of set up. You can see in some of my pictures. You can see the cameras and so forth. But then as soon as we were done with that, we said, we've got to go because of the curfew. So then when we walked back downstairs from the interview, that's when we saw a bunch of officers, which I don't know if they were SWAT, National Guard, you know, Washington Metropolitan Police. I do not know what they were. But they were all walking in a line in a formation, and my thought was, oh, my gosh, let me get out of their way. And so I moved out of the way. They didn't tell us to move. They didn't tell us to leave or anything. They just started forming, I guess, like, a man -- like a human wall, you know, if you would, around the area of the Capitol, which we were already away from anyway. So it's not like we were in their way and, you know, being insubordinate or anything like that. So as we're walking away, I'm like, whoa, hold on, let me just take pictures of these guys. In my opinion, being in the field that I am -- I may not be a PO, but I thought it was cool. You know, I thought it was cool to see these guys, you know, coming and protecting the building and doing what they're supposed to be doing. So I wanted to take pictures of that. So we took pictures of them, and we left.

The Grievant indicated that she did not identify herself as a Bexar County Sheriff Department Officer. She did say that she thanked some officers for their service who were positioned by a barricade nearby.

Then in response to an inquiry about her video post (which was broadcast nationally right after the riot and later on KSAT Channel 12 in San Antonio):

Q. Okay. And in this here -- this picture here, it says KSAT.com. And it has this caption, Bexar County Sheriff's lieutenant under investigation for possible role in deadly U.S. Capitol riot. Right?

A. Correct.

Q. Okay. Down here -- I mean, you saw this. Now, how -- I mean, they took a picture of this -- or a -- what do you call it -- a screenshot of this, I guess,



from IA. But in this little inset here – (it says) and the most beautiful part of all. Not gonna lie....aside from my kids, this was, indeed, the best day of my life. And it's not over yet. Took a break to eat. Heading back.

Q. So when -- you heard the testimony of the sheriff yesterday. He said making that quote when officers have been injured or killed, or whatever he said yesterday in his testimony, he had a problem with you coming out with this statement here. Was this statement made with the knowledge of officers being assaulted and killed or injured or was it made prior to you having that knowledge?

A. That was definitely made prior to having that knowledge.

The Sheriff became aware of this situation involving the Grievant the very next day after as the video and some other pictures of the Grievant hit social media and he was informed of them. The Sheriff later made comments to the local media to the effect that he would investigate the matter and depending on the results would make his decision. He was resolute if there was wrong-doing he would take severe action.

The circumstances and facts of the January 6 lawless conduct and the Grievant's own comments about the matter show a real disconnect between what happened and what she said she observed. Furthermore, the Grievant's assessment of the reason for the rally and what actually occurred is wanting in both its reasoning and logic.

The purpose of the rally, by all accounts, was to convince Congress to overturn the 2020 Presidential Election or at the very least not certify the entirety of Electoral College votes/ballots. Lawless activity ensued that day from trespass and destruction of property to assault, battery and death. To say the least, the Grievant (who is neither a journalist or historian) was correct in stating that she was documenting history – but assigning the notion of patriotism to purpose of the rally is naïve at best and hypocritical at worst.

Moreover, the Grievant observed people trespassing, barricades that were knocked down and experienced tear-gas in the air. Nevertheless, she contends that she saw nothing illegal. Then, after all of this, she goes to lunch with plans to go back to the Capitol grounds or an area nearby after lunch purportedly to take pictures of Washington, D. C. at night

While eating lunch at a hotel, she observes video on television of what had just occurred at the Capitol over the last few hours – but she goes back to the Capitol area.

The Grievant is aware of a 6:00 p.m. curfew in effect but apparently does not equate that with the seriousness of what occurred or the possibility of what might occur later on that evening. Finally, the Grievant gives an interview to a foreign news service to explain why she attended the rally – apparently never caring to acknowledge the seriousness of what actually occurred.

Of course, as noted above, the Grievant posted pictures and a video of herself and others on social media as well as her comment as these events occurred. There was evidence that this were viewed negatively by some of the public.

I have examined the entire record of this case. I have come to the conclusion that even if the Grievant was duped into believing this rally was really a patriotic gesture or a protest to manner in which the election was conducted or even a last tribute to President Trump by his loyal supporters, the Grievant knew or should have known she was observing illegal activity (trespass, barricades down, people climbing walls and scaffolding); that tear gas in the air and later a curfew were signs of trouble; that her social media would disseminate her pictures, video and comments to the public; and, that as an officer with the Bexar County Sheriff's Office the last place she should be or remain or come back to was the scene of this so-called "rally."

Therefore, as to the charges, I find that:

Her participation in the rally in Washington, D. C. which evolved into a riot is a violation of a Civil Service rule, regulation or Commission conduct "which has proven to be detrimental or has had an adverse effect on the Sheriff's Office;"

Her participation in the rally in Washington, D. C. is also "conduct unbecoming an officer" which has brought discredit to the Grievant and the Sheriff's Office;

The posts and pictures of the Grievant at this event on her Facebook is a violation of "conduct which has proven to be detrimental or has an adverse effect on the Sheriff's Office;" and it is also a violation of social media policy;

Finally, failure to report any of the events that took place at the political rally is a violation of a Civil Service rule, regulation or Commission order;" is a "conduct which has proven detrimental or has an adverse effect on the Sheriff's Office;" is a "failure to report crimes;" is a failure to report incidents that might endanger the public health or safety; and is a failure to report non-compliance with the law or unethical behavior.

As a final point, her 120-day suspension which she was serving at the time of these offenses undermines any mitigation of the penalty imposed.

**VI. AWARD**

Upon these facts and for these reasons, the grievance must be denied

DATED: December 22, 2021

A handwritten signature in cursive script that reads "Thomas A. Cipolla". The signature is written in black ink and is positioned above a horizontal line.

**Thomas A. Cipolla, Arbitrator**