Sonoma County Sheriff's Office
Internal Investigation Report
19-IA-0005

Investigation

On April 23, 2019,[1] at approximately 0800 hours, I found a letter in my office, which apparently was slipped under my door. The anonymous letter indicated Sergeant Dave Berges may have used inappropriate language ('Harassment') and derogatory comments when discussing different members of this Office while he supervised EVOC training. The letter stated:

To the Bureau of Professional Standards,

Since working for the County of Sonoma, I have been surrounded by wonderful men and women who work in both a civilian and peace officer capacity. The employees of the county, from my point of view, have routinely treated one another with courteously and respect. It has truly been a joy being employed here.

This letter is to address an issue that has been brought to my attention and has weighed on me heavily. In the past few months, it has come to my attention that Sergeant Dave Berges, has potentially been failing to carry on the tradition of treating one another, and specifically his subordinates, with the same civility normally shown within the county. I have heard, on more than one occasion, of Sergeant Berges using not only homophobic language and remarks, but racial slurs. It has been told to me this has occurred on duty, and specifically routinely at the EVOC training facility, specifically with the EVOC training cadre.

It has been told to me, Sergeant Berges has routinely used homophobic language, and homosexual degrading remarks, specifically while an openly gay deputy sheriff is present. I have been told Sergeant Berges routinely talks about having anal sex and oral copulation, with other male cadre, in a joking fashion. While this has possibly occurred in jest, it was told to me that the openly gay deputy does not engage in the conversations in anyway, and does not laugh at the comments. It has been told to me that the words, "Gay" and "Fag", are routinely said by Sergeant Berges, and are continued to be said in the presence of the openly gay deputy. It appears this conduct has gone on for months (or longer), unaddressed.

Additionally, some months ago, it was rumored that a female deputy was part of an Internal Affairs Investigation, and the investigation was assumed by Sergeant Berges' unit (DVSA), for a criminal investigation. It was told to me that Sergeant Berges was extremely unhappy with this responsibility and felt this investigation lied solely with the Professional Standards Bureau. It was told to me that while speaking about his displeasure, and 'venting' to deputies about the investigation, Sergeant Berges referred to Captain Eddie Engram as the Sheriff's, "Porch Monkey".

I do not know if all or any of these ongoing rumors/allegations regarding Sergeant Berges' conduct are true. I do know this is an ongoing theme of rumors of inappropriate and insensitive language and bigotry. I have deep concerns for the insensitivity shown and uncomfortable environment created for the openly gay deputy on the EVOC training staff. Additionally, I find the alleged racist and disgusting comments made regarding Captain Engram, to not only be insubordinate and undermining of the administration; but a gross display of racism which simply cannot exist in the county's work environment.

This letter of concern is being submitted anonymously, as Sergeant Berges is a supervisor within the Sheriff's Office. I fear, as I believe several other do, that there would be severe consequences for coming forward without anonymity. I fear that the backlash would be not only from Sergeant Berges, but from his supporters. While I do believe his conduct should immediately change, I am not willing to come forward publicly with my concerns do to fear of retaliation.

Respectfully Submitted Anonymously

[1] An underlined date indicates it is a part of my investigation.

Based on Sergeant Berges' assignment, the following members of the Sheriff's Office should review this report:

Captain Darin Dougherty
Assistant Sheriff Jim Naugle
Sheriff Mark Essick

I was able to determine the last EVOC training occurred on March 30, 2019. The instructors present on that occasion included; Sergeant Berges, [redacted].

On April 24, 2019, I advised Deputies [redacted] and [redacted] (since these deputies do not work directly for Sergeant Berges in DVSA) to come in on April 30 for an interview.

On April 30, 2019, at 0904 hours, the following additional deputies, detectives, and sergeants (based on their DVSA and/or EVOC assignments) were advised they would be interviewed as witnesses:

Sergeants [redacted], and [redacted] ([redacted]).

Detectives [redacted].

Deputies [redacted]

[redacted]

At 1203 hours, Sergeant Doherty and I interviewed Deputy [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]:

[redacted]. Directing Deputy [redacted] attention towards the Office's 'Harassment' policy, of which he said he was familiar, he could not recall on any occasion when Sergeant Berges made a comment that would have been deemed inappropriate. Specifically, he never heard Sergeant Berges say; "gay," "fag," or "porch monkey."

[2] I later learned that [redacted], so he will not have any timely information.

For further information refer to Deputy [redacted] statement.

[redacted] At 1402 hours, Sergeant Doherty and I interviewed Deputy [redacted] as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted] Initially, Deputy [redacted] said nothing significant stood out in regards to Sergeant Berges using verbiage that might be considered inappropriate based on the Harassment policy. [redacted] said the DVSA detectives would, on occasion, discuss cases they were working that were "a little shocking." [3] At this point [redacted] was provided with the (redacted) anonymous letter.

After reading the letter, [redacted] advised he was familiar with some specific comments Sergeant Berges used, those that [redacted] believed were inappropriate, such as the words "fag" and "gay." [4] [redacted]. [redacted] believed Sergeant Berges used those words between 2 and 4 times during the 20 to 25 times [redacted] was present at EVOC.

When questioned about Sergeant Berges talking about "anal sex," as indicated in the letter, [redacted] said "…I've heard him talk about that sort of stuff." [5] This occurred between 2 and 4 times during the 20 to 25 times he was present at EVOC.

[redacted] never heard Sergeant Berges say anything derogatory towards Captain [redacted]

For further information refer to [redacted] statement.

At 1940 hours, I contacted Sergeant Berges by phone, as he had called in 'sick' and was unavailable at work. I wanted to ensure that Sergeant Berges was aware he was being placed on Administrative Leave and was the subject of this internal investigation.

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[3] [redacted] statement, pg. 7 of 16.
[4] Ibid., pg. 8.
[5] Ibid., pg. 13.

[redacted] On May 1, 2019, at 1102 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] was not aware Sergeant Berges was recently involved in an internal investigation. [redacted] has never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 1128 hours, Sergeant Doherty and I interviewed [redacted], as a witness to this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] was aware Sergeant Berges was recently involved in an internal investigation, as "…he expressed extreme displeasure" at being the subject officer.[6] [redacted] has never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 1213 hours, Sergeant Doherty and I interviewed [redacted], as a witness to this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

During his time working with Sergeant Berges, [redacted] has heard him use the word "gay" a "…handful of times." [7] When he used that word, Sergeant Berges never

[6] Refer to Detective [redacted] statement, pg. 7 of 9.
[7] Refer to Sergeant [redacted] statement, pg. 4 of 10.

directed it towards anyone in particular. While they handled cases that involved homosexuals, specifically using that term unrelated to an individual or a case, Sergeant Berges said it a "couple" of times.[8] [redacted] did not recall Sergeant Berges ever using the word "fag."

[redacted] was not aware Sergeant Berges was recently a part of an internal investigation. [redacted] has never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

On May 1, 2019, Detective Lieutenant Tim Duke served Sergeant Berges his Internal Affairs notice, which he signed and dated upon receipt.

[redacted] On May 2, 2019, at 1002 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] was aware Sergeant Berges was recently involved in an internal affairs investigation and he "…voiced his displeasure with admin" at being the subject officer.[9] [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 1058 hours, Sergeant Doherty and I interviewed [redacted] as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] recalled Sergeant Berges using the word "gay" but occasions. When Sergeant Berges used the word, it was never used derogatorily towards someone.

[8] Ibid., pg. 5.
[9] Refer to [redacted] statement, pg. 6 of 9.

[redacted] was aware Sergeant Berges was recently involved in an internal affairs investigation and "…was very frustrated, um, and felt like he was wronged." [10] [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] On May 14, 2019, at 1005 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 1029 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] was not aware Sergeant Berges was recently involved in an internal affairs investigation. [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 1041 hours, Sergeant Doherty and I interviewed [redacted] as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[10] Refer to [redacted] statement, pg. 9 of 12.

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] was not aware Sergeant Berges was recently involved in an internal affairs investigation. [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 1129 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] was not aware Sergeant Berges was recently involved in working an internal investigation; however, he did recall when Sergeant Berges spoke despairingly about Captain [redacted].[11] [redacted] said:

> "I don't remember the exact date or the context of this conversation, but, uh, he threw out the term 'porch monkey.' And I was, I was pa-, or like, like I said, I wasn't really listenin' to the conversation, but that phrase kinda alerted – I was like, what the hell did he just say? So, and then I was led to believe that he was referring to then Lieutenant [redacted]." [12]

Sergeant Berges was talking in a group setting (i.e., instructors, students, etc.), not directly to [redacted]

[redacted] has heard Sergeant Berges use the word "fag" a "handful of times." When Sergeant Berges said that, it was [redacted] impression Sergeant Berges was not directing the word toward anyone in particular. When asked about the word "gay," [redacted] said "Yeah. Another word that he would use. But it's just more like, oh, that was gay or oh what a fag." [13] When asked if these words were ever used in front of [redacted], [redacted] said:

> "So, yeah, and that's, that's one thing in particular, so, I think pretty much everybody that we work with, especially on our team, especially out at the

[11] [redacted] believed when this occurred Captain [redacted] was a lieutenant in charge of the Professional Standards Unit.

[12] [redacted] statement, pg. 7 of 16.

[13] Ibid., pg. 9.

track, they're aware of [redacted] orientation. Uh, I consider [redacted] a good buddy of mine. We've worked a lot, uh, ended up on the same shifts a lot together over the past 5 years. Uh, I would never want to have, uh, an atmosphere where he didn't feel welcomed or part of the team. So, we, I mean, I consider us good buddies. We share a lot of the same interests, we go to coffee together every day. We're shift partners. You know. So, like one thing I could never recall is anybody, um, here at, on patrol or anywhere, uh, make a joke or direct a comment disparaging against gay people, towards [redacted] as an attack. I just, I can't recall it. [redacted], you'd have to talk to him. Maybe he can recall more specifically. I'm sure he'd remember things like that a little bit better than me. Um, there's, there's been more than one occasion where somebody has slipped up and maybe used the word gay or fag around him, and either not realized it at the time, or realized it, and everyone in the room kinda looks at each other and, sometimes it ends up like a, hey, sorry [redacted]. Or, or whatever, but it's never, I've never been present for an instant where like that's been used as an attack, because I'd recognize that. 'Cause when people do slip up and say, somethin's gay or whatever, and it's like, you guys know [redacted] here." [14]

For further information refer to [redacted] statement.

[redacted] At 1158 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] was aware Sergeant Berges was recently involved in an internal affairs investigation however he never heard Sergeant Berges express his frustrations. [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[14] Ibid., pg. 9 and 10.

[redacted] At 1310 hours, Sergeant Doherty and I interviewed [redacted] as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay" though he is aware Sergeant Berges has used those words on occasion. [redacted] was aware Sergeant Berges was recently involved in an internal affairs investigation but doesn't recall the context of what it was regarding as he did not speak to Sergeant Berges about it. [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] On May 15, 2019, at 0758 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 0838 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay" but [redacted] was confident he probably did use those words since "…those things get said around here all the time." [15] [redacted] was aware Sergeant Berges was recently involved in an internal affairs investigation and he

[15] [redacted] statement, pg. 8 of 10.

"…voiced his displeasure with the administration" about his unit having to conduct [redacted] investigation. Sergeant Berges believed it should have been assigned to the Santa Rosa Police Department.[16]

[redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 0908 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

For further information refer to [redacted] statement.

[redacted] At 0926 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

For further information refer to [redacted] recorded interview.

[redacted] At 0926 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted]

[16] The [redacted] matter was initially given to the Internal Affairs Bureau to investigate. Once begun, it was determined it should be investigated as a criminal matter since [redacted] was the victim of a crime.

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.

[redacted] At 1042 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted] said since January of 2019, he has worked as an instructor roughly ten times. On most of those occasions, Sergeant Berges was the supervising EVOC member. When asked how often (when he has been at the track) he heard Sergeant Berges uses the word "gay," [redacted] responded "…every time." When asked about Sergeant Berges using the word "fag," [redacted] said "Frequently." [17] While Sergeant Berges was not using the word derogatorily towards any deputy, [redacted] was able to hear those comments. [redacted] then asked to speak "freely" stating:

> "So, ever since I've, I've worked with Dave, he's said some things that have been a little inappropriate, you know. Um, and he runs that unit. You know, he is the alpha sergeant out there, in my opinion. Um, he, uh, clearly controls the schedule. He clearly was in charge of, um, the paperwork. Uh, it was made very clear to me, right, and so I have never worked with him when I thought that the words coming outa his mouth were completely appropriate, you know. I, I just, it was one of those things where it's like almost the way he talks, um, and him being the sergeant out there, uh, you know, I, I thought it was, yeah, I thought some of it was inappropriate regarding the word that you brought up, fag and the word gay that you said, and specifically with having [redacted] there, you know. I, uh, I remember him saying, I don't remember when, you know, because it happened…frequently. I would kinda feel bad and, um, it didn't seem to offend him. Uh [redacted] that is. Um, but that is the s, the statement I wanna say, that it just seemed like this is the person that, that he is, you know, and he's promoted to a position where he's at and he was in charge of the, of our unit, and so, you know, I was shocked." [18]

[17] Refer to [redacted] statement, pg 8 of 20.
[18] Ibid., pgs. 9 and 10.

[redacted] also recalled when Sergeant Berges was tasked with his unit investigating the [redacted], "…he was upset because he thought it was an internal matter, not a criminal investigation." [19] It was during this time, and while passing Sergeant Berges (who was conversing with other instructors whom [redacted] could not recall), said "…something I would say, but it was something about like a, like a porch monkey." [20] This occurred one time.

[redacted] said Sergeant Berges was obviously comfortable talking to some instructors while others he was a little more hesitant. [redacted] felt he was one of those whom Sergeant Berges was not comfortable talking with.

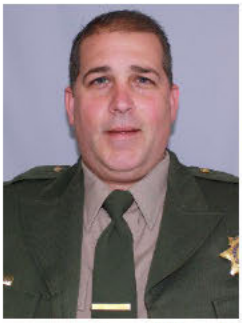
For further information refer to [redacted] statement.

[redacted] On May 16, 2019, at 1217 hours, Sergeant Doherty and I interviewed [redacted], as a witness in this matter. He was ordered to answer all questions honestly and truthfully.

[redacted].

[redacted] could not specifically recall Sergeant Berges ever using the words "fag" or "gay." [redacted] was not aware Sergeant Berges was recently involved in an internal affairs investigation. [redacted] has never heard Sergeant Berges refer to Captain [redacted] in a derogatory way.

For further information refer to [redacted] statement.



On May 22, 2019, at 1230 hours, Sergeant Doherty and I interviewed Sergeant Berges. The interview was digitally recorded. Sergeant Berges was represented by Attorney Mike Rains. Sergeant Berges was provided with a Disciplinary Interview Advice of Rights form, which he signed. This was witnessed by Attorney Rains. Sergeant Berges basically stated the following:

Sergeant Berges has worked at the Sheriff's Office for nearly 20 years. He has been a sergeant for the last 4.5 years. He has supervised the DVSA unit for nearly 3 years. He is also one of the EVOC supervisors.

During January 2019, DVSA was tasked with completing a criminal investigation by Captain Darrin Dougherty and then Lieutenant [redacted]. The case was initially assigned to the Internal Affairs Bureau however, after some interviews were completed it was

[19] Ibid., pg. 12.
[20] Ibid., pg. 13.

determined the subject employee was actually the victim of a crime, hence why DVSA was tasked with the investigation. Sergeant Berges admitted he was upset by the decision that DVSA was assigned the case, stating:

> "Um, I wasn't happy with that decision because I, uh, and I had expressed this concern with, with Brandon that, um, this particular case, um, in, would start involving our detective or my detective unit investigating our own people. Even though, uh, she was claiming to be a victim it wasn't, didn't even occur in our jurisdiction.
>
> "Uh, and I just felt that the, there had been rumors already floating out there and we were aware of the rumors and I specifically stated that I was concerned with the information, um, basically how they, IA, believed she was a true victim and I thought that if our, if we started to do an investigation we were gonna uncover the opposite more than likely, um, and that would not make the IA, uh, person look good.
>
> "And I, and my other concern was us having to interview other involved deputies. And I was concerned with that for two reasons. Number one, I don't think it's ever a good idea to investigate, uh, criminally, uh, do a criminal investigation on our people. And two, when you start interviewing people about sex, um, especially law enforcement it's been my experience that they will lie to you.
>
> "And they will lie out of embarrassment, uh, for whatever reason. Maybe they're married. Maybe – who knows what. And I, I didn't wanna put them in that position. So I had great concerns over it." [21]

Sergeant Berges said he expressed his displeasure with his detectives, not only in their office, but also out at the track. Sergeant Berges continued:

> "I may have discussed even with other, uh, other instructors in, in passing about how frustrating it was. Um, it was very frustrating for me in particularly because every, every single direction that this investigation went my lieutenant would call me and question and, and tell me the captain or, uh, usually it was the captain was questioning why we're doing something.

[redacted]

[21] Refer to Sergeant Berges' statement, pg. 10 and 11 of 27.

[redacted] [22]

When Sergeant Berges was asked if this was the reason why he referred to Captain [redacted] as a "porch monkey," he said [redacted] Sergeant Berges continued:

> "Well, um, I, when I was talking to guys about this I, after it was done, I was extremely pissed off. And, um, I believe what I actually said in, in front of, um, that group of people was probably that fucking monkey. And in that same conversation I said, I called [redacted] the same thing." [23]

Sergeant Berges then tried to minimize his use of the term "monkey" by stating:

> "I have called my detectives that. And what I mean by that is you're being stupid. Now I know I was pissed off and, uh, is it possible that I said porch monkey? I, I guess it's very possible 'cause I was pissed off. Um, it's a normal phrase that I use and so that's why I think it said, I said, you know, fucking monkey. However, it's very possible I, Larry, I was pissed and I was pissed that it even, it happened. Um, I was, even though there was no discipline I was pissed with the conclusion of it. Um, and, and I was pissed at [redacted] for never getting back to me." [24]

Sergeant Berges agreed the term "porch monkey" is not an appropriate term to use in front of his detectives in reference to someone who is a part of the Sheriff's Office management.

Sergeant Berges said he is familiar with the Department's Harassment policy since he is required to take an updated class every two years as a supervisor as well as discuss with his subordinates the policy when completing their evaluations.

From January till May, 2019, Sergeant Berges believed he was the supervisor during EVOC training approximately 20 times. Sergeant Berges agreed he was responsible for ensuring his instructors taught and evaluated the students based on POST standards.[25]

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[22] Ibid., pg. 13.

[23] Ibid., pg. 18. Note—[redacted]

[24] Ibid., pg. 19.

[25] I am using the term students as EVOC training is provided to every employee (who works for the Sheriff's Office) who drives a vehicle based upon their assignment.

Sergeant Berges, when asked how often he used the word "fag" during training, said it was a common word for him to say. Sergeant Berges said "…I know I use that word. Um, I can't, um, I can't think of a specific like incident but I definitely know I use that word." [26] While using this word, Sergeant Berges claimed he has never used it to be derogatory towards any employee.

When asked about the word "gay," Sergeant Berges said the word "…would come out of my mouth too." [27] Like before, Sergeant Berges claimed he never used it in a derogatory manner.

Sergeant Berges was aware [redacted] is homosexual, claiming he "…hired him."[28] When asked, Sergeant Berges said he "most definitely" used the words "fag" and/or "gay" around [redacted] however claiming he was not trying to be disrespectful.[29]

When asked if Sergeant Berges believed those words were appropriate to use around [redacted], he responded:

> "Absolutely not. I do not think, um, I, I will be honest with you and tell you that EVOC in general, um, and it, it may be EVOC more than any other trainings but EVOC people feel secure up there. It's a closed course. The only people that are up there are us, the instructors and a, and a small group of students who are usually deputies. The people that attend do feel comfortable. They feel like they can say what's on their mind and there is a lot of bantering and 99 percent of it is done in jest." [30]

Attorney Rains, who was allowed to asked Sergeant Berges questions, said he knew the Sheriff should consider (when deciding discipline) if there was a likelihood of reoccurrence. When Attorney Rains asked Sergeant Berges if the Department could be reassured he would never use the words "gay and fag" again, he responded:

> "I, I can most definitely give that assurance. This has, um, this is humiliating, um, and, and I know that there is lax speech everywhere. And think has shown me that, um, you know, I didn't, I did not mean to offend anybody and I can see how words like that can be taken offensive. And that was not my intent. I was angry and, um, or playing around, um, but I can assure you that this will not occur ever again." [31]

In regards to the term "monkey or porch monkey," Sergeant Berges responded:

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[26] Sergeant Berges' statement, pg. 9.
[27] Ibid.
[28] Ibid., pg. 10.
[29] Ibid.
[30] Ibid., pg. 19.
[31] Ibid., pg. 20.

> "Uh, most definitely and, ye, yes, and by the, there was no intent to attack him as a racial slur. It was out of anger. And yes, can I see how that can be taken by somebody? Mo, most definitely, and it's not acceptable. Um, I'm not gonna make any excuses, um, but I will assure you nothing like this will ever happen again and in fact, you know, I would have a, lo, you know, long meeting with my instructors so that they understand. No joking like this can happen." [32]

Sergeant Berges was then asked about what he would have done if he had heard one of his subordinates say either the words gay or fag in front of [redacted] or referred to Captain [redacted] as a porch monkey. Sergeant Berges said he would have taken action right away to deal with it. Sergeant Berges was then asked who was supposed to "take action" when he was the one making those comments, to which, he responded "probably other deputies." [33]

For further information refer to Sergeant Berges' statement.

Nothing further.

[32] Ibid.

[33] Ibid., pg. 21.

Conclusion and Findings

The focus of this investigation was based on Sergeant Dave Berges' conduct while supervising the EVOC instructors and students and then to determine if there was a violation of a Sheriff's Office Rules and Regulations, more specifically:

Rules and Regulations Regarding Conduct

5. **PROCEDURES**

B. DUTIES, CONDUCT AND RESPONSIBILITY

3. Obey Policies and Procedures: Members shall obey and carry out all lawful Sheriff's Office and County policies, procedures, and other orders whether written or oral. Specifically:

Discrimination and Harassment, Specifically:

Discrimination and harassment are defined under this policy as verbal, visual, or physical conduct that ridicules, insults, intimidates, or shows hostility or aversion toward an individual because of his **race, religion, color, gender, sexual orientation, disability, medical condition, marital status, age, military status, national origin or ancestry**.

11. Conduct Toward Other Members: All members shall treat superior officers, subordinates and associates with respect. They shall be courteous and civil at all times in their relationships with one another.

17. Insubordination: Failure or deliberate refusal of any member to obey a lawful order given by a supervisor is insubordination. Giving false or misleading statements, misrepresenting or omitting material information to a supervisor or other person in a position of authority in connection with any investigation or in the reporting of Sheriff's Office related business. Ridiculing a supervisor or his order is also insubordination.

C. ADDITIONAL DUTIES OF SHERIFF'S OFFICE MANAGERS AND SUPERVISORS

1. Supervise and/or manage subordinates, so as to improve their efficiency and quality of performance by:

c. Provide effective leadership, guidance and control conducive to effective performance and high morale.

e. Assume responsibility for the proper conduct and discipline of subordinates.

Incident:

On April 23, 2019, an anonymous letter was left (placed under the door) in my office. It appears to have been written by a deputy. The letter alleged Detective Sergeant (DVSA) Dave Berges, while supervising at EVOC training, used the words "fag," "gay," and "porch monkey" in a group setting.

The words "Fag" and "gay" were said in front of EVOC instructors, one who is a homosexual. In regards to "porch monkey," Sergeant Berges said this when venting about a recent investigation ([redacted]) where his unit was assigned to conduct a criminal investigation. I am aware Sergeant Berges was given this assignment by Captain (then Lieutenant) Eddie Engram.

Due to the potentially egregious comments being made by Sergeant Berges in a group setting, where he was the supervisor, he was placed on Administrative Leave. This occurred after we were able to verify (through interviews) he had in fact made the comments that were indicated in the anonymous letter.

Several instructors were interviewed during this investigation. Investigators focused on those training dates between January and May 2019, as it was determined the "porch monkey" comment was used after DVSA was assigned the [redacted] investigation and Sergeant Berges was the subject of an Internal Affairs investigation.

Note—On each EVOC training date there is usually one EVOC supervisor, four EVOC instructors, and two alternate EVOC instructors.[34]

One of the EVOC instructors interviewed was [redacted], [redacted] was initially reluctant to discuss what he specifically recalled about Sergeant Berges using the words "fag" and "gay" however after he was provided with the anonymous letter, [redacted] advised he was familiar with the specific comments Sergeant Berges used, those [redacted] believed were inappropriate, such as "fag" or "gay."

[redacted] never felt the words were directed towards him but they did make him feel uncomfortable. He was also aware those words should not be used (amongst deputies) based on policy. [redacted] believed Sergeant Berges used those words between 2 and 4 times during the 20 to 25 times [redacted] was present at EVOC.

[34] Alternate instructors are those deputies who haven't attended a POST certified EVOC instructor's course therefore, they are unable to sign off deputies after completing course objectives.

When questioned about Sergeant Berges talking about "anal sex," as indicated in the letter, [redacted] said "…I've heard him talk about that sort of stuff." This also occurred between 2 and 4 times during the 20 to 25 times he was present at EVOC with Sergeant Berges.

[redacted] never heard Sergeant Berges use the phrase "porch monkey."

Another EVOC instructor interviewed was [redacted]. [redacted] was not aware Sergeant Berges' unit was assigned to conduct the [redacted] investigation however he did recall Sergeant Berges speaking despairingly about Captain Engram. [redacted] said:

> "I don't remember the exact date or the context of this conversation, but, uh, he threw out the term 'porch monkey.' And I was, I was pa-, or like, like I said, I wasn't really listenin' to the conversation, but that phrase kinda alerted – I was like, what the hell did he just say? So, and then I was led to believe that he was referring to then Lieutenant Engram."

Sergeant Berges said this in a group setting (i.e., instructors, students, etc.), not directly to [redacted].

[redacted] has also heard Sergeant Berges use the word "fag" a "handful of times." When Sergeant Berges said that, it was [redacted] impression Sergeant Berges was not directing the word toward anyone in particular. When asked about the word "gay," [redacted] said "Yeah. Another word that he would use. But it's just more like, oh, that was gay or oh what a fag." When asked if these words were ever used in front of [redacted] said:

> "So, yeah, and that's, that's one thing in particular, so, I think pretty much everybody that we work with, especially on our team, especially out at the track, they're aware of [redacted] orientation. Uh, I consider [redacted] a good buddy of mine. We've worked a lot, uh, ended up on the same shifts a lot together over the past 5 years. Uh, I would never want to have, uh, an atmosphere where he didn't feel welcomed or part of the team. So, we, I mean, I consider us good buddies. We share a lot of the same interests, we go to coffee together every day. We're shift partners. You know. So, like one thing I could never recall is anybody, um, here at, on patrol or anywhere, uh, make a joke or direct a comment disparaging against gay people, towards [redacted] as an attack. I just, I can't recall it. [redacted], you'd have to talk to him. Maybe he can recall more specifically. I'm sure he'd remember things like that a little bit better than me. Um, there's, there's been more than one occasion where somebody has slipped up and maybe used the word gay or fag around him, and either not realized it at the time, or realized it, and everyone in the room kinda looks at each other and, sometimes it ends up like a, hey, sorry [redacted]. Or, or whatever, but

it's never, I've never been present for an instant where like that's been used as an attack, because I'd recognize that. 'Cause when people do slip up and say, somethin's gay or whatever, and it's like, you guys know [redacted] here." [35]

[redacted], who is an EVOC instructor, said since January of 2019, he has worked as an instructor roughly ten times. On most of those occasions, Sergeant Berges was the supervising EVOC member. When asked how often (when he was at the track) he heard Sergeant Berges use the word "gay," [redacted] responded "…every time." When asked about Sergeant Berges using the word "fag," [redacted] said Sergeant Berges used it "Frequently." While Sergeant Berges was not using the word derogatorily towards any deputy, [redacted] knew [redacted] was able to hear those comments. [redacted] then asked to speak "freely" stating:

"So, ever since I've, I've worked with Dave, he's said some things that have been a little inappropriate, you know. Um, and he runs that unit. You know, he is the alpha sergeant out there, in my opinion. Um, he, uh, clearly controls the schedule. He clearly was in charge of, um, the paperwork. Uh, it was made very clear to me, right, and so I have never worked with him when I thought that the words coming outa his mouth were completely appropriate, you know. I, I just, it was one of those things where it's like almost the way he talks, um, and him being the sergeant out there, uh, you know, I, I thought it was, yeah, I thought some of it was inappropriate regarding the word that you brought up, fag and the word gay that you said, and specifically with having [redacted] there, you know. I, uh, I remember him saying, I don't remember when, you know, because it happened…frequently. I would kinda feel bad and, um, it didn't seem to offend him. Uh [redacted] that is. Um, but that is the s, the statement I wanna say, that it just seemed like this is the person that, that he is, you know, and he's promoted to a position where he's at and he was in charge of the, of our unit, and so, you know, I was shocked."

[redacted] recalled when Sergeant Berges' unit was tasked with investigating the [redacted] matter, "…he was upset because he thought it was an internal matter, not a criminal investigation." It was during this time, and while passing Sergeant Berges (who was talking to other instructors who's names [redacted] could not recall), said "…something I would say, but it was something about like a, like a porch monkey." This occurred on one occasion.

So considering there were six instructors at any given time, at least three recalled Sergeant Berges using verbiage that was extremely inappropriate. Apparently the

[35] Ibid., pg. 9 and 10.

words “Fag” and/or “gay” where used on more than one occasion, despite who may have been present.

During Sergeant Berges’ Internal Affairs interview he said during the beginning of this year he became upset over two issues; one, when the DVSA unit, which he supervises, was assigned the [redacted] investigation and second, when he became the subject of an Internal Affairs Investigation. The common denominator of these two issues was Lieutenant, now Captain [redacted].

Captain [redacted] supervised the Internal Affairs Bureau and was present when the [redacted].

Sergeant Berges said he expressed his displeasure about the above two matters with his detectives, not only in their office, but also out at the track. Sergeant Berges continued:

> “I may have discussed even with other, uh, other instructors in, in passing about how frustrating it was. Um, it was very frustrating for me in particularly because every, every single direction that this investigation went my lieutenant would call me and question and, and tell me the captain or, uh, usually it was the captain was questioning why we're doing something.
>
> “And I, this to me was not a very complicated case. We have investigated a lot harder cases, a lot more complicated and not once has my supervisor or anybody above him questioned what direction like this case was going. So that caused me a lot of frustration because they were second guessing every road we went down and, and [redacted] would tell me Dave I gotta ask you this again, we'll just have to prove it to 'em again that you're, you're doing the right thing. And I said you know I'm sick and tired of this. Sick and tired of being questioned about why we're doing the things we're doing. We're trying to get as close to the truth as we possibly can. And so that was, it was very frustrating for me.”

Sergeant Berges was asked, based on him being upset, why he referred to Captain [redacted] as a “porch monkey.” Sergeant Berges continued:

> “Well, um, I, when I was talking to guys about this I, after it was done, I was extremely pissed off. And, um, I believe what I actually said in, in

> front of, um, that group of people was probably that fucking monkey. And in that same conversation I said, I called [redacted] the same thing."

Sergeant Berges then tried to minimize his use of the term "monkey" by stating:

> "I have called my detectives that. And what I mean by that is you're being stupid. Now I know I was pissed off and, uh, is it possible that I said porch monkey? I, I guess it's very possible 'cause I was pissed off. Um, it's a normal phrase that I use and so that's why I think it said, I said, you know, fucking monkey. However, it's very possible I, Larry, I was pissed and I was pissed that it even, it happened. Um, I was, even though there was no discipline I was pissed with the conclusion of it. Um, and, and I was pissed at [redacted] for never getting back to me." [36]

(None of the detectives interviewed during this matter recalled Sergeant Berges ever using the term "porch monkey." None of them indicated he used the term "fucking monkeys" or "monkey.")

Sergeant Berges agreed the term "porch monkey" is not an appropriate term to use in front of his detectives in reference to someone who is a part of the Sheriff's Office management.

Sergeant Berges advised he is familiar with the Department's Harassment policy since he is required to take an updated class every two years as a supervisor as well as discuss with his subordinates the policy when completing their evaluations.

From January till May, 2019, Sergeant Berges believed he was the supervisor during EVOC training approximately 20 times. Sergeant Berges agreed he was responsible for ensuring his instructors taught and evaluated the students based on POST standards.

Sergeant Berges, when asked how often he used the word "fag" during training, said it was a common word for him to say. Sergeant Berges said "…I know I use that word. Um, I can't, um, I can't think of a specific like incident but I definitely know I use that word." While using this word, Sergeant Berges claimed he has never used it to be derogatory towards any employee.

When asked about the word "gay," Sergeant Berges said the word "…would come out of my mouth too." Like before, Sergeant Berges claimed he never used it in a derogatory manner.

Sergeant Berges was aware [redacted] is homosexual, claiming he "…hired him." When asked, Sergeant Berges said he "most definitely" used the words "fag" and/or "gay" around [redacted] however claiming he was not trying to be disrespectful.

[36] Ibid., pg. 19.

When asked if Sergeant Berges believed those words were appropriate to use around [redacted], he responded:

> "Absolutely not. I do not think, um, I, I will be honest with you and tell you that EVOC in general, um, and it, it may be EVOC more than any other trainings but EVOC people feel secure up there. It's a closed course. The only people that are up there are us, the instructors and a, and a small group of students who are usually deputies. The people that attend do feel comfortable. They feel like they can say what's on their mind and there is a lot of bantering and 99 percent of it is done in jest."

Attorney Rains, who was allowed to asked Sergeant Berges questions, said he knew the Sheriff should consider (when deciding discipline) if there was a likelihood of reoccurrence. When Attorney Rains asked Sergeant Berges if the Department could be reassured he would never use the words "gay and fag" again, he responded:

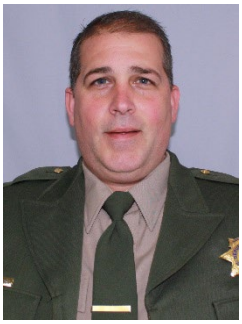
> "I, I can most definitely give that assurance. This has, um, this is humiliating, um, and, and I know that there is lax speech everywhere. And think has shown me that, um, you know, I didn't, I did not mean to offend anybody and I can see how words like that can be taken offensive. And that was not my intent. I was angry and, um, or playing around, um, but I can assure you that this will not occur ever again."

In regards to the term "monkey or porch monkey," Sergeant Berges responded:

> "Uh, most definitely and, ye, yes, and by the, there was no intent to attack him as a racial slur. It was out of anger. And yes, can I see how that can be taken by somebody? Mo, most definitely, and it's not acceptable. Um, I'm not gonna make any excuses, um, but I will assure you nothing like this will ever happen again and in fact, you know, I would have a, lo, you know, long meeting with my instructors so that they understand. No joking like this can happen."

Sergeant Berges was then asked about what he would have done if he had heard one of his subordinates say either the words gay or fag in front of [redacted] or referred to Captain [redacted] as a porch monkey. Sergeant Berges said he would have taken action right away to deal with it. Sergeant Berges was then asked who was supposed to "take action" when he was the one making those comments, to which, he responded "probably other deputies."

Sergeant Dave Berges



Employment History:

Sergeant Berges was hired on September 20, 1999.

Sergeant Berges' last two evaluations indicate:

Period	Overall Rating
05/06/2016 to 05/06/2018	Exceeds Standards
11/05/2015 to 05/05/2016	Exceeds Standards

Obey Policies and Procedures: Members shall obey and carry out all lawful Sheriff's Office and County policies, procedures, and other orders whether written or oral, Specifically, **Discrimination and Harassment.**

This policy is very clear, stating:

> Discrimination and harassment are defined under this policy as verbal, visual, or physical conduct that ridicules, insults, intimidates, or shows hostility or aversion toward an individual because of his **race**, religion, color, gender, **sexual orientation**, disability, medical condition, marital status, age, military status, national origin or ancestry.

Sergeant Berges is very familiar with this policy based upon his rank, as he is required to attend a class every two years and discuss this policy with his subordinates every time he completes their evaluation.

While Sergeant Berges may not have been directing his comments toward [redacted] in a derogatory manner, it nevertheless insulted [redacted] since Sergeant Berges was unable to choose other words to express himself.

In regards to the reference to Captain [redacted] as a "porch monkey," *Wiktionary* defines the phrase as "A lazy black person." [37] For Sergeant Berges to use this word in reference to Captain [redacted] ridiculed and insulted him because of his race. Sergeant Berges attempted to minimize it one time by stating he may have said "fucking monkey," which is even more of an explicit derogatory remark.

I believe this policy violation should be listed as Sustained as the evidence clearly indicates Sergeant Berges violated this policy.

[37] As found on the internet: https://en.wiktionary.org/wiki/porch_monkey

Finding: Sustained

Conduct Toward Other Members: All members shall treat superior officers, subordinates and associates with respect. They shall be courteous and civil at all times in their relationships with one another.

Sergeant Berges, who was the supervisor of the EVOC team, not only spoke despairingly about one of his subordinates, he disrespected a superior officer—Captain [redacted].

I believe this policy violation should be listed as Sustained as the evidence clearly indicates Sergeant Berges violated this policy.

Finding: Sustained

Insubordination: Failure or deliberate refusal of any member to obey a lawful order given by a supervisor is insubordination. Giving false or misleading statements, misrepresenting or omitting material information to a supervisor or other person in a position of authority in connection with any investigation or in the reporting of Sheriff's Office related business. Ridiculing a supervisor or his order is also insubordination.

Sergeant Berges, who was the supervisor of the EVOC team, not only spoke despairingly about one of his subordinates he also ridiculed a superior officer—Captain [redacted] by referring to him as a “porch monkey.”

I believe this policy violation should be listed as Sustained as the evidence clearly indicates Sergeant Berges violated this policy.

Finding: Sustained

Supervise and/or manage subordinates, so as to improve their efficiency and quality of performance by providing effective leadership, guidance and control conducive to effective performance and high morale. And to assume responsibility for the proper conduct and discipline of subordinates.

Based on this investigation which focused on Sergeant Berges comments, made in a group setting, there was nothing that indicated he was improving the efficiency and/or performance of his subordinates. Sergeant Berges could not have assumed responsibly for the conduct of his subordinates, as he was unable to control his own conduct thereby setting a poor example of a leader here at the Sheriff’s Office. Sergeant Berges admitted that if one of his subordinates had done what he had done

he would have taken action. When asked who was responsible for his actions, he said a deputy. Sergeant Berges conduct was far from being an effective leader.

There are several leadership traits that Sergeant Berges failed, such as being dependable, tactful, and loyal. Sergeant Berges was expected to perform the duties as a sergeant in a training setting, instead he proved he could not be depended on to achieve the highest standards of performance. Sergeant Berges was anything but tactful when he used despairingly words to express himself. Sergeant Berges proved he was not loyal to those managers above him or his subordinates below him. Sergeant Berges failed at being a leader.

I believe this policy violation should be listed as Sustained as the evidence clearly indicates Sergeant Berges violated this policy.

Finding: Sustained