

POST COUNCIL MEETING

September 9, 2020 at 10:00 a.m.

Remote Electronic Meeting*

Anchor location: Public Safety Education & Training Center
3rd Floor Council Room, 410 West 9800 South, Sandy UT

Agenda

- ❖ Welcome: Chairman Wade Carpenter
00:00 – 01:02

- ❖ Approval of June 17, 2020 Minutes: Chairman Wade Carpenter
01:02 – 01:25

- ❖ Quarterly Reports: Lt. Jaclyn Moore & Lt. Alex Garcia
01:25 – 07:14

- ❖ 2020-2021 Quarter Two Curriculum Update: 07:14 – 13:42
 - Special Functions Officer/Law Enforcement Officer: Lt. Alex Garcia
07:14 – 08:08
 - Report on additional 30 hours: Director Scott Stephenson
09:20 – 13:42

- ❖ Disciplinary Cases: Attorney Lynda Viti 13:47 – 1:42:42
 - Ricardo Aguilar 14:00 – 16:58
 - Michael Cortes 16:58 – 19:12
 - Taggert Foias 19:12 – 22:23
 - Elayne Franco 22:23 – 34:18
 - Colten Johansen 34:18 – 48:15
 - Troy Leary 48:20 – 57:41
 - Elan Matotek 57:43 – 1:03:09
 - Devin Park 1:03:13 – 1:26:13
 - Rodney Purvis 1:26:17 – 1:28:32
 - Taylor Scruggs 1:28:41 – 1:32:09 & 1:37:57 – 1:42:42
 - Lindsay Smith 1:32:10 – 1:37:46

- ❖ Recognition: Director Scott Stephenson 1:42:49 - 1:44:08

❖ Schedule Next Meeting: **01/13/21 @ 10:00am POST HQ, Sandy, Utah** 1:44:08 – 1:45:44

❖ Adjourn: 1:45:48 – 1:45:55

* NOTICE OF SPECIAL MEETING CIRCUMSTANCES DUE TO COVID-19 PANDEMIC: In keeping with recommendations of Federal, State, and Local authorities to limit public gatherings in order to control the continuing spread of COVID-19, and in accordance with the Utah Open and Public Meetings Act, specifically Utah Code § 52-4-207(4), the Peace Officer Standards and Training Council will make the following adjustments to our normal meeting procedures.

- All members of the POST Council, POST staff and those on the agenda and their counsel will have the option to attend in person or participate electronically via phone or video conference.

- All other observers may listen to the live streamed event here: utahpost.adobeconnect.com/pc

POST COUNCIL MEETING

September 9, 2020 at 10:00 a.m.

Remote Electronic Meeting

Anchor location: Public Safety Education & Training Center
3rd Floor Council Room, 410 West 9800 South, Sandy UT

Attendance Roster

The following POST Council members were in attendance:

Chief Wade Carpenter, Chairman, Park City Police Department (In-Person)
Colonel Mike Rapich, Superintendent, Utah Highway Patrol (In-Person)
Spencer Austin, Representing Utah Attorney General (In-Person)
Matthew Checketts, PhD. At Large (In-Person)
John Crowley, UPOA Representative (In-Person)
Chief Allen Swanson, Layton City Police Department (Video)
Sheriff Cory Pulsipher, Washington County Sheriff's Office (Video)
Chief Chad Soffe, Utah Chiefs of Police Association (In-Person)
Sheriff Nathan Curtis, Sevier County Sheriff's Office (Video)
Victoria McFarland, JD. At Large (In-Person)
Frank Budd, PhD. At Large (Phone)
Sheriff Cameron Noel, Utah Sheriffs Association (In-Person)

The following POST Council members were absent or excused:

Executive Director Mike Haddon, Utah Department of Corrections
Christie Moren, At Large
Bruce Bayley, PhD. Weber State University

POST staff present:

Scott Stephenson, Director (In-Person)
Lynda Viti, JD. DPS Legal Counsel representing POST, Asst. Attorney General (Video)
Mark Burns, JD. DPS Legal Counsel representing POST, Asst. Attorney General (In-Person)
Julie Gomez, Administrative Secretary (In-Person)
Alex Garcia, Basic Training Bureau Chief (In-Person)
Jaclyn Moore, Investigations Bureau Chief (In-Person)
Dusty Hamlin, Investigations (In-Person)
Dave Barnett, Investigations (In-Person)
Jeff Adams, Investigations (In-Person)
Chris Fielding, POST Media (In-Person)
John Jacobs, POST Media (Video)
Camille Zabriskie, Basic Training/Investigations Technician (In-Person)

Others present:

Lindsay Smith (Video)
Elayne Franco (In-Person)
Nathan Evershed (In-Person)
Colten Johansen (In-Person)
Troy Leary (In-Person)
Blake Hamilton (In-Person)
Elan Matotek (In-Person)
Devin Park (In-Person)

September 2020 POST Council Case Summaries

Ricardo Aguilar

Ricardo Aguilar was investigated for domestic violence (DV) aggravated assault and DV in the presence of a child. The investigation concluded Aguilar put his hands on his wife's neck and pushed her back against a wall and briefly held her there. An assault charge was screened, with a pending court date of July 30, 2020.

An internal investigation was conducted by Aguilar's agency that included a *Garrity* interview. Aguilar told his agency he and his wife were in an argument. During the argument, Aguilar went to their bedroom, turned on the TV, and lay down on their bed. Aguilar said this angered his wife who started hitting his shoulder, so he used his legs and pushed her away from him, which angered her even more. Aguilar said she then jumped on him as he was lying on the bed and

started hitting him again. Aguilar said he pushed his wife away a second time then got up and put his hands around her neck and held her for a little bit to get her attention. Aguilar also participated in a POST *Garrity* interview and confirmed what he told his agency.

During the POST interview, Aguilar was asked if he applied pressure to his wife's neck and said, "It's possible." A follow up question was asked regarding the likelihood he applied pressure and Aguilar said, "50/50, maybe the time when I got up and put my hands on her, on her neck, maybe I uh put some force on there, but as I recall I just put my hands on there to get her attention and tell her to get out of the house."

Aguilar is on paid leave with his agency. A pretrial conference is scheduled for July 30, 2020 regarding the assault charge.

Michael Cortes

Michael Cortes was investigated by a local police department for lewdness.

Cortes and his girlfriend drove his personal vehicle behind a liquor store and engaged in sexual intercourse, in the rear passenger seat. A local police officer was dispatched to Cortes' vehicle and observed Cortes having sex. After identifying Cortes and his girlfriend, the officer issued both a citation for lewdness. Cortes later entered a guilty plea to be held in abeyance to the charge of lewdness, an infraction.

During the department and POST *Garrity* interviews Cortes admitted to the conduct which constitutes lewdness. Cortes resigned from his department before any discipline was administered.

Taggart Foias

Taggart Foias was investigated by his agency for driving under the influence of alcohol, drugs, or a combination of both. The investigation disclosed Foias went to break with some other officers who were able to smell the odor of alcohol coming from Foias. Foias submitted to two (2) breath tests and one (1) blood test approximately four and one-half hours after his shift started. The two (2) breath tests showed results of .034 and .031 BrAC. The blood test showed a result of .033 blood alcohol. The average burn off rate for alcohol is .015 per hour which would

have placed Foias over the legal limit of .05 alcohol content at the time he started his shift. Foias would have been near .09 alcohol content when he started his shift.

During *Garrity* interviews with his department and POST, Foias admitted to drinking mixed alcoholic drinks until 8:30 pm the night before. Foias did not feel intoxicated when he went to bed or when he woke up. Foias said he did feel groggy when he woke up but attributed it to the two over the counter sleeping pills he took that night. Foias said he did not drink any alcohol when he woke up or while he was on-duty. Foias believed a possible reason for his positive alcohol tests was an undiagnosed stomach issue that caused him to digest things slower than the average person.

Elayne Franco

On December 23, 2020, Elayne Franco was asked by a friend to run a license plate to ascertain who the owner was. Franco then forwarded a picture of the vehicle registration information obtained from the BCI search to her friend who posted the information on Facebook.

Franco was investigated criminally. A charge was screened, but not filed in the best interest of justice.

During the *Garrity* interviews with her agency and POST, Franco said she knew it was wrong to access the BCI record of the license plate and share it with her friend. Franco said although she knew it was wrong, a man had stolen thousands of dollars from the friend she sent the picture to. Franco said she did not know her friend was going to post the information on Facebook.

Franco's agency determined Franco had violated the criminal code and department policy on the accessing and dissemination of BCI controlled information. Franco received 40 hours off, loss of her next pay increase, and ability to test for sergeant during the next testing cycle.

Colten Johansen

Colten Johansen was investigated by his department for unauthorized access to BCI protected records after his department received a complaint from Johansen's ex-wife that he was running a background check on her boyfriend. Johansen's department obtained a BCI dissemination access log report which confirmed Johansen queried two driver license searches through BCI on the boyfriend.

During department and POST *Garrity* interviews, Johansen admitted he unlawfully accessed his ex-wife's boyfriend's information through BCI multiple times. Criminal charges were screened with the city prosecutor but they declined to file. Johansen's agency sustained unlawful use of BCI protected records and Johansen was suspended for two days without pay but retained his employment with his department.

Troy Leary

Troy Leary was investigated by his department after he disclosed he engaged in sexual conduct on duty. Leary cultivated a relationship with a dispatch supervisor who worked for the same department. Leary met with the dispatch supervisor several times from April to October of 2019,

and engaged in sexual conduct while he was off duty. In October Leary met with the dispatch supervisor while he was on duty while working a graveyard shift. The dispatch supervisor entered Leary's patrol vehicle and sat in the front passenger seat. Leary participated in what he called "heavy petting" and digitally penetrated the dispatch supervisor's vagina, underneath her clothing, which brought her to climax. In November of 2019, Leary confided in his sergeant and told him about the affair. The sergeant notified his chain of command and an IA was initiated on Leary.

During the department IA interview as well as the POST Garrity interview, Leary confirmed that he was on duty during the sexual conduct that occurred in October. Leary said he was in his department uniform during the encounter. Leary said that was the only time he engaged in sexual conduct while on duty. Leary said there were other times he engaged in sexual conduct with the dispatch supervisor but was not on duty during those instances. Leary's department sustained department policy violations and he was given the option of resigning in lieu of termination.

Elan Matotek

On January 31, 2020, Elan Matotek, was investigated by a police agency in another state and her department for assault. The investigations disclosed that on January 28, 2020 and January 31, 2020, Matotek assaulted her girlfriend. On January 28, 2020, Matotek and her girlfriend began to argue, which led to pushing each other. Matotek punched her girlfriend in the eye causing a black eye. On January 31, 2020, Matotek and her girlfriend were at a bar when they began to argue. Matotek's girlfriend walked away and sat on a bench. Matotek followed her girlfriend and shoved her off of the bench into a nearby wall.

The case was screened with the county attorney, but charges were dropped against Matotek because her girlfriend could not afford to travel back to the city where the crime occurred.

During *Garrity* interviews with her department, Matotek admitted that she may have hit her girlfriend in the face while pushing her causing the black eye. Matotek also admitted that she pushed her girlfriend off of a bench.

During a *Garrity* interview with POST, Matotek admitted to punching her girlfriend and causing a black eye. Matotek also admitted to pushing her girlfriend off of the bench into the wall. Matotek said she was extremely intoxicated during both events. Matotek admitted that her actions constituted assault. Matotek said she has quit drinking alcohol and started attending counseling.

Devin Park

Devin Park was investigated by his agency for: sexual battery for intentionally rubbing, over the clothes, the penis of another trooper, pointing his duty weapon at the same trooper, pointing his taser on multiple occasions at the same trooper, and pointing the laser of his taser in another trooper's eye. During multiple *Garrity* interviews Park denied or made conflicting statements about each event.

Park was investigated criminally, and charges were screened. The attorney's office did not file on the sexual battery because the victim trooper did not wish to pursue charges. The attorney's office did not file any other charges because of the low probability of prosecution for horseplay.

Rodney Purvis

On December 30, 2019, Rodney Purvis was investigated for driving under the influence of alcohol (DUI). Purvis was stopped for a traffic violation and declined to participate in any roadside sobriety test. Purvis was arrested for DUI and refused to take an intoxilyzer test. Purvis pled guilty to driving while ability impaired under Colorado State Law which is equivalent to impaired driving under Utah State Law.

Purvis did not participate in the POST investigation. NOTE: Purvis had a previous POST suspension in September 2018.

Taylor Scruggs

Taylor Scruggs, a law enforcement officer, made threats while on the phone with a crisis line worker at UNI to go over to his sergeant's and lieutenant's homes and shoot them. The threats reached a point where the crisis worker felt obligated to notify police. Scruggs became so angry with the crisis worker for reporting it to police, she felt it necessary to request an officer respond to UNI for their safety. An officer from Scruggs' agency and another local agency responded to Scruggs' residence, both noted indicators of intoxication, but Scruggs denied having consumed any alcohol.

During the internal investigation, Scruggs told his agency the threats were a result of a new medication he had just been put on and provided a letter from a doctor supporting the statement. On September 31, 2018, UPD placed Scruggs on administrative leave. On March 1, 2019, Scruggs was terminated from UPD based on this incident.

Scruggs did not participate in the POST investigation. POST discovered that the FDA recommends people taking Seroquel to not use alcohol and that doing so can cause agitation and aggression.

Lindsay Smith

On September 2, 2019, Lindsay Smith drove her vehicle to work while intoxicated. After arriving at work, Smith's behavior led fellow employees to question Smith about being impaired. Work Med was called, and Smith was asked to provide two breath samples that tested .133 and .094. During a department *Garrity* interview, Smith admitted to drinking early in the day. On September 18, 2019, Smith resigned her employment.

On July 13, 2020, Smith participated in a POST *Garrity* interview. During the interview Smith confirmed she had drunk multiple servings of alcohol earlier in the day. Smith stated that looking back, she was impaired and should not have driven or went to work that night.

No criminal investigation was conducted.