



# Mountain View Police Department

## Incident: MV22000127

### Incident details:

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**Incident Type:** NON-CRIMINAL INCIDENT  
**Incident time:** 10/04/2021 08:00 - 10/06/2021 08:00  
**Reported time:** 02/21/2022 09:25  
**Incident location:** 4176 BENTON ST, Bld: MOUNTAIN VIEW POLICE DEPARTMENT, MOUNTAIN VIEW, JEFFERSON CO 80212 (MOUNTAIN VIEW POLICE DEPARTMENT) (Beat: MOUNTAINVIEWPD) 80212  
**Incident status:** Assigned - Under investigation  
**Reporting officer:** #MV1801 NESBITT, MICHAEL  
**Investigator:** #MV1901 DAVIS, STEVE  
**Summary:** I.A. Investigation by the Mountain View Police Department

### Involved Persons:

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**Name:** MOUNTAIN VIEW POLICE DEPARTMENT      **Gender:**  
**Classification:** Other      **DOB:**  
**DL:**  
**Address:** 4176 BENTON ST, Bld: MOUNTAIN VIEW POLICE DEPARTMENT, MOUNTAIN VIEW, JEFFERSON CO 80212 (MOUNTAIN VIEW POLICE DEPARTMENT) (Beat: MOUNTAINVIEWPD)  
**Telephone:** (Landline) (303) 425-1748 [Business]  
(Landline) (303) 425-1748 [Other]

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**Name:** NESBITT, MICHAEL      **Gender:** Male  
**Classification:** Other      **DOB:**  
**DL:**  
**Address:**  
**Telephone:**

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**Name:** DAVIS, STEVE      **Gender:** Male  
**Classification:** Other      **DOB:**  
**DL:**  
**Address:**  
**Telephone:**

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## Reports:

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### General report:

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**Author:** #MV1801 NESBITT, MICHAEL

**Report time:** 09/30/2022 12:10

#### Narrative:

The following investigation will outline an incident involving Officer Benjamin Muir, who is a full-time police officer with the town of Mountain View Colorado. Officer Muir has been assigned to the DEA Task Force (Denver) since May of 2019, and recently was asked to leave that unit in January of 2022, when he returned to his normal duties as a patrol officer with the Town of Mountain View.

On June 9, 2021, I was advised by then Task Force Officer/Police Officer Benjamin Muir that he was being formally advised of a potential investigation involving an issue with an arrest warrant he had written while working at the DEA Task Force. TFO Muir emailed me on June 9, 2021, advising me that he swore to a statement regarding an arrest warrant, and when his supervisors reviewed the warrant, some of the statements he made were brought into question. TFO Muir assured me that the issue was just an oversight and could be fixed within that agency.

The next day, I contacted Lt. Andrew Howard and asked for a meeting in person to discuss this incident. That meeting was held on June 15, 2021, here at my office located at 4176 Benton Street Mountain View CO. Lt. Howard told me that during this incident, TFO Muir wrote an arrest warrant on a subject and "inadvertently" added some context that he thought another TFO relayed to him, which later he found to not be true. According to Lt. Howard, he believed Officer Muir was "Paraphrasing" the other officer's information when he talked to the other officer on the phone, and the issue was discovered during court. Lt. Andrew Howard assured me that he believed it was an honest mistake and that Ben was internally reprimanded verbally for this and that the issue was dead.

In that same meeting, Lt. Howard told me that since TFO Muir had "no formal DEA Training" that he would like to observe him for the next six months and give him, what Lt. Howard compared to a DEA Field Training Program, and work TFO "Outside" of the box to better use his skills. I agreed and asked for a formal evaluation at the end of this training, which Lt. Howard agreed with. Also, noted in this incident, TFO Muir specifically mentioned that several people at DEA and at the Arapahoe County District Attorney's Office were upset with him, and he pointed out that Arapahoe Senior Deputy District Attorney Darcy Kofol was very upset and asked for his resignation. Lt. Andrew Howard's response to that was "She gets upset, but we think she is calm now after we explained it was an honest mistake".

July 21, 2021, at 10:00, Chief Davis attended the quarterly Front Range Task Force Executive Meeting located at 3300 S. Parker Road in Aurora, CO. During this meeting, I saw DEA Special Agent in Charge Deanna Reuter. I asked to have a sidebar meeting with SAC Reuter and told her I was displeased with Ben's failure in reference to the afore mentioned arrest warrant, and the issue it brought to the group. SAC Reuter told me that she did not know anything about the issue and was obviously surprised when I gave her the initial facts as I knew them.

SAC Reuter told me that she was concerned that Lt. Howard or any other staff had not mentioned this and assured me she would talk to her staff and get back to me. During this conversation, DEA SAC Reuter told me that to the best of her knowledge, TFO Muir has been doing a good job and was completing what was expected of him as a TFO. Later in this same meeting, I was approached by Lt. Howard. I told him that I spoke to DEA SAC Reuter who said she knew nothing about the arrest warrant issue with Ben. He responded by saying "Oh crap, I didn't tell her and just got my ass reamed". I apologized to him but thought that their agent in charge would have known about this matter considering a DA was upset. DEA SAC Reuter contacted me two weeks later via phone and told me that she talked to her staff about this issue and that she did not believe it would be an issue, and agreed that TFO Muir probably needs some additional training, but the issue was resolved within the department.

This issue would not come up again until I met with Lt. Howard and Assistant SAC David Olesky in December of 2021. Prior to this date, I had TFO Muir come into my office on at least three occasions to assist me with DEA business on the computer (DAG updates) and give me updates as to his progress at DEA. During these meetings, TFO Muir assured me that his job at DEA was running smoothly and that they in fact were using him for some additional drug work, as well as using him as a "spotter" in the aircraft for surveillance missions. At no time, did TFO Muir mention that there were any other issues with his work product, or his personal relationships within the agency. In fact, I specifically asked him if the relationship between he and Lt. Howard was amicable, and he said it was.

On October 1, 2021, I received an email from TFO Muir. In this email, he offered his services to the open Sergeants position I had at MVPD. In this email, TFO Muir also mentioned that "There is also a feeling in the air here that has changed, and the dynamics of the group is changing, I can't explain it" (Meaning DEA TFO Group) TFO Muir also mentioned in this email that the Biden Administration was "pushing down new protocols" and that he might be a

better benefit for the police department.

This email was prior to a promotional board MVPD did to promote for a Corporal position. TFO Muir did not put in for this promotion and when asked why by Chief Davis, he responded "I can't work nights because of my kid issues, and I feel I am at the same rank as a Corporal in my current position as Detective". When I (Chief Davis) advised Ben that he was not at the same level, and that most likely that Corporal position would become a future Sergeant, TFO Muir visibly became upset. He told me that he was not happy at DEA and was looking at testing with Denver Police Department as a lateral transfer. He said that he believed it would be best to move on to a larger department. TFO Muir and I spoke about his future, and I assured him that I would support any decision he made, and when I asked him if there was an issue at DEA, he assured me there was not.

One of the last in person meetings I had with TFO Muir was on November 29, 2021, when he arrived at my office to again assist me with DEA entries on the computer.

During the November 29, 2021, meeting with TFO Muir, he told me that DEA was treating him well and that most of the time he was flying in the helicopter. At no time did TFO Muir mention any issues at DEA, and he did not mention any training he attended the month before in Vail Colorado, or any issues at that training event.

On December 22, 2021, I received a call from Lt. Howard regarding TFO Muir's work product. In that conversation Lt. Howard stated that he had concerns with TFO Muir not being able to stay in the unit and told me that he was going to be recommending TFO Muir no longer be retained with the task force. In that same conversation, Lt. Howard told me that TFO Muir has had some report writing issues, including the case with the warrant back in June of 2021. Lt. Howard specifically told me that he did not believe that TFO Muir had the ability to conduct complex investigations and the past six months of his evaluation of TFO Muir showed other deficiencies. Lt. Howard told me that a case in November of 2020 was filed with report writing issues that potentially caused harm to this case. Lt. Howard stated that he was directed to correct grammatical and spelling errors and that this report was lacking complete and accurate information and had to be reviewed multiple times by supervisors. Lt. Howard also told me that TFO Muir wore the wrong color of clothing on a tactical call, and that TFO Muir had his personal cell phone on his vest, as if to use it as a body cam, which is unauthorized with the unit. Lt. Howard also said TFO had some "range issues" and described it to me as "he was seen sweeping on the range". Essentially that means he had a loaded weapon and failed to keep it pointed down range. Lt. Howard said this has happened at least one time.

Lt. Howard was being cautious with me, and I could detect that there was possibly something else going on, and when asked, Lt. Howard failed to mention anything else and even told me that "This in no means is a failure by Ben, he just needs more training, and I don't think this is the job for him". At no time did Lt. Howard mention any training that he and TFO Muir attended together, nor mention any issues at any training.

Lt. Howard then told me that he would complete an evaluation for TFO Muir and give that to me and TFO Muir by January 1, 2022. Lt. Howard also told me that because of Christmas and the fact that TFO Muir was on vacation with his family, the SAC and he believed it would be best to not notify TFO Muir of this until after the holiday. Lt. Howard told me that they would notify TFO Muir after January 2022 when he returns from vacation but would notify me first prior to this action.

On January 6, 2022, at 10:00am, I had an appointment set up with Acting Agent in Charge David Olesky and Lt. Howard. During this meeting, Lt. Howard gave me a "Front Range Task Force Officer Evaluation" form for TFO Muir. On this form the date was incorrect and showed 2020. Lt. Howard stated he made a mistake on the form, and it should read 2021 and would change the error and get me a current copy. (On this date, I still do not have a corrected copy). I asked Lieutenant Mike Nesbitt, my second in command to attend this meeting and the four of us went over the evaluation in detail. The evaluation (which will be attached in this investigation) showcased the following:

**Job Knowledge:** This category covered the incident in November of 2020 and had narrative showing TFO Muir's report writing issues, specific to one case (MK21-0011). He received a "Needs Improvement" on this category.

**Situational/Operational Skills:** This category covered TFO Muir wearing the wrong color shirt at an incident on October 8, 2020, as well as having his cell phone in the wrong position on his tactical vest. This also mentioned a shooting range incident where TFO Muir "Swept" other officers during tactical practice. This category also praised TFO Muir for his efforts in the helicopter and his spotting abilities. He received a "Needs Improvement" on this category.

**Communication Skills-Oral and Written:** This category covered TFO Muir's communications as to relating to other agents, sources, and management. He received a "Meets expectations" on this category.

**Decision Making Ethical/Actions:** This category covered when enforcement actions should be taken and covered a short sentence about TFO Muir being mindful of the public and mitigating potential pitfalls with community safety. For

category, TFO Muir received a "Meets expectations".

The remainder of the evaluation covered Strengths/Improvements which were two very short sentences about TFO Muir's strength in surveillance, and his difficulty in writing reports and grammar errors/punctuation. There is a brief mention about the MK21-0011 case that specifically mentions "This became an issue with the DA's office" but did not elaborate.

There is also a small paragraph for supervisor comments which include praise for TFO Muir and how he "repeatedly volunteers to assist with other investigations" and "Strives to succeed and has a passion to assist". The final portion of this evaluation has "Commander Comments" that were from Lt. Howard. In those comments, Lt. Howard states how TFO Muir comes to work with a great attitude and often volunteers. Lt. Howard also states he recognizes the efforts TFO Muir makes to improve his skills during this reporting year. Lt. Howard writes "After speaking with 3 supervisors assigned to this task force, it is evident that it's time for TFO Muir to continue to develop his law enforcement skills in a different environment"

In concluding this meeting with Lt. Howard and Assistant SAC Olekey. Both Lt. Nesbitt and I asked, "Is there anything else that you would like to mention about Ben"? Specifically, I felt that both Lt. Howard and ASAC Olesky were being evasive in this meeting. Lt. Nesbitt then stated "Hey, we are all professionals here, we are all friends, just level with us, are we missing something here?" Lt. Howard then smiled and said, "this is difficult because I like Ben, and everybody likes Ben". He went on to say, "We really tried hard to get him to where he needs to be but honestly there are some in the unit that just don't trust Ben and do not want to work with him". I asked Lt. Howard why he would not be trusted, and his response was, "I can't pinpoint it; it's just the way some feel in the unit".

At that time, I asked if that included TFO Muir's supervisors, and Lt. Howard said, "Yes it does".

Both Lt. Nesbitt and I agreed then that if they had some credibility issue with Ben and that it would be best that he stepped down from the unit. When I mentioned this, I could tell that ASAC was uncomfortable and wanted to leave. It was because of this action that I decided to call the previous SAC Deanne Reuter and learned about the inappropriate photo that TFO Muir took at the event in Vail Colorado on or about, October 4, 2021.

On January 10, 2022, Lt. Howard called TFO Muir into his office at DEA and presented him with the aforementioned TFO Evaluation. Lt. Howard did not notify me this was happening and TFO Muir immediately called me on the telephone. TFO Muir said "Chief, I have let you down". I asked him what happened, and he told me that Lt. Howard called him into his office and presented him with the Evaluation and told him he was being released from the unit and his last day would be Friday. During this call, I asked TFO Muir if he thought it was anything specific, he was being released for, and he said he believed Lt. Howard was just "out to get me" because of the incident back in June of 2021, it has led up to this.

Since that time, TFO Muir and I have had multiple conversations as I brought him back into the police department to work, and at no time did TFO Muir discuss any issues within the DEA specifically the night of October 4, 2021.

On January 31, 2022, I emailed former SAC Deanna Reuter and asked her to call me. DEA SAC Reuter is now in Miami Florida and was reassigned from Denver at the beginning of 2022. SAC Reuter called me right back and we had a conversation about TFO Muir. In that conversation, SAC Reuter was surprised to learn that TFO Muir had left the unit. In the short conversation I had with SAC Reuter, she said that she has only known TFO Muir to be a professional and did his job well the 2 years she supervised him.

As I ended the call with SAC Reuter, she said "Chief, it might be due to the inappropriate photo that Ben took that might embarrass the unit". When I asked, "What photo", SAC Reuter said "I am really not able to talk about it, you should probably talk to Commander Jimenez with Denver. Commander Jimenez is the former supervisor of TFO Muir, prior to Lt. Howard.

I met with Lt. Nesbitt the following week and relayed this information to him. We both realized that this could be a potential issue that was not brought to our attention by TFO Muir, Lt. Howard or ASAC Olesky during our meetings. I did not even know when this "inappropriate photo" was taken, by whom, where or when at this time. It was decided that it would be best to just ask (Now Officer) Muir about any photo to determine if MVPD needed to either be aware of any potential damage to our town, or to see if an internal investigation needed to be conducted to see how or if Officer Muir was involved.

On February 14, 2021, Officer Muir walked into my office to talk to be about a scheduling issue. During this conversation I asked Officer Muir, "Tell me about this inappropriate photo that is being talked about at DEA". His demeanor changed immediately, and he stood in front of my desk and was obviously taken back by my question. Officer Muir voluntarily began to tell me that there was an incident at a training in Vail Colorado where he jokingly took a photo of the Arapahoe County Deputy DA and another TFO on a bed. Officer Muir said that there were about

15 to 20 people in a hospitality room at the hotel where they went for a conference. He said that in that room, there was a bedroom off the main living area, and this is where the photo was taken.

Officer Muir stated, "It was a joke; they were not undressed, just lying on the bed, so I snapped a photo of them". Officer Muir went on to say that both people on the bed became upset at what he did and immediately told him to stop, and to delete the photo. Officer Muir told me "I told them I deleted it" and went out onto a balcony where I saw Lt. Howard and told him that, "I think I just pissed off the DA". Officer Muir said that Lt. Howard told him something to the effect of "You should erase that photo". Officer Muir said that he tried to apologize to both people whom he identified as DA Darcy Kofol and TFO Padilla, whom Officer Muir said he later attempted to apologize to. Officer Muir said he met with Paul Padilla later in the lobby and "showed him he had erased the photo" and said he was sorry. Officer Muir said that TFO Padilla told him "No big deal".

I then asked Officer Muir, "But you didn't delete it did you", and he quickly responded, "Hell no, I sent it to my wife, but it's not on my phone". I asked Officer Muir why he still had the photo and he said that he did not trust Lt. Howard or the DA and felt they would try to "Screw me over" after I left. He also mentioned that DA Kofol was going to run for some kind of office but did not elaborate further. I advised Officer Muir that he should have his wife delete the photo and that keeping it could be a problem for him. Officer Muir then said "Yeah, they said they wanted to charge me with a crime, like they could". I asked him what he meant, and he said that someone (he did not identify) told him that someone at DEA mentioned they could charge him criminally for taking and keeping the photo.

Again, I told him it would be in the best interest for him to delete the photo from his wife's phone or anywhere else he had it. He agreed and said that he would. In this same conversation, I asked Officer Muir why he did not notify me of this incident until I asked. He responded by saying "I screwed up Chief; I didn't think it was a big deal, it was a joke".

Later that day, Ben came into my office and shut the door. He said "Chief, I want to talk to someone about this, and I know you don't trust me anymore". He said he wanted to explain his part. I told Officer Muir that I didn't have any details on this, but that from his description, it sounded like because of his actions, he not only put our department in a bad light, but he also put himself in a possible criminal situation. I told him until I knew some details of what occurred, I was very disappointed in his choices of that night. Ben was visibly upset and apologetic to me.

On February 16, 2022, I met with Lt. Nesbitt and discussed some options. Since neither of us knew the events of that night, Lt. Nesbitt asked Officer Muir if he would write a voluntary statement as to what occurred so we could determine if an investigation would be necessary. Officer Muir agreed and asked if he could have it completed by the following Friday, which was three days later. Officer Muir called me on the telephone and asked me if that would be ok, and I told him to get me a statement at his leisure, as long as it was by next week on Monday. This gave Officer Muir five days to complete a statement, which he voluntarily turned in on Sunday February 20, 2022, via email to Lt. Nesbitt and me.

On February 23, 2022, I placed Ben Muir on administrative leave after reviewing his voluntary statement. The statement that Ben Muir gave to me was his recollection of the events that occurred surrounding the incident at the 2021 Colorado Drug Investigators Association Conference in Vail Colorado between October 4 and 5, 2021. Ben stated that during this conference on the evening of October 5, 2021, there was a large gathering in the hospitality suite at the Vail Marriott Mountain Resort located at 715 W. Lionshead Circle, Vail CO 81657. Officer Muir stated that inside the room there was a large bedroom that several people gathered into as well. He stated that this suite was large and that there was also a bar set up with "Hard alcohol and several coolers filled with beer".

Officer Muir stated that there were two rooms being used, and that he believed one of the rooms belonged to Lt. Andrew Howard, who is his commander at the Task Force. Officer Muir stated the second room belonged to the CDIA President and fellow Task Force Officer Ray Padilla. Although Officer Muir is a full time MVPD employee, officer Muir reports to at least one Task Force Sergeant, and to Lt. Howard during his day-to-day operations at the DEA Task Force.

In his written statement, Officer Muir stated that while in the bedroom, the room that belonged to Lt. Howard, he was talking to another unidentified investigator. He said there were two individuals lying on the bed whom he identified as District Attorney Kofol and TFO Padilla. Officer Muir specifically stated that the pair were not doing anything other than talking to each other and were fully clothed. Officer Muir wrote that he then wanted to "Tease" TFO Padilla, whom he considered a friend, and "made it overtly apparent" that he was taking a picture of the pair on the bed with what he described as his "personal phone".

Officer Muir states that District Attorney Kofol realized what he was doing and immediately stood up and started, "Cursing at me and made it clear she was upset with me for taking the picture". During my routine conversation with Officer Muir the prior week, he also added that "Darcy was pissed and told me to fuck off". In his statement, Officer Muir said he tried to apologize to the DA Kofol, but she refused to talk to him and left the room too

quickly. Officer Muir then wrote that he immediately talked to TFO Padilla and told him he was just joking and meant nothing by taking the photo. Officer Muir stated that TFO Padilla stated something to the effect of "Darcy is drunk, and she can get mad, but it was no big deal".

Officer Muir then wrote that he "texted my wife, telling her about getting cursed out by Darcy" and that how his wife was aware about how his professional relationship with DA Kofol has been rocky. Officer Muir states that he thought "She might find it funny" and asked, "What she looked like".

Officer Muir stated that immediately after texting his wife, he went to Lt. Howard who was on the balcony in the same room area. Officer Muir states that he explained to Lt. Howard that he "Pissed off" Darcy. He told Lt. Howard that he had taken a picture of her and Ray on the bed as a joke and stated, "But as a result I probably wouldn't be able to ever file a case in the 18<sup>th</sup> Judicial District now". Officer Muir stated in his statement that Lt. Howard said something along the lines of, "Don't worry about it, he knows a few people she's mad at, but I would probably have to do my cases in Denver". Officer Muir stated he went back to his hotel room and went to bed a short time later.

Officer Muir then writes that the next morning on October 6, 2022, he approached TFO Padilla and apologized again. Officer Muir stated that TFO Padilla accepted his apology and told him not to worry about it. Officer Muir stated that he asked TFO Padilla to relay his apology to DA Kofol but admitted that she would not take a call from him. Officer Muir stated he then left and returned home later that day.

Officer Muir then wrote that later that same day (October 6, 2022) after he returned home, he received a call from TFO John Robledo who also works for the DEA Task Force. He said that TFO Robledo told him he heard that Officer Muir was taking pictures at the CDIA Conference and warned Officer Muir that if he intended on using them "Like blackmail" that he could be charged criminally. Officer Muir then assured TFO Robledo that this was not his intention and was told by TFO Robledo "To get rid of them". Officer Muir wrote in his statement that "NOTE: TFO Robledo uses several phones, and the conversations might have been recorded, I am not sure of this at this time".

Officer Muir states that on October 7, 2021, he was summoned to Lt. Andrew Howard's office. He stated that he met with Lt. Howard and GS Castleberry. Officer Muir added that before this meeting started, Lt. Howard asked, "Are you recording this conversation", which Officer Muir replied "No". Officer Muir stated that Lt. Howard explained to him that he had been informed that Officer Muir had been taking video and photos of people while he attended the CDIA Conference. (This part of Officer Muir's statement was concerning to me as Chief, since he told me and wrote that he already notified Lt. Howard of the photos on the night this incident occurred).

Officer Muir continued to explain that Lt. Howard told him these events were private and meant to let officers relax and be able to drink alcohol and not have to worry about watching their backs. Officer Muir then stated that Lt. Howard mentioned additional comments about "Ramifications that a picture out of context could have on someone's marriage or if someone was wanting to run for a public office".

Officer Muir also wrote that GD Castleberry explained that this was a trust issue among the group and told Ben he needed to be aware of the negative influence a picture of this nature could have.

Officer Muir stated that during this conversation with Lt. Howard and GS Castleberry, he did admit to taking a single picture. He then stated that he reminded Lt. Howard that he reported it to him after it occurred at which time, he stated Lt. Howard stated, "I thought you were joking".

Officer Muir then stated that he, "Began to shut down" because he had been through IA's before and felt like this was the beginning of one. Officer Muir again in his statement stated that he reminded Lt. Howard that he did take one single photo and took responsibility for it. Officer Muir stated that he "Clarified his intentions" and that the photo was "Purely a joke" and had no ill intentions in taking the photo. Officer Muir stated that Lt. Howard, "Abruptly stood up" and stated, "We are done", and asked Officer Muir to leave his office.

As Officer Muir was exiting, he states that Lt. Howard asked him if he deleted the picture or if he had shared it with anyone. Officer Muir explains that since he already deleted it off of his phone, and did not want to involve his wife, he told Lt. Howard, he had not shared it with anyone.

Officer Muir stated that he left Lt. Howard's office and went to find TFO Padilla to, "Give him a heads up as a friend, letting him know I had been called into Lt. Howard's office". In Officer Muir's statement, he says again that he apologized to TFO Padilla who told him not to worry about it.

Officer Muir stated that that same day, October 7, 2021, that GS Castleberry called him into his office. He stated that GS Castleberry specifically asked him if he had contacted his Chief (Chief Davis) about being called into Lt. Howard's office. Officer Muir said that he had not called Chief Davis and, in his statement, states that, "If I didn't

notify him, it could be detrimental with my relationship with my Chief" and "I was concerned that if my Chief found out from someone else before I told him, I could be without a job".

Officer Muir's statement also added a statement that GS Castleberry told him to, "Hold off notifying your Chief" and that he (Castleberry) wanted to check with Lt. Howard about how things are going to proceed.

In his statement, Officer Muir says that he received a text from Lt. Howard that stated, "I spoke to Castleberry and reconfirmed what he told you. We have no plans of taking this further or involving other people or your agency. Officer Muir ends his statement with "After reading this text it was my understanding that this was a minor issue or misunderstanding. As a result, I had no reason to think the events surrounding this incident needed to be relayed to my home agency".

On February 14, 2022, when Officer Muir left my office, I immediately wrote down what he stated in a journal. In that conversation, Officer Muir's statement to me was not the same as his written statement, and he omitted vital information that he originally told me in my office. Specifically, Officer Muir told me he was asked by Lt. Howard if he deleted the alleged photo and he told Lt. Howard he did. When I confronted Officer Muir on this exact statement, he not only told me he had not deleted it, but told me, "Hell no, I sent it to my wife, but it's not on my phone", indicating he lied to Lt. Howard, who was his commander in the unit.

Officer Muir also added that District Attorney Kofol was "going to run for some kind of office in Elbert County", and when I asked him what he meant by that, his response was "Well, I am just saying, I have to protect myself". I advised Officer Muir that that could be considered blackmail and that he should immediately remove that photo from all sources.

Officer Muir's written statement also did not include his original explanation of why he did not notify me of this event. On February 14, 2022, I asked Officer Muir why he didn't notify me of this event and his response was, "I let you down Chief; I know I should have called you when I was called into Lt. Howard's office".

## Supplemental:

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**Author:** #MV1801 NESBITT, MICHAEL

**Report time:** 09/30/2022 12:14

**Entered by:** #MV1801 NESBITT, MICHAEL

**Entered time:** 09/30/2022 12:14

### Narrative:

The following investigation will outline an incident involving Officer Benjamin Muir, who is a full-time police officer with the town of Mountain View Colorado. Officer Muir has been assigned to the DEA Task Force (Denver) since May of 2019, and recently was asked to leave that unit in January of 2022, when he returned to his normal duties as a patrol officer with the Town of Mountain View.

On June 9, 2021, I was advised by then Task Force Officer/Police Officer Benjamin Muir that he was being formally advised of a potential investigation involving an issue with an arrest warrant he had written while working at the DEA Task Force. TFO Muir emailed me on June 9, 2021, advising me that he swore to a statement regarding an arrest warrant, and when his supervisors reviewed the warrant, some of the statements he made were brought into question. TFO Muir assured me that the issue was just an oversight and could be fixed within that agency.

The next day, I contacted Lt. Andrew Howard and asked for a meeting in person to discuss this incident. That meeting was held on June 15, 2021, here at my office located at 4176 Benton Street Mountain View CO. Lt. Howard told me that during this incident, TFO Muir wrote an arrest warrant on a subject and "inadvertently" added some context that he thought another TFO relayed to him, which later he found too not be true. According to Lt. Howard, he believed Officer Muir was "Paraphrasing" the other officer's information when he talked to the other officer on the phone, and the issue was discovered during court. Lt. Andrew Howard assured me that he believed it was an honest mistake and that Ben was internally reprimanded verbally for this that the issue was dead.

In that same meeting, Lt. Howard told me that since TFO Muir had "no formal DEA Training" that he would like to observe him for the next six months and give him what Lt. Howard compared to a DEA Field Training Program, and work TFO "Outside" of the box to better use his skills. I agreed and asked for a formal evaluation at the end of this training, which Lt. Howard agreed with. Also, noted in this incident, TFO Muir specifically mentioned that several people at DEA and at the Arapahoe County District Attorney's Office were upset with him, and he pointed out that Arapahoe Senior Deputy District Attorney Darcy Kofol was very upset and asked for his resignation. Lt. Andrew Howard's response to that was "She gets upset, but we think she is calm now after we explained it was an honest mistake".

July 21, 2021, at 10:00, Chief Davis attended the quarterly Front Range Task Force Executive Meeting located at 3300 S. Parker Road in Aurora, CO. During this meeting, I saw DEA Special Agent in Charge Deanna Reuter. I asked to have a sidebar meeting with SAC Reuter and told her I was displeased with Ben's failure to complete the aforementioned arrest report, and the issue it brought to the group. SAC Reuter told me that she did not know anything about the issue and was obviously surprised when I gave her the initial facts as I knew them.

SAC Reuter told me that she was concerned that Lt. Howard or any other staff had not mentioned this and assured me she would talk to her staff and get back to me. During this conversation, DEA SAC Reuter told me that to the best of her knowledge, TFO Muir has been doing a good job and was completing what was expected of him as a TFO. Later in this same meeting, I was approached by Lt. Howard. I told him that I spoke to DEA SAC Reuter who said she knew nothing about the arrest warrant issue with Ben. He responded by saying "Oh crap, I didn't tell her and just got my ass reamed". I apologized to him but thought that their agent in charge would have known about this matter considering a DA was upset. DEA SAC Reuter contacted me two weeks later via phone and told me that she talked to her staff about this issue and that she did not believe it would be an issue, and agreed that TFO Muir probably needs some additional training, but the issue was resolved within the department.

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On October 1, 2021, I received an email from TFO Muir. In this email, he offered his services to the open Sergeants position I had at MVPD. In this email, TFO Muir also mentioned that "There is also a feeling in the air here that has changed, and the dynamics of the group is changing, I can't explain it" (Meaning DEA TFO Group) TFO Muir also mentioned in this email that the Biden Administration was "pushing down new protocols" and that he might be a better benefit for the police department.

This email was prior to a promotional board MVPD did to promote for a Corporal position. TFO Muir did not put in for this promotion and when asked why by Chief Davis, he responded "I can't work nights because of my kid issues, and I feel I am at the same rank as a Corporal in my current position as Detective" When I (Chief Davis) advised Ben that he was not at the same level, and that most likely that Corporal position would become a future Sergeant, TFO Muir visibly became upset. He told me that he was not happy at DEA and was looking at testing with Denver Police Department as a lateral transfer. He said that he believed it would be best to move on to a larger department. TFO Muir and I spoke about his future, and I assured him that I would support any decision he made, and when I asked him if there was an issue at DEA, he assured me there was not.

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Lt. Howard was being cautious with me and I could detect that there was possibly something else going on, and when asked, Lt. Howard failed to mention anything else and even told me that "This in no means is a failure by Ben, he just needs more training and I don't think this is the job for him" At no time did Lt. Howard mention any training that he and TFO Muir attended together, nor mention any issues at any training.

Lt. Howard then told me that he would complete an evaluation for TFO Muir and give that to me and TFO Muir by January 1, 2022. Lt. Howard also told me that because of Christmas and the fact that TFO Muir was on vacation with his family, the SAC and he believed it would be best to not notify TFO Muir of this until after the holiday. Lt. Howard told me that they would notify TFO Muir after January 2022 when he returns from vacation but would notify me first prior to this action.

On January 6, 2022, at 10:00am, I had an appointment set up with Acting Agent in Charge David Olesky and Lt. Howard. During this meeting, Lt. Howard gave me a "Front Range Task Force Officer Evaluation" form for TFO Muir. On this for the date was incorrect and showed 2020. Lt. Howard stated he made a mistake on the form, and it should read 2021 and would change the error and get me a current copy. (On this date, I still do not have a corrected copy). I asked Lieutenant Mike Nesbitt, my second in command to attend this meeting and the four of us went over the evaluation in detail. The evaluation (which will be attached in this investigation) showcased the following:

**Job Knowledge:** This category covered the incident in November of 2020 and had narrative showing TFO Muir's report writing issues, specific to one case (MK21-0011). He received a "Needs Improvement" on this category.

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The remainder of the evaluation covered Strengths/Improvements which where two very short sentences about TFO Muir's strength in surveillance, and his difficulty in writing reports and grammar errors/punctuation. There is a brief mention about the MK21-0011 case that specifically mentions "This became an issue with the DA's office" but did not elaborate.

There is also a small paragraph for supervisor comments which include praise for TFO Muir and how he "repeatedly volunteers to assist with other investigations" and "Strives to succeed and has a passion to assist". The final portion of this evaluation has "Commander Comments" that were from Lt. Howard. In those comments, Lt Howard states how TFO Muir comes to work with a great attitude and often volunteers. Lt. Howard also states he recognizes the efforts TFO Muir makes to improve his skills during this reporting year. Lt. Howard writes "After speaking with 3 supervisors assigned to this task force, it is evident that it's time for TFO Muir to continue to develop his law enforcement skills in a different environment"

In concluding this meeting with Lt. Howard and Assistant SAC Olekey. Both Lt. Nesbitt and I asked, "Is there anything else that you would like to mention about Ben"? Specifically, I felt that both Lt. Howard and ASAC Olesky were being evasive in this meeting. Lt. Nesbitt then stated "Hey, we are all professionals here, we are all friends, just level with us, are we missing something here?" Lt. Howard then smiled and said, "this is difficult because I like Ben, and everybody likes Ben". He went on to say, "We really tried hard to get him to where he needs to be but honestly there are some in the unit that just don't trust Ben and do not want to work with him". I asked Lt. Howard why he would not be trusted, and his response was "I can't pinpoint it; it's just the way some feel in the unit".

At that time, I asked if that included TFO Muir's supervisors, and Lt. Howard said, "Yes it does".

Both Lt. Nesbitt and I agreed then that if they had some credibility issue with Ben and that it would be best that he stepped down from the unit. When I mentioned this, I could tell that ASAC was uncomfortable and wanted to leave. It was because of this action that I decided to call the previous SAC Deanne Reuter and learned about the inappropriate photo that TFO Muir took at the event in Vail Colorado on or about, October 4, 2021.

On January 10, 2022, Lt. Howard called TFO Muir into his office at DEA and presented him with the aforementioned TFO Evaluation. Lt. Howard did not notify me this was happening and TFO Muir immediately called me on the telephone. TFO Muir said "Chief, I have let you down" I asked him what happened, and he told me that Lt. Howard called him into his office and presented him with the Evaluation and told him he was being released from the unit and his last day would be Friday. During this call, I asked TFO Muir if he thought it was anything specific, he was being released for, and he said he believed Lt. Howard was just "out to get me" and because of the incident back in June of 2021, it has led up to this.

Since that time, TFO Muir and I have had multiple conversations as I brought him back into the police department to work, and at no time did TFO Muir discuss any issues within the DEA specifically the night of October 4, 2021.

On January 31, 2022, I emailed former SAC Deanna Reuter and asked her to call me. DEA SAC Reuter is now in Miami Florida and was reassigned from Denver at the beginning of 2022. SAC Reuter called me right back and we had a conversation about TFO Muir. In that conversation, SAC Reuter was surprised to learn that TFO Muir had left the unit. In the short conversation I had with SAC Reuter, she said that she has only known TFO Muir to be professional and did his job well the 2 years she supervised him.

As I ended the call with SAC Reuter, she said "Chief, it might be due to the inappropriate photo that Ben took that might embarrass the unit". When I asked, "What photo", SAC Reuter said "I am really not able to talk about it, you should probably talk to Commander Jimenez with Denver. Commander Jimenez is the former supervisor of TFO Muir, prior to Lt. Howard.

I met with Lt. Nesbitt the following week and relayed this information to him. We both realized that this could be a potential issue that was not brought to our attention by TFO Muir, Lt. Howard or ASAC Olesky during our meetings. I did not even know when this "inappropriate photo" was taken, by whom, where or when at this time. It was decided that it would be best to just ask (Now Officer) Muir about any photo to determine if MVPD needed to either be aware of any potential damage to our town, or to see if an internal investigation needed to be conducted to see how or if Officer Muir was involved.

On February 14, 2021, Officer Muir walked into my office to talk to be about a scheduling issue. During this conversation I asked Officer Muir "Tell me about this inappropriate photo that is being talked about at DEA". His demeanor changed immediately, and he stood in front of my desk and was obviously taken back by my question. Officer Muir voluntarily began to tell me that there was an incident at training in Vail Colorado where he jokingly took a photo of the Arapahoe County Deputy DA and another TFO on a bed. Officer Muir said that there were about 15 to

20 people in a hospitality room at the hotel where they went for a conference. He said that in that room, there was a bedroom off the main living area, and this is where the photo was taken.

Officer Muir stated, "It was a joke; they were not undressed, just lying on the bed, so I snapped a photo of them". Officer Muir went on to say that both people on the bed became upset at what he did and immediately told him to stop, and to delete the photo.

Officer Muir told me "I told them I deleted it and went onto a balcony where I saw Lt. Howard and told him that I think I just pissed off the DA". Officer Muir said that Lt. Howard told him something to the effect of "You should erase that photo". Officer Muir said that he tried to apologize to both people whom he identified as DA Darcy Kofol and TFO Padilla, whom Officer Muir said he later attempted to apologize to. Officer Muir said he met with Paul Padilla later in the lobby and "showed him he had erased the photo" and said he was sorry. Officer Muir said that TFO Padilla told him "No big deal".

I then asked Officer Muir "But you didn't delete it did you", and he quickly responded, "Hell no, I sent it to my wife, but it's not on my phone". I asked Officer Muir why he still had the photo and he said that he did not trust Lt. Howard or the DA and felt they would try to "Screw me over" after I left. He also mentioned that DA Kofol was going to run for some kind of office but did not elaborate further. I advised Officer Muir that he should have his wife delete the photo and that keeping it could be a problem for him. Officer Muir then said "Yeah, they said they wanted to charge me with a crime, like they could". I asked him what he meant, and he said that someone (he did not identify) told him that someone at DEA mentioned they could charge him criminally for taking and keeping the photo.

Again, I told him it would be in the best interest for him to delete the photo from his wife's phone or anywhere else he had it. He agreed and said that he would. In this same conversation, I asked Officer Muir why he did not notify me of this incident until I asked. He responded by saying "I screwed up Chief; I didn't think it was a big deal, it was a joke".

Later that day, Ben came into my office and shut the door. He said "Chief, I want to talk to someone about this, and I know you don't trust me anymore". He said he wanted to explain his part. I told Officer Muir that I didn't have any details on this, but that from his description, it sounded like because of his actions, he not only put our department in a bad light, but he also put himself in a possible criminal situation. I told him until I knew some details of what occurred, I was very disappointed in his choices of that night. Ben was visibly upset and apologetic to me.

On February 16, 2022, I met with Lt. Nesbitt and discussed some options. Since neither of us knew the events of that night, Lt. Nesbitt asked Officer Muir if he would write a voluntary statement as to what occurred so we could determine if an investigation is even necessary. Officer Muir agreed and asked if he could have it completed by the following Friday, which was three days later. Officer Muir called me on the telephone and asked me if that would be ok, and I told him to get me a statement at his leisure, as long as it was by next week on Monday. This gave Officer Muir five days to complete a statement, which he voluntarily turned in on Sunday February 20, 2022, via email to Lt. Nesbitt and me.



# Mountain View Police Department

**Incident: MV22000127**

## Incident details:

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**Incident Type:** NON-CRIMINAL INCIDENT  
**Incident time:** 10/04/2021 08:00 - 10/06/2021 08:00  
**Reported time:** 02/21/2022 09:25  
**Incident location:** 4176 BENTON ST, Bld: MOUNTAIN VIEW POLICE DEPARTMENT, MOUNTAIN VIEW, JEFFERSON CO 80212 (MOUNTAIN VIEW POLICE DEPARTMENT) (Beat: MOUNTAINVIEWPD) 80212  
**Incident status:** Assigned - Under investigation  
**Reporting officer:** #MV1801 NESBITT, MICHAEL  
**Investigator:** #MV1901 DAVIS, STEVE  
**Summary:** I.A. Investigation by the Mountain View Police Department

## Involved Persons:

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**Name:** MOUNTAIN VIEW POLICE DEPARTMENT      **Gender:**  
**Classification:** Other      **DOB:**  
**DL:**  
**Address:** 4176 BENTON ST, Bld: MOUNTAIN VIEW POLICE DEPARTMENT, MOUNTAIN VIEW, JEFFERSON CO 80212 (MOUNTAIN VIEW POLICE DEPARTMENT) (Beat: MOUNTAINVIEWPD)  
**Telephone:** (Landline) (303) 425-1748 [Business]  
(Landline) (303) 425-1748 [Other]

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**Name:** NESBITT, MICHAEL      **Gender:** Male  
**Classification:** Other      **DOB:**  
**DL:**  
**Address:**  
**Telephone:**

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**Name:** DAVIS, STEVE      **Gender:** Male  
**Classification:** Other      **DOB:**  
**DL:**  
**Address:**  
**Telephone:**

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## Reports:

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### General report:

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**Author:** #MV1801 NESBITT, MICHAEL

**Report time:** 09/30/2022 12:10

#### Narrative:

The following investigation will outline an incident involving Officer Benjamin Muir, who is a full-time police officer with the town of Mountain View Colorado. Officer Muir has been assigned to the DEA Task Force (Denver) since May of 2019, and recently was asked to leave that unit in January of 2022, when he returned to his normal duties as a patrol officer with the Town of Mountain View.

On June 9, 2021, I was advised by then Task Force Officer/Police Officer Benjamin Muir that he was being formally advised of a potential investigation involving an issue with an arrest warrant he had written while working at the DEA Task Force. TFO Muir emailed me on June 9, 2021, advising me that he swore to a statement regarding an arrest warrant, and when his supervisors reviewed the warrant, some of the statements he made were brought into question. TFO Muir assured me that the issue was just an oversight and could be fixed within that agency.

The next day, I contacted Lt. Andrew Howard and asked for a meeting in person to discuss this incident. That meeting was held on June 15, 2021, here at my office located at 4176 Benton Street Mountain View CO. Lt. Howard told me that during this incident, TFO Muir wrote an arrest warrant on a subject and "inadvertently" added some context that he thought another TFO relayed to him, which later he found to not be true. According to Lt. Howard, he believed Officer Muir was "Paraphrasing" the other officer's information when he talked to the other officer on the phone, and the issue was discovered during court. Lt. Andrew Howard assured me that he believed it was an honest mistake and that Ben was internally reprimanded verbally for this and that the issue was dead.

In that same meeting, Lt. Howard told me that since TFO Muir had "no formal DEA Training" that he would like to observe him for the next six months and give him, what Lt. Howard compared to a DEA Field Training Program, and work TFO "Outside" of the box to better use his skills. I agreed and asked for a formal evaluation at the end of this training, which Lt. Howard agreed with. Also, noted in this incident, TFO Muir specifically mentioned that several people at DEA and at the Arapahoe County District Attorney's Office were upset with him, and he pointed out that Arapahoe Senior Deputy District Attorney Darcy Kofol was very upset and asked for his resignation. Lt. Andrew Howard's response to that was "She gets upset, but we think she is calm now after we explained it was an honest mistake".

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SAC Reuter told me that she was concerned that Lt. Howard or any other staff had not mentioned this and assured me she would talk to her staff and get back to me. During this conversation, DEA SAC Reuter told me that to the best of her knowledge, TFO Muir has been doing a good job and was completing what was expected of him as a TFO. Later in this same meeting, I was approached by Lt. Howard. I told him that I spoke to DEA SAC Reuter who said she knew nothing about the arrest warrant issue with Ben. He responded by saying "Oh crap, I didn't tell her and just got my ass reamed". I apologized to him but thought that their agent in charge would have known about this matter considering a DA was upset. DEA SAC Reuter contacted me two weeks later via phone and told me that she talked to her staff about this issue and that she did not believe it would be an issue, and agreed that TFO Muir probably needs some additional training, but the issue was resolved within the department.

This issue would not come up again until I met with Lt. Howard and Assistant SAC David Olesky in December of 2021. Prior to this date, I had TFO Muir come into my office on at least three occasions to assist me with DEA business on the computer (DAG updates) and give me updates as to his progress at DEA. During these meetings, TFO Muir assured me that his job at DEA was running smoothly and that they in fact were using him for some additional drug work, as well as using him as a "spotter" in the aircraft for surveillance missions. At no time, did TFO Muir mention that there were any other issues with his work product, or his personal relationships within the agency. In fact, I specifically asked him if the relationship between he and Lt. Howard was amicable, and he said it was.

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better benefit for the police department.

This email was prior to a promotional board MVPD did to promote for a Corporal position. TFO Muir did not put in for this promotion and when asked why by Chief Davis, he responded "I can't work nights because of my kid issues, and I feel I am at the same rank as a Corporal in my current position as Detective". When I (Chief Davis) advised Ben that he was not at the same level, and that most likely that Corporal position would become a future Sergeant, TFO Muir visibly became upset. He told me that he was not happy at DEA and was looking at testing with Denver Police Department as a lateral transfer. He said that he believed it would be best to move on to a larger department. TFO Muir and I spoke about his future, and I assured him that I would support any decision he made, and when I asked him if there was an issue at DEA, he assured me there was not.

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During the November 29, 2021, meeting with TFO Muir, he told me that DEA was treating him well and that most of the time he was flying in the helicopter. At no time did TFO Muir mention any issues at DEA, and he did not mention any training he attended the month before in Vail Colorado, or any issues at that training event.

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Since that time, TFO Muir and I have had multiple conversations as I brought him back into the police department to work, and at no time did TFO Muir discuss any issues within the DEA specifically the night of October 4, 2021.

On January 31, 2022, I emailed former SAC Deanna Reuter and asked her to call me. DEA SAC Reuter is now in Miami Florida and was reassigned from Denver at the beginning of 2022. SAC Reuter called me right back and we had a conversation about TFO Muir. In that conversation, SAC Reuter was surprised to learn that TFO Muir had left the unit. In the short conversation I had with SAC Reuter, she said that she has only known TFO Muir to be a professional and did his job well the 2 years she supervised him.

As I ended the call with SAC Reuter, she said "Chief, it might be due to the inappropriate photo that Ben took that might embarrass the unit". When I asked, "What photo", SAC Reuter said "I am really not able to talk about it, you should probably talk to Commander Jimenez with Denver. Commander Jimenez is the former supervisor of TFO Muir, prior to Lt. Howard.

I met with Lt. Nesbitt the following week and relayed this information to him. We both realized that this could be a potential issue that was not brought to our attention by TFO Muir, Lt. Howard or ASAC Olesky during our meetings. I did not even know when this "inappropriate photo" was taken, by whom, where or when at this time. It was decided that it would be best to just ask (Now Officer) Muir about any photo to determine if MVPD needed to either be aware of any potential damage to our town, or to see if an internal investigation needed to be conducted to see how or if Officer Muir was involved.

On February 14, 2021, Officer Muir walked into my office to talk to be about a scheduling issue. During this conversation I asked Officer Muir, "Tell me about this inappropriate photo that is being talked about at DEA". His demeanor changed immediately, and he stood in front of my desk and was obviously taken back by my question. Officer Muir voluntarily began to tell me that there was an incident at a training in Vail Colorado where he jokingly took a photo of the Arapahoe County Deputy DA and another TFO on a bed. Officer Muir said that there were about

15 to 20 people in a hospitality room at the hotel where they went for a conference. He said that in that room, there was a bedroom off the main living area, and this is where the photo was taken.

Officer Muir stated, "It was a joke; they were not undressed, just lying on the bed, so I snapped a photo of them". Officer Muir went on to say that both people on the bed became upset at what he did and immediately told him to stop, and to delete the photo. Officer Muir told me "I told them I deleted it" and went out onto a balcony where I saw Lt. Howard and told him that, "I think I just pissed off the DA". Officer Muir said that Lt. Howard told him something to the effect of "You should erase that photo". Officer Muir said that he tried to apologize to both people whom he identified as DA Darcy Kofol and TFO Padilla, whom Officer Muir said he later attempted to apologize to. Officer Muir said he met with Paul Padilla later in the lobby and "showed him he had erased the photo" and said he was sorry. Officer Muir said that TFO Padilla told him "No big deal".

I then asked Officer Muir, "But you didn't delete it did you", and he quickly responded, "Hell no, I sent it to my wife, but it's not on my phone". I asked Officer Muir why he still had the photo and he said that he did not trust Lt. Howard or the DA and felt they would try to "Screw me over" after I left. He also mentioned that DA Kofol was going to run for some kind of office but did not elaborate further. I advised Officer Muir that he should have his wife delete the photo and that keeping it could be a problem for him. Officer Muir then said "Yeah, they said they wanted to charge me with a crime, like they could". I asked him what he meant, and he said that someone (he did not identify) told him that someone at DEA mentioned they could charge him criminally for taking and keeping the photo.

Again, I told him it would be in the best interest for him to delete the photo from his wife's phone or anywhere else he had it. He agreed and said that he would. In this same conversation, I asked Officer Muir why he did not notify me of this incident until I asked. He responded by saying "I screwed up Chief; I didn't think it was a big deal, it was a joke".

Later that day, Ben came into my office and shut the door. He said "Chief, I want to talk to someone about this, and I know you don't trust me anymore". He said he wanted to explain his part. I told Officer Muir that I didn't have any details on this, but that from his description, it sounded like because of his actions, he not only put our department in a bad light, but he also put himself in a possible criminal situation. I told him until I knew some details of what occurred, I was very disappointed in his choices of that night. Ben was visibly upset and apologetic to me.

On February 16, 2022, I met with Lt. Nesbitt and discussed some options. Since neither of us knew the events of that night, Lt. Nesbitt asked Officer Muir if he would write a voluntary statement as to what occurred so we could determine if an investigation would be necessary. Officer Muir agreed and asked if he could have it completed by the following Friday, which was three days later. Officer Muir called me on the telephone and asked me if that would be ok, and I told him to get me a statement at his leisure, as long as it was by next week on Monday. This gave Officer Muir five days to complete a statement, which he voluntarily turned in on Sunday February 20, 2022, via email to Lt. Nesbitt and me.

On February 23, 2022, I placed Ben Muir on administrative leave after reviewing his voluntary statement. The statement that Ben Muir gave to me was his recollection of the events that occurred surrounding the incident at the 2021 Colorado Drug Investigators Association Conference in Vail Colorado between October 4 and 5, 2021. Ben stated that during this conference on the evening of October 5, 2021, there was a large gathering in the hospitality suite at the Vail Marriott Mountain Resort located at 715 W. Lionshead Circle, Vail CO 81657. Officer Muir stated that inside the room there was a large bedroom that several people gathered into as well. He stated that this suite was large and that there was also a bar set up with "Hard alcohol and several coolers filled with beer".

Officer Muir stated that there were two rooms being used, and that he believed one of the rooms belonged to Lt. Andrew Howard, who is his commander at the Task Force. Officer Muir stated the second room belonged to the CDIA President and fellow Task Force Officer Ray Padilla. Although Officer Muir is a full time MVRD employee, officer Muir reports to at least one Task Force Sergeant, and to Lt. Howard during his day-to-day operations at the DEA Task Force.

In his written statement, Officer Muir stated that while in the bedroom, the room that belonged to Lt. Howard, he was talking to another unidentified investigator. He said there were two individuals lying on the bed whom he identified as District Attorney Kofol and TFO Padilla. Officer Muir specifically stated that the pair were not doing anything other than talking to each other and were fully clothed. Officer Muir wrote that he then wanted to "Tease" TFO Padilla, whom he considered a friend, and "made it overtly apparent" that he was taking a picture of the pair on the bed with what he described as his "personal phone".

Officer Muir states that District Attorney Kofol realized what he was doing and immediately stood up and started, "Cursing at me and made it clear she was upset with me for taking the picture". During my routine conversation with Officer Muir the prior week, he also added that "Darcy was pissed and told me to fuck off". In his statement, Officer Muir said he tried to apologize to the DA Kofol, but she refused to talk to him and left the room too

quickly. Officer Muir then wrote that he immediately talked to TFO Padilla and told him he was just joking and meant nothing by taking the photo. Officer Muir stated that TFO Padilla stated something to the effect of "Darcy is drunk, and she can get mad, but it was no big deal".

Officer Muir then wrote that he "texted my wife, telling her about getting cursed out by Darcy" and that how his wife was aware about how his professional relationship with DA Kofol has been rocky. Officer Muir states that he thought "She might find it funny" and asked, "What she looked like".

Officer Muir stated that immediately after texting his wife, he went to Lt. Howard who was on the balcony in the same room area. Officer Muir states that he explained to Lt. Howard that he "Pissed off" Darcy. He told Lt. Howard that he had taken a picture of her and Ray on the bed as a joke and stated, "But as a result I probably wouldn't be able to ever file a case in the 18<sup>th</sup> Judicial District now". Officer Muir stated in his statement that Lt. Howard said something along the lines of, "Don't worry about it, he knows a few people she's mad at, but I would probably have to do my cases in Denver". Officer Muir stated he went back to his hotel room and went to bed a short time later.

Officer Muir then writes that the next morning on October 6, 2022, he approached TFO Padilla and apologized again. Officer Muir stated that TFO Padilla accepted his apology and told him not to worry about it. Officer Muir stated that he asked TFO Padilla to relay his apology to DA Kofol but admitted that she would not take a call from him. Officer Muir stated he then left and returned home later that day.

Officer Muir then wrote that later that same day (October 6, 2022) after he returned home, he received a call from TFO John Robledo who also works for the DEA Task Force. He said that TFO Robledo told him he heard that Officer Muir was taking pictures at the CDIA Conference and warned Officer Muir that if he intended on using them "Like blackmail" that he could be charged criminally. Officer Muir then assured TFO Robledo that this was not his intention and was told by TFO Robledo "To get rid of them". Officer Muir wrote in his statement that "NOTE: TFO Robledo uses several phones, and the conversations might have been recorded, I am not sure of this at this time".

Officer Muir states that on October 7, 2021, he was summoned to Lt. Andrew Howard's office. He stated that he met with Lt. Howard and GS Castleberry. Officer Muir added that before this meeting started, Lt. Howard asked, "Are you recording this conversation", which Officer Muir replied "No". Officer Muir stated that Lt. Howard explained to him that he had been informed that Officer Muir had been taking video and photos of people while he attended the CDIA Conference. (This part of Officer Muir's statement was concerning to me as Chief, since he told me and wrote that he already notified Lt. Howard of the photos on the night this incident occurred).

Officer Muir continued to explain that Lt. Howard told him these events were private and meant to let officers relax and be able to drink alcohol and not have to worry about watching their backs. Officer Muir then stated that Lt. Howard mentioned additional comments about "Ramifications that a picture out of context could have on someone's marriage or if someone was wanting to run for a public office".

Officer Muir also wrote that GD Castleberry explained that this was a trust issue among the group and told Ben he needed to be aware of the negative influence a picture of this nature could have.

Officer Muir stated that during this conversation with Lt. Howard and GS Castleberry, he did admit to taking a single picture. He then stated that he reminded Lt. Howard that he reported it to him after it occurred at which time, he stated Lt. Howard stated, "I thought you were joking".

Officer Muir then stated that he, "Began to shut down" because he had been through IA's before and felt like this was the beginning of one. Officer Muir again in his statement stated that he reminded Lt. Howard that he did take one single photo and took responsibility for it. Officer Muir stated that he "Clarified his intentions" and that the photo was "Purely a joke" and had no ill intentions in taking the photo. Officer Muir stated that Lt. Howard, "Abruptly stood up" and stated, "We are done", and asked Officer Muir to leave his office.

As Officer Muir was exiting, he states that Lt. Howard asked him if he deleted the picture or if he had shared it with anyone. Officer Muir explains that since he already deleted it off of his phone, and did not want to involve his wife, he told Lt. Howard, he had not shared it with anyone.

Officer Muir stated that he left Lt. Howard's office and went to find TFO Padilla to, "Give him a heads up as a friend, letting him know I had been called into Lt. Howard's office". In Officer Muir's statement, he says again that he apologized to TFO Padilla who told him not to worry about it.

Officer Muir stated that that same day, October 7, 2021, that GS Castleberry called him into his office. He stated that GS Castleberry specifically asked him if he had contacted his Chief (Chief Davis) about being called into Lt. Howard's office. Officer Muir said that he had not called Chief Davis and, in his statement, states that, "If I didn't

notify him, it could be detrimental with my relationship with my Chief" and "I was concerned that if my Chief found out from someone else before I told him, I could be without a job".

Officer Muir's statement also added a statement that GS Castleberry told him to, "Hold off notifying your Chief" and that he (Castleberry) wanted to check with Lt. Howard about how things are going to proceed.

In his statement, Officer Muir says that he received a text from Lt. Howard that stated, "I spoke to Castleberry and reconfirmed what he told you. We have no plans of taking this further or involving other people or your agency. Officer Muir ends his statement with "After reading this text it was my understanding that this was a minor issue or misunderstanding. As a result, I had no reason to think the events surrounding this incident needed to be relayed to my home agency".

On February 14, 2022, when Officer Muir left my office, I immediately wrote down what he stated in a journal. In that conversation, Officer Muir's statement to me was not the same as his written statement, and he omitted vital information that he originally told me in my office. Specifically, Officer Muir told me he was asked by Lt. Howard if he deleted the alleged photo and he told Lt. Howard he did. When I confronted Officer Muir on this exact statement, he not only told me he had not deleted it, but told me, "Hell no, I sent it to my wife, but it's not on my phone", indicating he lied to Lt. Howard, who was his commander in the unit.

Officer Muir also added that District Attorney Kofol was "going to run for some kind of office in Elbert County", and when I asked him what he meant by that, his response was "Well, I am just saying, I have to protect myself". I advised Officer Muir that that could be considered blackmail and that he should immediately remove that photo from all sources.

Officer Muir's written statement also did not include his original explanation of why he did not notify me of this event. On February 14, 2022, I asked Officer Muir why he didn't notify me of this event and his response was, "I let you down Chief; I know I should have called you when I was called into Lt. Howard's office".

## Supplemental:

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**Author:** #MV1801 NESBITT, MICHAEL

**Report time:** 09/30/2022 12:14

**Entered by:** #MV1801 NESBITT, MICHAEL

**Entered time:** 09/30/2022 12:14

### Narrative:

The following investigation will outline an incident involving Officer Benjamin Muir, who is a full-time police officer with the town of Mountain View Colorado. Officer Muir has been assigned to the DEA Task Force (Denver) since May of 2019, and recently was asked to leave that unit in January of 2022, when he returned to his normal duties as a patrol officer with the Town of Mountain View.

On June 9, 2021, I was advised by then Task Force Officer/Police Officer Benjamin Muir that he was being formally advised of a potential investigation involving an issue with an arrest warrant he had written while working at the DEA Task Force. TFO Muir emailed me on June 9, 2021, advising me that he swore to a statement regarding an arrest warrant, and when his supervisors reviewed the warrant, some of the statements he made were brought into question. TFO Muir assured me that the issue was just an oversight and could be fixed within that agency.

The next day, I contacted Lt. Andrew Howard and asked for a meeting in person to discuss this incident. That meeting was held on June 15, 2021, here at my office located at 4176 Benton Street Mountain View CO. Lt. Howard told me that during this incident, TFO Muir wrote an arrest warrant on a subject and "inadvertently" added some context that he thought another TFO relayed to him, which later he found too not be true. According to Lt. Howard, he believed Officer Muir was "Paraphrasing" the other officer's information when he talked to the other officer on the phone, and the issue was discovered during court. Lt. Andrew Howard assured me that he believed it was an honest mistake and that Ben was internally reprimanded verbally for this that the issue was dead.

In that same meeting, Lt. Howard told me that since TFO Muir had "no formal DEA Training" that he would like to observe him for the next six months and give him what Lt. Howard compared to a DEA Field Training Program, and work TFO "Outside" of the box to better use his skills. I agreed and asked for a formal evaluation at the end of this training, which Lt. Howard agreed with. Also, noted in this incident, TFO Muir specifically mentioned that several people at DEA and at the Arapahoe County District Attorney's Office were upset with him, and he pointed out that Arapahoe Senior Deputy District Attorney Darcy Kofol was very upset and asked for his resignation. Lt. Andrew Howard's response to that was "She gets upset, but we think she is calm now after we explained it was an honest mistake".

July 21, 2021, at 10:00, Chief Davis attended the quarterly Front Range Task Force Executive Meeting located at 3300 S. Parker Road in Aurora, CO. During this meeting, I saw DEA Special Agent in Charge Deanna Reuter. I asked to have a sidebar meeting with SAC Reuter and told her I was displeased with Ben's failure to complete the aforementioned arrest report, and the issue it brought to the group. SAC Reuter told me that she did not know anything about the issue and was obviously surprised when I gave her the initial facts as I knew them.

SAC Reuter told me that she was concerned that Lt. Howard or any other staff had not mentioned this and assured me she would talk to her staff and get back to me. During this conversation, DEA SAC Reuter told me that to the best of her knowledge, TFO Muir has been doing a good job and was completing what was expected of him as a TFO. Later in this same meeting, I was approached by Lt. Howard. I told him that I spoke to DEA SAC Reuter who said she knew nothing about the arrest warrant issue with Ben. He responded by saying "Oh crap, I didn't tell her and just got my ass reamed". I apologized to him but thought that their agent in charge would have known about this matter considering a DA was upset. DEA SAC Reuter contacted me two weeks later via phone and told me that she talked to her staff about this issue and that she did not believe it would be an issue, and agreed that TFO Muir probably needs some additional training, but the issue was resolved within the department.

This issue would not come up again until I met with Lt. Howard and Assistant SAC David Olesky in December of 2021. Prior to this date, I had TFO Muir come into my office on at least three occasions to assist me with DEA business on the computer (DAG updates) and give me updates as to his progress at DEA. During these meetings, TFO Muir assured me that his job at DEA was running smoothly and that they in fact were using him for some additional drug work, as well as using him as a "spotter" in the aircraft for surveillance missions. At no time, did TFO Muir mention that there were any other issues with his work product, or his personal relationships within the agency. In fact, I specifically asked him if the relationship between he and Lt. Howard was amicable, and he said it was.

On October 1, 2021, I received an email from TFO Muir. In this email, he offered his services to the open Sergeants position I had at MVPD. In this email, TFO Muir also mentioned that "There is also a feeling in the air here that has changed, and the dynamics of the group is changing, I can't explain it" (Meaning DEA TFO Group) TFO Muir also mentioned in this email that the Biden Administration was "pushing down new protocols" and that he might be a better benefit for the police department.

This email was prior to a promotional board MVPD did to promote for a Corporal position. TFO Muir did not put in for this promotion and when asked why by Chief Davis, he responded "I can't work nights because of my kid issues, and I feel I am at the same rank as a Corporal in my current position as Detective" When I (Chief Davis) advised Ben that he was not at the same level, and that most likely that Corporal position would become a future Sergeant, TFO Muir visibly became upset. He told me that he was not happy at DEA and was looking at testing with Denver Police Department as a lateral transfer. He said that he believed it would be best to move on to a larger department. TFO Muir and I spoke about his future, and I assured him that I would support any decision he made, and when I asked him if there was an issue at DEA, he assured me there was not.

One of the last in person meetings I had with TFO Muir was on November 29, 2021, when he arrived at my office to again assist me with DEA entries on the computer.

During the November 29, 2021, meeting with TFO Muir, he told me that DEA was treating him well and that most of the time he was flying in the helicopter. At no time did TFO Muir mention any issues at DEA, and he did not mention any training he attended the month before in Vail Colorado, or any issues at that training event.

On December 22, 2021, I received a call from Lt. Howard regarding TFO Muir's work product. In that conversation Lt. Howard stated that he had concerns with TFO Muir not being able to stay in the unit and told me that he was going to be recommending TFO Muir no longer be retained with the task force. In that same conversation, Lt. Howard told me that TFO Muir has had some report writing issues, including the case with the warrant back in June of 2021. Lt. Howard specifically told me that he did not believe that TFO Muir had the ability to conduct complex investigations and the past six months of his evaluation of TFO Muir showed other deficiencies. Lt. Howard told me that a case in November of 2020 was filed with report writing issues that potentially caused harm to this case. Lt. Howard stated that he was directed to correct grammatical and spelling errors and that this report was lacking complete and accurate information and had to be reviewed multiple times by supervisors. Lt. Howard also told me that TFO Muir wore the wrong color of clothing on a tactical call, and that TFO Muir had his personal cell phone on his vest, as if to use it as a body cam, which is unauthorized with the unit. Lt. Howard also said TFO had some "range issues" and described it to me as "he was seen sweeping on the range". Essentially that means he had a loaded weapon and failed to keep it pointed down range. Lt. Howard said this has happened at least one time.

Lt. Howard was being cautious with me and I could detect that there was possibly something else going on, and when asked, Lt. Howard failed to mention anything else and even told me that "This in no means is a failure by Ben, he just needs more training and I don't think this is the job for him" At no time did Lt. Howard mention any training that he and TFO Muir attended together, nor mention any issues at any training.

Lt. Howard then told me that he would complete an evaluation for TFO Muir and give that to me and TFO Muir by January 1, 2022. Lt. Howard also told me that because of Christmas and the fact that TFO Muir was on vacation with his family, the SAC and he believed it would be best to not notify TFO Muir of this until after the holiday. Lt. Howard told me that they would notify TFO Muir after January 2022 when he returns from vacation but would notify me first prior to this action.

On January 6, 2022, at 10:00am, I had an appointment set up with Acting Agent in Charge David Olesky and Lt. Howard. During this meeting, Lt. Howard gave me a "Front Range Task Force Officer Evaluation" form for TFO Muir. On this form the date was incorrect and showed 2020. Lt. Howard stated he made a mistake on the form, and it should read 2021 and would change the error and get me a current copy. (On this date, I still do not have a corrected copy). I asked Lieutenant Mike Nesbitt, my second in command to attend this meeting and the four of us went over the evaluation in detail. The evaluation (which will be attached in this investigation) showcased the following:

**Job Knowledge:** This category covered the incident in November of 2020 and had narrative showing TFO Muir's report writing issues, specific to one case (MK21-0011). He received a "Needs Improvement" on this category.

**Situational/Operational Skills:** This category covered TFO Muir wearing the wrong color shirt at an incident on October 8, 2020, as well as having his cell phone in the wrong position on his tactical vest. This also mentioned a shooting range incident where TFO Muir "Swept" other officers during tactical practice. This category also praised TFO Muir for his efforts in the helicopter and his spotting abilities. He received a "Needs Improvement" on this category.

**Communication Skills-Oral and Written:** This category covered TFO Muir's communications as to relating to other agents, sources, and management. He received a "Meets expectations" on this category.

**Decision Making Ethical/Actions:** This category covered when enforcement actions should be taken and covered a short sentence about TFO Muir being mindful of the public and mitigating potential pitfalls with community safety. For this category, TFO Muir received a "Meets expectations".

The remainder of the evaluation covered Strengths/Improvements which were two very short sentences about TFO Muir's strength in surveillance, and his difficulty in writing reports and grammar errors/punctuation. There is a brief mention about the MK21-0011 case that specifically mentions "This became an issue with the DA's office" but did not elaborate.

There is also a small paragraph for supervisor comments which include praise for TFO Muir and how he "repeatedly volunteers to assist with other investigations" and "Strives to succeed and has a passion to assist". The final portion of this evaluation has "Commander Comments" that were from Lt. Howard. In those comments, Lt Howard states how TFO Muir comes to work with a great attitude and often volunteers. Lt. Howard also states he recognizes the efforts TFO Muir makes to improve his skills during this reporting year. Lt. Howard writes "After speaking with 3 supervisors assigned to this task force, it is evident that it's time for TFO Muir to continue to develop his law enforcement skills in a different environment"

In concluding this meeting with Lt. Howard and Assistant SAC Olekey. Both Lt. Nesbitt and I asked, "Is there anything else that you would like to mention about Ben"? Specifically, I felt that both Lt. Howard and ASAC Olesky were being evasive in this meeting. Lt. Nesbitt then stated "Hey, we are all professionals here, we are all friends, just level with us, are we missing something here?" Lt. Howard then smiled and said, "this is difficult because I like Ben, and everybody likes Ben". He went on to say, "We really tried hard to get him to where he needs to be but honestly there are some in the unit that just don't trust Ben and do not want to work with him". I asked Lt. Howard why he would not be trusted, and his response was "I can't pinpoint it; it's just the way some feel in the unit".

At that time, I asked if that included TFO Muir's supervisors, and Lt. Howard said, "Yes it does".

Both Lt. Nesbitt and I agreed then that if they had some credibility issue with Ben and that it would be best that he stepped down from the unit. When I mentioned this, I could tell that ASAC was uncomfortable and wanted to leave. It was because of this action that I decided to call the previous SAC Deanne Reuter and learned about the inappropriate photo that TFO Muir took at the event in Vail Colorado on or about, October 4, 2021.

On January 10, 2022, Lt. Howard called TFO Muir into his office at DEA and presented him with the aforementioned TFO Evaluation. Lt. Howard did not notify me this was happening and TFO Muir immediately called me on the telephone. TFO Muir said "Chief, I have let you down" I asked him what happened, and he told me that Lt. Howard called him into his office and presented him with the Evaluation and told him he was being released from the unit and his last day would be Friday. During this call, I asked TFO Muir if he thought it was anything specific, he was being released for, and he said he believed Lt. Howard was just "out to get me" and because of the incident back in June of 2021, it has led up to this.

Since that time, TFO Muir and I have had multiple conversations as I brought him back into the police department to work, and at no time did TFO Muir discuss any issues within the DEA specifically the night of October 4, 2021.

On January 31, 2022, I emailed former SAC Deanna Reuter and asked her to call me. DEA SAC Reuter is now in Miami Florida and was reassigned from Denver at the beginning of 2022. SAC Reuter called me right back and we had a conversation about TFO Muir. In that conversation, SAC Reuter was surprised to learn that TFO Muir had left the unit. In the short conversation I had with SAC Reuter, she said that she has only known TFO Muir to be professional and did his job well the 2 years she supervised him.

As I ended the call with SAC Reuter, she said "Chief, it might be due to the inappropriate photo that Ben took that might embarrass the unit". When I asked, "What photo", SAC Reuter said "I am really not able to talk about it, you should probably talk to Commander Jimenez with Denver. Commander Jimenez is the former supervisor of TFO Muir, prior to Lt. Howard.

I met with Lt. Nesbitt the following week and relayed this information to him. We both realized that this could be a potential issue that was not brought to our attention by TFO Muir, Lt. Howard or ASAC Olesky during our meetings. I did not even know when this "inappropriate photo" was taken, by whom, where or when at this time. It was decided that it would be best to just ask (Now Officer) Muir about any photo to determine if MVPD needed to either be aware of any potential damage to our town, or to see if an internal investigation needed to be conducted to see how or if Officer Muir was involved.

On February 14, 2021, Officer Muir walked into my office to talk to be about a scheduling issue. During this conversation I asked Officer Muir "Tell me about this inappropriate photo that is being talked about at DEA". His demeanor changed immediately, and he stood in front of my desk and was obviously taken back by my question. Officer Muir voluntarily began to tell me that there was an incident at training in Vail Colorado where he jokingly took a photo of the Arapahoe County Deputy DA and another TFO on a bed. Officer Muir said that there were about 15 to

20 people in a hospitality room at the hotel where they went for a conference. He said that in that room, there was a bedroom off the main living area, and this is where the photo was taken.

Officer Muir stated, "It was a joke; they were not undressed, just lying on the bed, so I snapped a photo of them". Officer Muir went on to say that both people on the bed became upset at what he did and immediately told him to stop, and to delete the photo.

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Again, I told him it would be in the best interest for him to delete the photo from his wife's phone or anywhere else he had it. He agreed and said that he would. In this same conversation, I asked Officer Muir why he did not notify me of this incident until I asked. He responded by saying "I screwed up Chief; I didn't think it was a big deal, it was a joke".

Later that day, Ben came into my office and shut the door. He said "Chief, I want to talk to someone about this, and I know you don't trust me anymore". He said he wanted to explain his part. I told Officer Muir that I didn't have any details on this, but that from his description, it sounded like because of his actions, he not only put our department in a bad light, but he also put himself in a possible criminal situation. I told him until I knew some details of what occurred, I was very disappointed in his choices of that night. Ben was visibly upset and apologetic to me.

On February 16, 2022, I met with Lt. Nesbitt and discussed some options. Since neither of us knew the events of that night, Lt. Nesbitt asked Officer Muir if he would write a voluntary statement as to what occurred so we could determine if an investigation is even necessary. Officer Muir agreed and asked if he could have it completed by the following Friday, which was three days later. Officer Muir called me on the telephone and asked me if that would be ok, and I told him to get me a statement at his leisure, as long as it was by next week on Monday. This gave Officer Muir five days to complete a statement, which he voluntarily turned in on Sunday February 20, 2022, via email to Lt. Nesbitt and me.