

DELANO POLICE DEPARTMENT
PROFESSIONAL STANDARDS UNIT
INTERNAL AFFAIRS MEMO

May 23, 2023

MEMORANDUM

TO:

~~TYSON DAVIS~~
Chief of Police

JERRY NICHOLSON
ACTING CHIEF of Police

THROUGH:

CECILIO VELASCO
Patrol Division Commander

[Signature]
7/12/23

FROM:

SERGEANT LARCELLUS A. SCOTT
Professional Standards Unit

SUBJECT:
COMPLAINANT:

INTERNAL AFFAIRS REPORT 23-05
DEPARTMENT INITIATED

ACCUSED:

OFFICER RAFAEL SILVA
PATROL DIVISION

ALLEGATION:

1. DPD Policy 320.5.2 (g) – ETHICS – Any other failure to abide by the standards of ethical conduct.
2. DPD Policy 320.5.3 – DISCRIMINATION, OPPRESSION OR FAVORITISM
3. DPD Policy 320.5.9 (f) – CONDUCT – Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
4. DPD Policy 320.5.9 (h) – CONDUCT – Criminal, dishonest, or disgraceful conduct, whether on-or-off duty, that adversely affects the member's relationship with this department.
5. DPD Policy 320.5.9 (m) – CONDUCT – Any other on or off duty conduct which any member knows or should reasonably know is unbecoming a member of this department, is contrary to good order, efficiency or morale,

or tends to reflect unfavorably upon this department or its members.

6. DPD Policy 1027.4 (c) – PROHIBITED SPEECH, EXPRESSION AND CONDUCT – Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.

7. CITY OF DELANO RULES AND REGULATIONS 18.02 (#8); GROSS MISCONDUCT (#17) – Failure to abide by the ordinary and reasonable rules of behavior observed by law-abiding citizens or other failure of good behavior either during or outside of duty hours which is of such a nature that it reflects unfavorably upon or causes discredit to the City.

RECOMMENDED
FINDINGS:

1. SUSTAINED
2. SUSTAINED
3. SUSTAINED
4. SUSTAINED
5. SUSTAINED
6. SUSTAINED
7. SUSTAINED

PERSONS
CONTACTED:

OFFICER RAFAEL SILVA

[REDACTED]

EXHIBITS:

1. Receipt of Complaint
2. FBI emails
3. Internal Affairs History
4. Internal Affairs forms
5. Policy Acknowledgement
6. Miscellaneous papers
7. Recorded Interview(s)

SYNOPSIS

On April 6, 2023, Commander J. Nicholson forwarded me an email received by Chief Davis, from FBI Agent Carlos Roscoe and an email from the Tik Tok Law Enforcement Response Team (TTLERT), to FBI SA Caleb Lyman.

The TTLERT email contained comments made by the user "philbaker33" There was also a second user, "Blaketoothicc," on the same profile as philbaker33.

On April 6, 2023, the FBI National Threat Operations Section (NTOS), Social Media Exploitation (SOMEX) Team, received a tip from a subject regarding Tik Tok user "philbaker33," making threats of mass violence toward transgender individuals with an AR-15. NTOC notified the FBI Field Office in Sacramento, CA.

NTOS SOMEX requested subscriber information and IP session logs associated with the account "philbaker33. The subscriber was identified as Rafael Silva, with his date of birth and current address. 's email was revealed to be, [REDACTED] with a signup IP of, [REDACTED]

The comments as written in the NTOS SOMEX email read:

"Send me the addy, I'll pull up on you." 04/05/2023

"Send the addy. I'll pull up on you rn." 04/05/2023

"But my AR will track y'all down like it did Aubrey from Tennessee." 04/05/2023

"I've lifted my AR, high than your rights." 04/05/2023

"Oh my dutchess, it's funny you think you have any form of power. The only power youll see is the one from from a barrel and a 9mm." 04/04/2023

Officer Silva was placed on Administrative Leave on April 6, 2023.

INVESTIGATION

On Thursday, April 6, 2023, I was directed by Chief Davis to investigate comments allegedly posted to Tik Tok, by Officer Rafael Silva.

STATEMENTS

Unless noted otherwise, the interviews for this investigation were recorded in their entirety. The following are summaries of those statements. The purpose of the summary is to render an overview of what was described; it is not a

transcription of the interviews. The summaries should not be viewed as containing only the important facts of the interviews. They are intended to provide the reader with the general understanding of what was said, therefore, refer to the recorded interviews and/or transcripts for complete details.

SYNOPSISIZED STATEMENT OF OFFICER RAFAEL SILVA:

On May 15, 2023, at about 1400 hours, I interviewed Silva at the Delano Police Department, in the Administration Conference Room. Present with Silva was his representative Montana Massone.

Silva confirmed his current address and said he had been at that address for a little over two years. He confirmed his previous address as [REDACTED] Delano. He said he had a roommate at his current address and identified that person as [REDACTED] who was a former police officer with the City of Delano.

INVESTIGATOR'S NOTE:

[REDACTED] is the last name of a former Delano police officer. His full name is [REDACTED]

I asked Silva if [REDACTED] had his own device to access the internet. He said, "I don't know, sir." I asked if he ever saw [REDACTED] on the internet and he said, "I don't know, sir." I asked if [REDACTED] had a cell phone and he said yes. I asked if he ever saw [REDACTED] on the cell phone and he said, yes.

I asked Silva if he provided his Wi-Fi password to [REDACTED] and he said yes. I asked Silva if he had a computer at his home and he said yes, a laptop. I asked if the password he had given to [REDACTED] would access the internet on the laptop, he said yes. Silva said [REDACTED] never used the laptop.

I asked Silva the timeframe that [REDACTED] lived with him. He said he believed it was August 2022 – October 2022.

I asked Silva what the Wi-Fi password was and he said it was, [REDACTED]. He said he would also give his password to friends and family, if they asked for it. I asked if a person had to be inside his house to access the Wi-Fi. He said he believed so. I asked if the people he gave his password to, accessed the internet while inside his house. He said he believed so. I asked if any of the people he gave his password to, lived on either side of his house. He said no.

I asked Silva which company he used for internet service, and he said AT&T. Silva said the internet service is under his name, and he has had the service for a little over a year.

I asked Silva what email is associated with his service with AT&T. He said he had a personal email and an email that he used for "the cell phones," and that email is generated by the company. He said he used an AT&T email account to pay his bills. He said AT&T generated an email address that he used to access and pay his AT&T bill.

His email address to pay his bills is, [REDACTED] I asked him what the other email was and he said he did not remember. I asked if he could still access that account and he said yes. I asked when the last time he accessed the account was and he said it was this month, when he paid his bills. He asked to try and find the email address on his cell phone, but was unable locate it due to poor Wi-Fi connection.

I asked if he had any other emails. He said emails for school, [REDACTED] He said he had an email that he used for an application he identified as "Only Fans" as [REDACTED]

I asked Silva if he had a Facebook account and he said yes. I asked if it was current and he said yes. He said the username was Rafael Silva. He said he had that account over ten years. I asked if it was a public account and he said no. I asked what email is associated with that account and he said it was his personal email, [REDACTED] I asked if he had any other Facebook accounts and he said no. I asked if he had any other Facebook accounts using a fictitious name and he said no.

I asked Silva if he had a Twitter account and he said yes. I asked if it was current and he said yes. He said he did not remember the username. I asked when the last time he accessed the account. He said it was around the time the Department seized his cell phone (April 2023). I again asked him his username and he said it may be, [REDACTED] He said he had that account over ten years. I asked if it was a public account and he said no. I asked what email is associated with that account and he said it was his personal email, [REDACTED] I asked if he had any other Twitter accounts using a fictitious name and he said no.

I asked Silva if he had a Snap Chat account and he said yes. I asked if it was current and he said yes. I asked his username and he said [REDACTED] He said he had that account over five years. I asked if it was a public account and he said no. I asked what email is associated with that account and he said it was his personal email, [REDACTED] I asked if he had any other Snap Chat accounts using a fictitious name and he said no.

I asked Silva if he had an Instagram account and he said yes. I asked if it was current and he said yes. He said the username is [REDACTED] I asked when the last time he accessed the account. He said he had that account about ten years. I asked if it was a public account and he said no. I asked what email is associated with that account and

he said it was his personal email, [REDACTED] I asked if he had any other Instagram accounts using a fictitious name and he said no.

I asked Silva if he had a Tik Tok account and he said yes. I asked if it was current and he said yes. He said he had a personal one, with the username of [REDACTED] He said he had that account for about two years. I asked if the account was public and he said no. I asked if he had an email account associated for that account and he said no, an

email is not needed to open an account. I asked what is needed to open a Tik Tok account and he said basic information, such as name and date of birth.

I asked if all of his accounts are password protected and he said yes I asked what his password was and he said, each account has its own password. I asked him what his passwords were and he said he did not remember. He said he has a general password for them that he keeps simple, but sometimes he forgets them.

I asked if he had any other Tik Tok accounts using a fictitious name and he said yes. He said he has two additional accounts. He said one account has the username of philbaker33. He said he did not remember because it was generated by Tik Tok. I asked if he was able to change the Tik Tok generated username and he said yes. I asked if he changed it and he said yes, but he did not remember what he changed it to. I asked when the last time he accessed the account and he said he did not remember, but it was within the past year, possibly within the past three months.

INVESTIGATOR'S NOTES:

I was aware of a third Tik Tok account associated with Officer Silva that had the username Falcon1996.

I said the username, Falcon1996 and Silva said, "Yes." I asked if that was the username of his third account and he said, "I don't remember." I asked Silva why he said yes, and he said "I'm familiar with the name, but the name changes within the account."

INVESTIGATOR'S NOTE:

I asked Silva why he created the third account (Falcon1996), and it appeared he was having difficulty answering the question. He asked for and was provided a break to speak with his attorney. Refer to audio.

I asked Silva why he created the third account. He said prior to this investigation, he noticed that his Twitter account had been hacked. So to be safe he opened the third account. I asked Silva when his Twitter account hacked, and he said it may have been between April 4 – 6, 2023. **Refer to audio.**

I asked Silva if he posted anything from the third account and he said no. I asked what he did with the third account and he said it was to use Tik Toks, to prepare for this investigation. I asked what he was looking for and he said, anything that could be related to this investigation, such as comments. I asked him if he had found any, and he

said, no because the philbaker33 account had been "banned" and when an account is banned, all comments are deleted.

I asked Silva if he ever sent a message from the Falcon1996 account and he said he did not think so.

I asked Silva if he ever sent a message, from any platform, using a fictitious name. He said, "Besides Tik Tok, sir, no." He said he sent messages from the philbaker33 account.

I asked Silva if he had ever seen the Tik Tok username, @zogrimmwood, and he said no. I asked if he ever received a message from @zogrimmwood. He said, "I don't remember, sir." I asked if he had ever seen a video from @zogrimmwood, and he said, "I don't remember, sir."

I asked Silva had ever seen the username, @blaketoothicc. He said yes. I asked if @blaketoothicc had ever sent him a message. He said no.

I asked Silva if he knew who @blaketoothicc was. He said it was another username that he had for the philbaker33 account. **Refer to audio.**

I asked Silva if he had ever sent a message using the @blaketoothicc account. He said yes. I asked if he remembered who he sent the message to. He said no.

I asked if it was more than one message and he said yes.

I asked if he knew the people that he had sent the messages to. He said no.

I asked if he had seen messages these people had posted and then he responded to those posts. He said yes.

I asked Silva if he had conducted a search for the username, @zogrimmwood. He said he did not remember.

I asked Silva if he had a sense of humor and he said he believed so. I asked him if he played practical jokes on people via social media, and he said he believed he had.

I asked from which account he used for the practical jokes and he said he did not remember. I asked if he ever played a practical jokes using Tik Tok, and he said yes.

I asked Silva if he remembered when he played the practical joke and he said he did not remember. I asked if it was April 2023, and he said he believed so. I asked him what the practical joke was and he said he wouldn't know and it's been a while since then.

I asked Silva if he posted messages on social media, in particular Tik Tok, to get a reaction from people. He said yes.

I asked him when he posted such a message(s). He said it was probably about April 4th and 5th.

I asked if he remembered who he sent a message to and he said no.

I asked Silva if he remembered the content of the message. He said he did not remember verbatim. He said he used that account to comment, so it is difficult to remember.

I asked Silva if he held any personal beliefs, regarding transgendered people; gay people, or people in general. He said no.

I asked Silva if he ever sent a message, via Tik Tok, to anyone he believed was transgender or was supportive of transgendered people. He said yes.

I asked if he remembered what he sent. He said, "Not verbatim, sir."

I asked Silva if he remembered anything about what he had sent. He said he could not remember.

I asked Silva if he owned a rifle or had access to a rifle and he said no. I asked Silva if he had a 9mm handgun. He said yes.

I read the following message sent from Silva's Tik Tok account: (SIC)
"Oh my dutches, it's funny you think you have any form of power. The only power youll see is the one from from a barrel and a 9mm."

I asked Silva if he sent that message and he said yes. I asked him what he meant.

INVESTIGATOR'S NOTE:

Officer requested and was allowed a break, with his attorney. I resumed the interview and repeated the above question to Silva. Refer to the audio due to the length of Silva's answer.

Silva said, his message was in response to a video posted by Duchess of Darkness, who was advocating violence.

I read the following messages sent from Silva's Tik Tok account: (SIC)
"I've lifted my AR, high than your rights" and "But my AR; will track y'all down like it did Aubrey from Tennessee;" "Send the addy. I'll pull up rn," and "Send me the addy, I'll pull up on you."

I asked Silva if he sent those messages and he said yes.

Silva said the comments were hyperbole and not to be taken seriously. He said he saw that people were supporting the Duchess and he thought it was necessary for him to intervene. **Refer to audio.**

I asked Silva if he thought no one would take the threat seriously. He said everyone has different perceptions.

I read the following message sent from Silva's Tik Tok account: (SIC)
"Don't worry bro. You're next. We gonna find you. You ain't safe. We finna change your pronouns soon. Was/were."

I asked Silva if he did not think someone would read that message and think that he would track them down, and harm them. **Refer to audio.**

I asked Silva what were his thoughts on transgendered people. He said he did not have any bias against or extreme opinions regarding transgender people.

I ended the interview at about 1540 hours.

SYNOPSIS STATEMENT OF [REDACTED]

On May 25, 2023, at about 1350 hours, I interviewed [REDACTED] via telephone. [REDACTED] was employed as Police Officer Trainee of the Delano Police Department, July 2023 – October 2023. While employed at the DPD, [REDACTED] was a roommate of Rafael Silva.

[REDACTED] said he did not know Silva until he began working for the DPD. He said they worked different shifts and did not spend much time together at the house. He said they did not have any conversations and only said, "Hi and goodbye."

I ended the interview at about 1357 hours.

FOCUS OF THE INVESTIGATION:

Did Officer Silva violate the following DPD policies:

1. DPD Policy 320.5.2 (g) – ETHICS – *Any other failure to abide by the standards of ethical conduct.*
2. DPD Policy 320.5.3 – DISCRIMINATION, OPPRESSION OR FAVORITISM

3. DPD Policy 320.5.9 (f) – CONDUCT – *Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.*

4. DPD Policy 320.5.9 (h) – CONDUCT – *Criminal, dishonest, or disgraceful conduct, whether on-or-off duty, that adversely affects the member's relationship with this department.*

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6. DPD Policy 1027.4 (c) – PROHIBITED SPEECH, EXPRESSION AND CONDUCT – *Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.*

7. CITY OF DELANO RULES AND REGULATIONS 18.02 (#8); GROSS MISCONDUCT (#17) – *Failure to abide by the ordinary and reasonable rules of behavior observed by law-abiding citizens or other failure of good behavior either during or outside of duty hours which is of such a nature that it reflects unfavorably upon or causes discredit to the City.*

The preponderance of the evidence supports the conclusion that Officer Silva violated the above Delano Police Department policies; therefore, all allegations are **SUSTAINED.**