

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**BEFORE THE CRIMINAL JUSTICE TRAINING COMMISSION
IN AND FOR THE STATE OF WASHINGTON**

In re the Certification of:

RICARDO R. GONZALES,

Respondent.

NO. 19-753

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER REVOKING
PEACE OFFICER CERTIFICATION

An administrative hearing in this matter was held on February 23, 2021 via Zoom, before the Washington State Criminal Justice Training Commission Hearing Panel (Hearing Panel) to determine whether Respondent Ricardo R. Gonzales’s peace officer certification should be revoked. The Hearing Panel was advised by Assistant Attorney General Justin Kato, and consisted of Presiding Member Professor Matthew Hickman of Seattle University, Chief Michael Ashby of the Nooksack Tribal Police Department, Chief David Brunckhurst of the Evergreen State College Police Department, Lieutenant Ben Baker of the Puyallup Tribal Police Department, and Sergeant Sean Hayes of the Normandy Park Police Department. The Petitioner was represented by Assistant Attorney General Susie Giles-Klein. Mr. Gonzales appeared *pro se*.

I. PROCEDURAL HISTORY

1.1 Ricardo Gonzales was terminated from the Lower Elwha Tribal Police Department (Police Department) on or about August 8, 2019. Prior to his termination, Mr. Gonzales had been employed as a peace officer with the Police Department.

1.2 On or about August 25, 2020, the Criminal Justice Training Commission (Commission) filed a Statement of Charges seeking to revoke Mr. Gonzales’s peace officer

1 certification on the grounds that he was discharged from the Police Department for disqualifying
2 misconduct as defined by RCW 43.101.010(8)(b).¹ The Statement of Charges alleged that
3 Mr. Gonzales was discharged for engaging in conduct constituting a crime involving dishonesty
4 or false statement within the meaning of Evidence Rule 609(a), to wit: Making a False or
5 Misleading Statement to a Public Servant. RCW 9A.76.175.

6 1.3 Mr. Gonzales timely requested a hearing.

7 II. HEARING

8 2.1 A hearing was held on February 23, 2021, via the Zoom teleconferencing
9 application, before the Hearing Panel.

10 2.2 The Petitioner presented the testimony of Lower Elwha Tribal Police Department
11 Sergeant Jimmy Thompson, Former Lower Elwha Tribal Police Department Sergeant George
12 Black Crow, Port Angeles Police Department Corporal Bruce Fernie, and Lower Elwha Tribal
13 Police Department Chief Sam White.

14 2.3 Mr. Gonzales testified on his own behalf, and presented the additional testimony
15 of Helen Gonzales.

16 2.4 The Petitioner offered the following exhibits, which were admitted by the
17 Presiding Member at the Second Telephonic Prehearing Conference on February 2, 2021:

- 18 1. Statement of Charges, *In re the Certification of Ricardo R. Gonzales*, dated
19 August 25, 2020 (5 pages);
- 20 2. Request for Hearing, dated September 10, 2020 (1 page);
- 21 3. Tribal Peace Officer Certification Application for Ricardo R. Gonzales, signed
22 September 8, 2017 (1 page);
- 23 4. Notice of Peace Officer Separation for Ricardo R. Gonzales, signed
24 August 13, 2019 (1 page);
- 25 5. Interagency Agreement between Washington State Criminal Justice Training
26 Commission and Lower Elwha Klallam Tribe, signed by the parties in March,
2008 (2 pages);
6. Interlocal Cooperative Law Enforcement Agreement Between the City of Port
Angeles and the Lower Elwha Klallam Tribe and Approval Agreement, various
dates (15 pages);

¹ RCW 43.101 was updated in 2020 to include the certification of corrections officers. Thus, RCW 43.101.010(8)(b) as cited in the Statement of Charges is now found under RCW 43.101.010(8)(a)(i)(B). The language is identical.

7. Acknowledgement of Receipt of Vehicle Use Policy and Inter-local Cooperative Law Enforcement Agreement, various dates (2 pages);
8. Detail Call for Service Report, dated August 1, 2019 (24 pages);
9. Port Angeles Police Department Arrest Report Case No. 2019-00014059, dated August 1, 2019 (21 pages);
10. Emails between Sergeant George Black Crow and Officer Ricardo Gonzales, dated August 1, 2019 (1 page);
11. Original Lower Elwha Police Department Report for Case No. 2019-00002349, signed by Ricardo Gonzales on August 1, 2019 (3 pages);
12. Updated Lower Elwha Police Department Report for Case No. 2019-00002349, signed by Ricardo Gonzales on August 1, 2019 (3 pages);
13. Memorandum from Sergeant Jimmy Thompson to Officer Ricardo Gonzales, dated August 3, 2019 (1 page);
14. Memorandum, from Sergeant George Black Crow, dated August 6, 2019 (1 page);
15. Letter from Chief Sam White re: Officer Gonzales, dated August 7, 2019 (2 pages);
16. Memo from Corporal Bruce Fernie to Chief Brian Smith of the Port Angeles Police Department, dated August 8, 2019 (5 pages);
17. Corrective Action Form for Ricardo Gonzales, dated August 9, 2019 (2 pages);
18. Brady Letter from Chief Sam White to Tribal Prosecutor regarding Ricardo Gonzales, dated August 20, 2019 (1 page);
19. Grievance Decision for Ricardo Gonzales, dated September 6, 2019 (6 pages).

2.5 The Respondent offered the following exhibits, which were admitted by the Presiding Member at the Second Telephonic Prehearing Conference on February 2, 2021:

1. Emails between Ricardo Gonzales and Sergeant Kevin Miller, dated December 9, 2020.

2.6 The parties made their respective arguments, which were considered by the Hearing Panel.

Based on the evidence presented at the hearing, the Hearing Panel enters the following Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

3.1 Ricardo Gonzales was hired as an officer by the Police Department on or about June 9, 2016.

1 3.2 At all times relevant to the events described herein, Mr. Gonzales was employed
2 by the Police Department as a peace officer.

3 3.3 In the early morning hours of August 1, 2019, Mr. Gonzales was driving outside
4 the jurisdiction of the Lower Elwha Tribe when he saw a car parked by the side of the road.
5 Noting that a portion of the car was over the fog line, Mr. Gonzales pulled up behind the car to
6 see if assistance was needed.

7 3.4 Shortly after he pulled up, the parked vehicle drove off at a high rate of speed.
8 Mr. Gonzales activated his emergency lights and pursued the vehicle, reaching speeds of at least
9 80 miles per hour.

10 3.5 The other vehicle contained two male children (ages 13 and 14). The vehicle itself
11 had been taken from one of their mothers without her knowledge.

12 3.6 After pursuing at a high rate of speed for several minutes, Mr. Gonzales found
13 the other vehicle overturned off the side of the road. He reported the accident to dispatch,
14 informing them that the vehicle he was pursuing crashed.

15 3.7 After pulling up beside the flipped vehicle, Mr. Gonzales observed one of the
16 occupants of the vehicle running from the scene. Mr. Gonzales made a threat of deadly force by
17 shouting “stop or I’ll shoot” at the fleeing minor, but did not draw his weapon. The minor stopped
18 running and was taken into custody by Mr. Gonzales.

19 3.8 The Police Department and the Port Angeles Police Department (PAPD) are
20 parties to a mutual aid agreement. This agreement preserves Police Department jurisdiction over
21 incidents that occur on tribal land, while incidents occurring within the limits of the City of Port
22 Angeles are within the jurisdiction of the PAPD.

23 3.9 Because the pursuit and collision happened outside of tribal jurisdiction, Officer
24 Vandusen of the PAPD responded to the scene of the accident. Mr. Gonzales told Officer
25 Vandusen what happened, including his arrest of the minor. Mr. Gonzales specifically told
26 Officer Vandusen that he yelled “stop or I’ll shoot” at the fleeing 13 year old boy. Officer

1 Vandusen later reported Mr. Gonzales’s threat of deadly force to Corporal Bruce Fernie with the
2 PAPD, who included the statement in his investigation of the incident.

3 3.10 Shortly after officers with the PAPD arrived, Mr. Gonzales left the scene and
4 went home without filing a report.

5 3.11 The following day, at the prompting of Sergeant Black Crow, Mr. Gonzales filed
6 a report for case number 2019-00002349. In his report, Mr. Gonzales knowingly omitted the fact
7 that he threatened to use deadly force against a fleeing suspect. Instead, Mr. Gonzales included
8 the following language: “I saw a person in a white hoodie with dark jeans running from the
9 scene. I hollered at the suspect to stop running and he complied.”

10 3.12 This language was false, as it failed to include the detail that Mr. Gonzales made
11 a threat of deadly force against a fleeing suspect.

12 3.13 At the prompting of Sergeant Jimmy Thompson to improve his written report,
13 Mr. Gonzales filed an updated report for case number 2019-00002349. The second report
14 removed language speculating about the driver’s motivation to speed away, but also did not
15 include Mr. Gonzales’s threat of deadly force against the fleeing suspect. Instead, Mr. Gonzales
16 included the following language: “I arrived on the scene and saw a person wearing a white hoodie
17 with dark jeans standing near the vehicle. The person started to run away from the scene. I
18 verbally hollered out loud for the suspect to stop. He complied and stop.”

19 3.14 This language was false, as it failed to include the detail that Mr. Gonzales made
20 a threat of deadly force against a fleeing suspect.

21 3.15 Findings 3.11 to 3.14 are based substantially upon the testimony of Sergeant
22 Thompson and Sergeant Black Crow, which the Hearing Panel found to be credible. The Hearing
23 Panel did not find the testimony contradicting these facts given by Mr. Gonzales to be credible.

24 3.16 Mr. Gonzales knew or should have known that he was required to include all
25 threats of deadly force in his police report. By knowingly withholding the fact that he made a
26 threat of deadly force from both versions of his police report, Mr. Gonzales lied by omission.

1 3.17 On or about August 3, 2019, the PAPD informed the Police Department that it
2 was investigating the incident involving Mr. Gonzales. Chief Sam White of the Police
3 Department also initiated an internal investigation into the incident, and assigned Sergeant
4 George Black Crow to the task.

5 3.18 Around this time, the PAPD informed Chief White that Mr. Gonzales yelled “stop
6 or I’ll shoot” at a fleeing suspect. This information was previously unknown to Chief White,
7 because the statement had not been included in Mr. Gonzales’s reports for case number 2019-
8 00002349.

9 3.19 On August 5, 2019, Chief White met with Mr. Gonzales and asked him whether
10 he made a threat of deadly force by shouting “stop or I’ll shoot” at the fleeing suspect. Mr.
11 Gonzales admitted that he did say “stop or I’ll shoot,” but claimed he never pulled his firearm.
12 He said that he yelled “stop or I’ll shoot” to get the suspect to stop running. Mr. Gonzales told
13 Chief White that he chose not to include the “stop or I’ll shoot” language in his police report
14 because he knew it would “look bad.” This finding is based substantially upon the testimony of
15 Chief White, which the Hearing Panel found to be credible. The Hearing Panel did not find the
16 testimony contradicting these facts given by Mr. Gonzales to be credible.

17 3.20 On August 8, 2019, PAPD Corporal Bruce Fernie provided Chief White with a
18 copy of the PAPD’s investigation into the Gonzales incident. The investigation included a
19 finding that Mr. Gonzales yelled “stop or I’ll shoot” at the fleeing minor. Corporal Fernie
20 concluded that Mr. Gonzales violated many PAPD policies during this incident, including their
21 Use of Force policy.

22 3.21 On or about August 8, 2019, following internal investigations by the Police
23 Department and the PAPD, Mr. Gonzales was terminated from employment with the Police
24 Department. Among the many incidents of misconduct sustained by Chief White was the fact
25 that that Mr. Gonzales “knowingly omitted the statement “stop or I’ll shoot” from [the] Lower
26 Elwha Klallam Police Department incident report. . . . because ‘it looks bad.’” Chief White

1 concluded that “this is a use of force statement that has to be documented within the police report.
2 Not documenting the statement is an ethics violation.”

3 3.22 Mr. Gonzales appealed his termination to an arbitration proceeding against the
4 Lower Elwha Klallam Tribe. An arbitration hearing was held on September 5, 2019 before
5 arbitrator Eileen M. Baratuci of Arbitration, Investigation, and Mediation Service, PLLC.

6 3.23 Following the hearing, during which Mr. Gonzales had the opportunity to cross-
7 examine the Police Department’s witnesses and present supporting evidence, the arbitrator
8 upheld Chief White’s decision to terminate Mr. Gonzales’s employment. Regarding the issue of
9 Mr. Gonzales’s decision to withhold the “stop or I’ll shoot” language from his police reports,
10 the arbitrator found such conduct was a “knowing failure” to report a use of deadly force because
11 Mr. Gonzales “knew it would look bad.”

12 3.24 Additionally, though Mr. Gonzales denied telling Chief White that he omitted the
13 use of deadly force language “because it would look bad,” the arbitrator specifically found Chief
14 White’s recollection of the conversation to be credible.

15 3.25 Based on this, as well as other sustained instances of misconduct, the arbitrator
16 denied Mr. Gonzales’s appeal and upheld his termination

17 3.26 Any Conclusion of Law deemed to be properly considered a Finding of Fact is
18 hereby adopted as such.

19 3.27 Based on the foregoing Findings of Fact, the Hearing Panel makes the following:

20 **IV. CONCLUSIONS OF LAW**

21 4.1 Revocation of Respondent Ricardo Gonzales’s peace officer certification is
22 governed by RCW 43.101 and WAC 139-06.

23 4.2 The Washington State Criminal Justice Training Commission and this
24 Hearing Panel have jurisdiction over Mr. Gonzales and these proceedings. RCW 43.101.085;
25 RCW 43.101.105; RCW 43.101.380.

1 4.3 RCW 43.101.105(1)(d) provides that the Commission may revoke a peace
2 officer’s certification when “[t]he peace officer has been discharged for disqualifying
3 misconduct, the discharge is final, and some or all of the acts or omissions forming the basis of
4 the discharge proceedings occurred on or after January 1, 2002.”

5 4.4 The Petitioner bears the burden of proving “discharge for disqualifying
6 misconduct” by “clear, cogent, and convincing evidence.” RCW 43.101.010(8);
7 RCW 43.101.380(1).

8 4.5 RCW 43.101.010(8)(a)(i)(B) defines discharge for “disqualifying misconduct” to
9 include discharge resulting from conduct constituting any of the crimes addressed in
10 RCW 43.101.010(8)(a)(i)(A).

11 4.6 One of the crimes enumerated in RCW 43.101.010(8)(a)(i)(A) is “any crime
12 involving dishonesty or false statement within the meaning of Evidence Rule 609(a).”

13 4.7 Under Washington law, it is a gross misdemeanor to knowingly make a false or
14 misleading material statement to a public servant. RCW 9A.76.175. “Material statement” is
15 defined as “a written or oral statement reasonably likely to be relied upon by a public servant in
16 the discharge of his or her official duties.” RCW 9A.76.175. A person acts with knowledge when
17 he or she is aware of a fact, facts, or circumstances or result described by a statute defining an
18 offense; or he or she has information which would lead a reasonable person in the same situation
19 to believe that facts exist which facts are described by a statute defining an offense.
20 RCW 9A.08.010(b)(i) and (ii). Police officers are public servants. When a police officer makes
21 false or misleading statements in a written report, those statements are necessarily likely to be
22 relied upon by other officers, as well as by prosecutors, judges, and other participants in the
23 criminal justice system in the discharge of their official duties.

24 4.8 If the peace officer requesting a hearing has already received a civil service or
25 arbitration hearing affirming his termination from the employment, the panel may revoke
26 certification if they conclude the officer’s termination was based on “disqualifying misconduct”

1 within the meaning of RCW 43.101.010(8). In making this determination, the panel “need not
2 redetermine the underlying facts but may make this determination based solely on review of the
3 records and decision relating to the employment separation proceeding.” RCW 43.101.380(3).
4 Mr. Gonzales received an arbitration hearing on September 9, 2019, and was found to have
5 knowingly omitted the phrase “stop or I’ll shoot” from his report because he feared it would
6 “look bad.”

7 4.9 The Panel concludes that Mr. Gonzales was discharged for disqualifying
8 misconduct within the meaning of RCW 43.101.010(8).

9 4.10 The Panel concludes that Mr. Gonzales’s discharge is final as that term is defined
10 in RCW 43.101.010(9).

11 4.11 The Panel concludes that the Petitioner established by clear, cogent, and
12 convincing evidence that that on or about August 1, 2019, while employed as an officer with
13 Police Department, Ricardo Gonzales made a false or misleading statement in both an original
14 and updated report filed in case number 2019-00002349. In both reports, the Mr. Gonzales
15 misleadingly claimed that he simply “hollered” at a suspect to stop. In fact, Mr. Gonzales yelled
16 “stop or I’ll shoot” – a threat of deadly force against a fleeing minor who posed no immediate
17 danger to the Respondent or the community. As an officer with years of experience at the Police
18 Department, the Respondent was well aware that threats of deadly force were only permissible
19 when reasonably necessary to accomplish a legitimate law enforcement purpose (i.e. to protect
20 his life or the life of another.) Mr. Gonzales knew or should have known that all threats of deadly
21 force were required to be documented. In fact, in a conversation with Chief White a few days
22 after the incident, the Mr. Gonzales admitted that he purposefully omitted his threat of deadly
23 force from his police report because he knew it would “look bad.”

24 4.12 Mr. Gonzales’s report that he “hollered” when he actually threatened to shoot is
25 a material misstatement of fact meant to deceive his supervisors and fellow officers and disguise
26 the fact that he violated Police Department policy. His statement was “material” within the

1 meaning of RCW 9A.76.175 in that it was “reasonably likely to be relied upon by a public
2 servant in the discharge of his or her official duties.” Officers with the Police Department and
3 PAPD, as well as prosecuting attorneys, defense attorneys, judges, jurors, and other public
4 servants within the criminal justice system either did or would have reasonably relied on the
5 Respondent’s false report had his integrity issues not been exposed. By providing false and
6 misleading statements in both drafts of his report, Mr. Gonzales committed conduct constituting
7 the crime of making a false or misleading statement to a public servant. This conduct is
8 disqualifying misconduct under RCW 43.101.010(8)(a)(i)(B).

9 4.13 Mr. Gonzales’s disqualifying misconduct warrants revocation of his peace officer
10 certification. Not only did he knowingly withhold the fact that he threatened to use deadly force
11 in an original versions of his report for case number 2019-00002349 – he intentionally omitted
12 this crucial information from an updated report as well. His admission that he was worried the
13 threat of deadly force would make him “look bad” indicates that he knew precisely what he was
14 doing when he omitted it from his report. Mr. Gonzales’s conduct demonstrates exceedingly
15 poor judgement and a willingness to engage in dishonest behavior. In addition to Mr. Gonzales’s
16 disqualifying misconduct, his lack of knowledge and understanding of various Police
17 Department policies was also troubling. His termination from employment was upheld by an
18 independent arbitrator, who had serious concerns about his ethics and integrity. Given the facts
19 of this case, revocation is the appropriate sanction.

20 4.14 Any finding of fact deemed to be properly considered a conclusion of law is
21 hereby adopted as such.

22 ///

23 ///

24 ///

25 ///

1 **V. ORDER**

2 5.1 Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing
3 Panel now therefore issues the following ORDER:

4 That Mr. Gonzales's peace officer certification is hereby REVOKED.

5
6 Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a
7 petition for reconsideration stating the specific grounds on which relief is requested. No matter will
8 be reconsidered unless it clearly appears from the petition for reconsideration that: (a) there is a
9 material clerical error in the Order, or (b) there is specific material error of fact or law. A petition
10 for reconsideration, together with any argument in support thereof, should be filed by mailing or
11 delivering directly to the Washington State Criminal Justice Training Commission, 19010 1st
12 Avenue South, Burien, Washington, 98148, with a copy to all other parties of record and their
13 representatives. Filing means actual receipt at the Commission's office. RCW 34.05.010(6).

14 A timely Petition for Reconsideration is deemed denied if, within twenty days from the date
15 the petition is filed, the Commission does not (a) dispose of the petition or (b) serve the parties with
16 a written notice specifying the date by which it will act on a petition. An order denying
17 reconsideration is not a prerequisite for filing a petition for review.

18 The filing of a petition for reconsideration does not stay the effectiveness of this Order. Any
19 such requests should be made in connection with a Petition for Judicial Review made under chapter
20 RCW 34.05.

21 Proceedings for judicial review may be instituted by filing a petition in superior court
22 according to the procedures specified in chapter RCW 34.05. The petition for judicial review of this
23 Order shall be filed with the appropriate court and served on the Commission, the Office of the
24 Attorney General, and all parties within thirty (30) days after service of this Order, as provided in
25 RCW 34.05.542(2).
26

1 For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review,
2 service is effective upon deposit of this order in the U.S. mail. RCW 34.05.010(19).

3 DATED this 11th day of March, 2021.

4
5 
6 _____
7 Professor Matthew Hickman
8 Seattle University
9 Presiding Panel Member
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26