

# faced no criminal charges

## Were disciplined for coming to work drunk

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GREEN BAY – Two officers from the Brown County Sheriff's Office were disciplined for reporting to work while intoxicated, but were not referred for criminal charges despite circumstances that suggested both drove to work drunk and were in the possession of a firearm while under the influence.



**Delain**



**Gossage**

Each instance prompted Sheriff Todd Delain, who at the time was chief deputy, to launch an internal workplace investigation. Following the investigation, Delain recommended disciplinary action, including suspensions and mandatory alcohol tests, that was approved by then-Sheriff John Gossage.

Rumors that the deputies had dodged significant consequences after driving to work drunk and armed began circulating prior to the November 2018 sheriff's election. USA TODAY NETWORK-Wisconsin obtained the employees' disciplinary records through a request filed under the Wisconsin Open Records Law.

The department's response to the open records request included a third incident in which a correctional officer at the jail was found sleeping on the floor in a locker room before the start of his shift.

The documents show the conditions and severity of the violations varied, but none of the employees was referred to the Brown County District Attorney's Office for drunken driving violations or possessing a firearm while under the influence of alcohol even though both were deemed unfit to work on the day of their infractions and were told they shouldn't drive and needed to find a ride home.

The incidents at a glance:

■ A breath test estimated Deputy Christopher Laux had a blood alcohol content of 0.114 percent after reporting to the Brown County Sheriff's Office for a regularly scheduled afternoon patrol shift on May 19, 2018. He re-

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ceived a five-day suspension without pay. Laux remains an employee of the sheriff's office.

■ Richard Kurth, a now-retired Brown County patrol sergeant, had a 0.081 percent blood alcohol content, after reporting to work for a regularly scheduled morning shift on Feb. 21, 2015. He received a 24-day suspension without pay.

■ Joshua Larmay, a former Brown County Jail correctional officer, was found "unresponsive" on the floor of an employee locker room on Aug. 5, 2017, after being dropped off at the jail several hours before the start of a shift. His blood alcohol content was determined to be 0.04 percent when he submitted to a Breathalyzer test hours after he arrived at the jail. Larmay was fired as the result of the incident and a series of previous employee-conduct violations.

## What happened

According to their disciplinary records, Laux and Kurth admitted to sheriff administrators that they consumed alcohol the night before their shifts, but both said they did not believe they were impaired when they got to work.

Laux, an employee of the sheriff's office since 2015, was found to be under the influence of alcohol May 19, 2018, after a supervisor reported smelling alcohol on Laux's breath and noticing that his eyes "appeared tired and droopy." Laux had approached the supervisor at the start of his 2 p.m. shift to ask for the following day off of work.

He was stopped by sheriff's officials as he was pulling his squad car out of the department's garage. A student intern assigned to ride with him that day was in the passenger seat.

Laux initially told supervisors that he had a few drinks the night before. A breath test that Laux voluntarily took as part of the office's investigation, estimated his blood alcohol content at 0.114 percent.

In followup interviews, Laux said he started drinking around noon the previous day and continued to drink for nearly 15 hours, stopping about 3 a.m. — roughly 11 hours before the start of his shift. He admitted to being "incredibly hung over," but he said he did not realize he was still "under the influence of alcohol or intoxicated."

Had he known, he said, we would asked for the day off. He also admitted he had driven himself home at the end of his night out.

According to a hearing transcript, Laux admitted he had a problem he "needed to figure out," as supervisors laid

out details from a background check that revealed concerns about alcohol use and being hungover at two prior jobs, including one at the Brown County Jail.

In the end, Laux was suspended without pay for five days and became subject to random Breathalyzer tests — all of which he has passed. The random tests are set to end July 31.

Kurth, who worked for the sheriff's office for about 30 years, was found to be under the influence of alcohol at work Feb. 21, 2015, after a colleague reported smelling alcohol on Kurth's breath at the start of his shift at 5:45 a.m. A breath test estimated his blood alcohol content at 0.081 percent, right on the threshold of being legally drunk.

Records show Kurth drove to work that day from Oconto County and had intended to drive a squad car.

Kurth told administrators that in the past he had "come in to work in the same condition as the morning in question" and that he thought he was in good condition to work.

He said the pressure associated with a leadership position, along with personality conflicts with a number of deputies, added stress to his life which he felt prompted him to turn to alcohol.

In subsequent hearings, Kurth said he had taken a number of steps to better and more safely manage the stress in his life and that an incident like the one that happened would never happen again.

Kurth was suspended for 24 days without pay and was also subject to random breath tests, all of which he passed. He has since retired.

In both incidents, sheriff's officials had the employees arrange to be taken home by "a responsible party." Administrators also expressed their intention to connect the employees with employee resources to address alcohol use and mitigate future problems.

Multiple attempts to reach Laux and Kurth for comment over the last three weeks were unsuccessful. They were, however, made aware by law, that their discipline records were being given to the Press-Gazette.

## Probable cause lacking; discipline explained

According to the disciplinary records, each of the employees violated sheriff's office policies regarding alcohol use. Other violations included failure to exercise common sense and affirmatively promote the organization's values, neglect of duty, committing unsafe acts and endangering self or others, unbecoming conduct and medical, physical and psychological readiness to perform duties and tasks.

However, the employees were not referred for prosecution because the circumstances did not provide probable

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**Former Sheriff John Gossage**

cause to make arrests, officials said.

Brown County District Attorney David Lasee said his office was not made aware of either of the incidents at the time they occurred. After reviewing the sheriff's office's records at the request of USA TODAY NETWORK-Wisconsin, Lasee said a number of factors would have made prosecution difficult.

Lasee said there needs to be initial evidence of impairment to establish probable cause to begin the type of investigation that would result in a criminal complaint or citation.

In each of the incidents, Lasee said, those who reported the smell of intoxicants did not report seeing the employees drive a car, stumble as they got out of a vehicle, or fall against walls while walking.

“There weren't any observations of physical impairment,” Lasee said. “If there ever was, the sheriff's office, I would hope, as with any law enforcement agency, would pursue a criminal investigation.”

Once it became an investigation of violations of workplace rules, he said, any statements made by the employee are considered “compelled” and are not admissible in court.

In other words, the sheriff's office required the employees to cooperate and make the statements.

“All of this involves the right to be able to conduct a search, and how the Fourth Amendment relates to a workplace investigation,” Lasee said.

Breath test results, Lasee added, also are not admissible in court to prove guilt.

In a typical drunken driving arrest, a breath test is administered after a suspected drunken driver has performed physical field-sobriety tests. If the driver fails the sobriety tests and a preliminary breath test produces a blood-alcohol content over the legal limit, a blood sample can be taken to determine the amount of alcohol in a person's bloodstream. The blood test is used in court as the proof of intoxication.

When asked what sort of infraction would warrant the sheriff's office to forgo an internal investigation, and instead pursue criminal charges, Delain, who declined an in-person interview with a reporter, wrote in an email:

“The Sheriff's Office completes an internal investigation for alleged work rule/policy violations. The pursuit of criminal charges is based on the legal standard for the law violation. If probable cause exists to make an arrest, then an arrest should be made. The independent internal investigation for the work rule/policy violations will parallel or follow, but shall not impede the criminal investigation.”

What was lacking in these cases, Delain wrote in a followup email, was evidence that a crime was committed before the employees arrived at work. He wrote that supervisors did not initially have reason to believe that the employees were impaired and that the odor of alcohol on the employees' breath without other signs of impairment is not enough to make an arrest.

Former Sheriff John Gossage, who left office in January, declined to discuss the department's discipline decisions or the office's policy regarding alcohol-related workplace violations and the potential impact on public safety. He instead submitted a statement via email in which he wrote that he does not discuss personnel matters, “unlike some other law enforcement administrators.”

He added that “the incidents were investigated in a timely fashion and sanctions imposed; as we would with any alleged or reported policy violation.”

He ended the email, without explanation, by attaching USA TODAY NETWORK's Principles of Ethical Conduct For Newsrooms.

Records show Gossage told Laux, “It's extremely concerning to me that not only did we have you put yourself at risk, but you put the public at risk ... This is extremely concerning for me being tasked with maintaining public safety.”

Delain said that when recommending or approving punishment, he considers the nature of the violation, the employee's work history and any mitigating or aggravating circumstances, adding that a veteran officer of higher rank would be held to a higher standard than a relatively new officer.

He said the sheriff's office will continue to promote officer wellness and other programs to prevent future incidents like these. He said it is important for agency leadership to allow for self-disclosure and have known, trusted and easily accessible resources available for employees struggling with alcohol use or other mental health problems.

“It is reported that law enforcement has higher rates of alcohol use and abuse than the general population; the divorce rate for first marriages is 60-75 percent; and officers often struggle with stress, fatigue and sleep disorders,” he wrote. “It is further reported there is a direct connection between trauma exposure and AODA (Alcohol and Other Drug Abuse).”