

**VOLUSIA COUNTY SHERIFF'S OFFICE
INTERNAL AFFAIRS**

REPORT OF INVESTIGATION

REPORT NUMBER: IA-12-008

PERIOD COVERED: April 11, 2012
DATE REPORTED: April 12, 2012
SUBJECT(S) NAME: Investigator Justin Martir I.D. 7276
INVESTIGATING OFFICER: Investigator Glen Bennett

BASIS FOR INVESTIGATION:

On April 11, 2012, Investigator Justin Martir was summoned to a meeting by his immediate supervisors, Lieutenant Sean Gowan and Sergeant Jessica Paugh in order to review his job performance in the Criminal Investigations Division at District-4. Investigator Martir attended the meeting and used his personal digital audio recorder to record the meeting surreptitiously without authorization which is a criminal violation of Florida Statute 934.

OFFENSE(S):

This investigation is relevant to an alleged violation of Department Standards Directives:

26.2.118 Code of Ethics for Public Officers and Employees - Employees shall strictly adhere to the code of ethics for public officers and employees and shall not violate the Code of Ethics for Public Officers and Employees as set forth in Florida law and the County Merit System. *(Violation subject up to dismissal.)*

26.2.99 Intentional Abuse of Equipment or Vehicles - Employees shall ensure the maintenance and utilization of Department or County equipment is in accordance with established procedures and shall not intentionally abuse, misuse or damage said equipment or vehicles. *(Violation subject up to a demotion.)*

26.2.130 Commission of Felony - Department personnel shall not commit any act or crime defined by state or federal law as a felony, whether chargeable or not. *(Violation subject to dismissal.)*

26.2.34 Failure to Follow Directive or Order - Employees shall adhere to all official Directives and/or orders, and shall faithfully execute all the duties and responsibilities of their assigned position. *(Violation subject up to a 5 day suspension.)*

Sec. 86-45. Conduct of Employees (a) Employees of Volusia County government are employed to provide service to the citizenry of Volusia County and the public in general and are expected to conduct themselves in a manner that will reflect credit on the County government, public officials, fellow employees and themselves. Employees must avoid any action, which might result in, or create the impression of, using public office for private gain, giving preferential treatment to any person, or losing impartiality in conducting public business.

Volusia County Merit System Rules and Regulations 86-453 (13). Any conduct, on or off duty, that reflects unfavorably on the County as an employer. *This violation may be sufficient grounds for disciplinary action ranging from oral reprimand to dismissal, depending on the seriousness of the offense and other circumstances related to the situation.*

INVESTIGATIVE SUMMARY:

On April 11, 2012, Investigator Martir was summoned to a meeting with Sergeant Paugh and Lieutenant Gowan to address his job performance. The closed door meeting took place in Lieutenant Gowan's office and only Sergeant Paugh, Lieutenant Gowan and Investigator Martir were present. The discussion during the meeting focused on Investigator Martir's work performance and what was expected of him. At the conclusion of the meeting, which lasted approximately forty minutes, Investigator Martir exited Lieutenant Gowan's office. That was when Sergeant Paugh advised Lieutenant Gowan that she (Sergeant Paugh) believed Investigator Martir recorded their meeting because she saw what she believed to be a digital audio recorder in his (Investigator Martir) pocket. Investigator Martir was then asked to come back into Lieutenant Gowan's office where he admitted to recording their meeting without consent and he placed the digital audio recorder on Lieutenant Gowan's desk. At that point Investigator Martir was relieved of duty and sent home by Lieutenant Gowan. Later that day, Lieutenant Gowan and Sergeant Paugh both received an e-mail from Investigator Martir's personal e-mail account. The subject of that e-mail was titled "Apology" and the narrative contained an apology for Investigator Martir's actions of recording the meeting.

On April 12, 2012, Chief Deputy Mike Coffin assigned the above-described incident to the Internal Affairs Unit for investigation. The Florida Department of Law Enforcement was contacted for an independent review to determine if there was a basis for criminal charges. Investigator Glen Bennett and Sergeant Tom Tatum served Investigator Justin Martir with a Notice of Internal Investigation and he was provided a copy of his Officer Bill of Rights. Investigator Martir was then relieved of his duties as a Deputy Sheriff and reassigned to the Communications Center pending the outcome of the investigation. Later that day Investigator Bennett and Sergeant Tatum met with Lieutenant Gowan and took possession of the digital audio recorder. *(See Tab-B for Official Correspondence)*

On April 13, 2012, Special Agent Josh Mead with the Florida Department of Law Enforcement was assigned as the case agent and he was briefed by the Internal Affairs Unit on the circumstances surrounding the case.

Lieutenant Sean Gowan

On April 19, 2012, Special Agent Mead conducted a sworn interview with Lieutenant Gowan in relation to Investigator Martir's recording of their meeting on April 11, 2012. The following is a summary of that interview:

Lieutenant Gowan described the meeting on April 11, 2012 with Investigator Martir as a follow up from a previous meeting that had taken place where deficiencies had been addressed with his assigned case load. Lieutenant Gowan stated that the meeting took place in his office at District-4 and the only people present were Sergeant Paugh, Investigator Martir and himself. Lieutenant Gowan explained that the door to his office was closed and it was a private meeting to address whether or not Investigator Martir wanted to remain in the CID and if so, how he needed to better manage his assigned cases.

Special Agent Mead asked Lieutenant Gowan what happened after the meeting concluded and Lieutenant Gowan stated that Sergeant Paugh advised him that she believed Investigator Martir recorded the meeting. Lieutenant Gowan stated that he was told by Sergeant Paugh that she noticed something in Investigator Martir's pocket but wasn't sure at first until he got up to leave the room and that was when she identified the outline in his pocket as a recorder. Lieutenant Gowan went on to say that the face of the recorder lights up when it is recording and Sergeant Paugh said that she could see the illumination indicating that the recorder was on.

Lieutenant Gowan said that he asked Sergeant Paugh to have Investigator Martir return to his office. Lieutenant Gowan then asked Investigator Martir, "*Did you record our previous conversation?*" and Investigator Martir replied, "*Yes I did.*" Lieutenant Gowan asked him if he had the recorder on him and Investigator Martir said that he did and he placed the recorder on the desk. Special Agent Mead then asked Lieutenant Gowan if Investigator Martir gave any inclination as to what his intentions were for recording the meeting. Lieutenant Gowan said that Investigator Martir told him he had no malicious intent when he recorded the conversation and that he just wanted to record the meeting because he knew it was important and he wanted to be able to reflect back on it as to not miss any important points.

Special Agent Mead asked Lieutenant Gowan why he thought Investigator Martir recorded the meeting and Lieutenant Gowan replied, "*My opinion is that he was recording that conversation in hopes that Sergeant Paugh would say something either out of line or what he would deem inappropriate.*" Lieutenant Gowan went on to say that if something was said inappropriate Investigator Martir could possibly use it in defense of his actions.

Special Agent Mead asked Lieutenant Gowan if Investigator Martir was aware of Florida Statute 934 and he said that Investigator Martir has made controlled phone calls in the past and used Florida Statute 934. Lieutenant Gowan then explained the department procedures for conducting a controlled phone call which includes reviewing Florida Statute 934. (*See Tab-H for F.S. 934*)

Lieutenant Gowan was then asked if he took notes during the interview with Investigator Martir and were they going to be used for any kind of evaluation, reassignment or demotion. Lieutenant Gowan stated that he did not keep notes during the meeting but would have expected Sergeant

Paugh to handle that. (See Tab-D for transcript)

Sergeant Jessica Paugh

On April 20, 2012, Special Agent Mead conducted a sworn interview with Sergeant Paugh in regards to Investigator Martir's recording of their meeting on April 11, 2012. The following is a summary of that interview:

Sergeant Paugh described the meeting with Investigator Martir as a follow up from a previous case management review. Sergeant Paugh said that the meeting took place behind closed doors in Lieutenant Gowan's office with only Lieutenant Gowan, Investigator Martir and herself present. Sergeant Paugh stated that the meeting was to review Investigator Martir's case performance and to evaluate whether or not he wanted to stay in CID and if so to find a way to improve his performance.

Sergeant Paugh said that while the three of them sat in Lieutenant Gowan's office talking she noticed what looked like a recording device in Investigator Martir's right pants pocket. Sergeant Paugh stated that when the meeting concluded and Investigator Martir stood up to exit the room, she could see what she believed to be a digital recorder. Sergeant Paugh said that she could clearly see the illuminating face of the recorder which indicated it was turned on.

Sergeant Paugh stated that after the meeting concluded she advised Lieutenant Gowan that she thought Investigator Martir had a recorder in his pocket. At that point Sergeant Paugh said she contacted Investigator Martir at his desk and asked him to come back into Lieutenant Gowan's office. After they closed the door to the office, Sergeant Paugh said that Lieutenant Gowan asked Investigator Martir if he recorded the meeting. Sergeant Paugh said Investigator Martir stated that he did record the meeting and that was when he pulled the recorder out of his pocket and placed it on the desk.

Special Agent Mead asked Sergeant Paugh if she had taken any notes during the meeting and could it lead to Investigator Martir ultimately being reassigned, demoted or to receive any type of disciplinary action. Sergeant Paugh replied. *"I would have made notes on the meeting just that we were part of it and it could have potentially be reassignment but it also could have been proof of a corrective action."*

Sergeant Pugh was asked if Investigator Martir provided an explanation for recording the interview and she stated he did. Sergeant Paugh said Investigator Martir explained that he recorded the interview so he could have the ability to reflect back on the meeting. Special Agent Mead asked Sergeant Paugh her opinion as to why she thought Investigator Martir recorded the meeting and she said, *"I feel that he may have used it later for like an adverse effect on me or the Lieutenant."* (See Tab-E for transcript)

On May 2, 2012, the meeting that Investigator Martir recorded was reviewed and transcribed by the Internal Affairs Unit. Investigator Bennett met with Special Agent Josh Mead at his office and turned over the digital audio recording device to him, along with a copy of the recording transcript.

On May 11, 2012, Special Agent Mead concluded his investigation and filed a charging affidavit against Investigator Martir with the State Attorney's Office, for Unlawful Interception of Oral Communication.

On May 15, 2012, Investigator Bennett obtained a copy of the e-mail titled "Apology" that Investigator Martir sent to Sergeant Paugh and Lieutenant Gowan on April 11, 2012 from his personal e-mail account after the meeting. *(See Tab-G for copy of e-mail)*

On May 17, 2012, Investigator Bennett obtained a copy of a "Permission to Intercept Oral Communications" document that Investigator Martir had witnessed in relation to VCSO case #11-35956. *(See Tab-I for copy of Permission to Intercept Oral Communications)*

Investigator Justin Martir

On May 22, 2012, Investigator Bennett and Sergeant Tatum conducted an interview with Investigator Martir. Also present for the interview was Deputy Josh Vedder, Bob Walker and Michael Politis. The following is a summary of that interview:

Investigator Martir described the meeting on April 11, 2012 with Sergeant Paugh and Lieutenant Gowan as a closed door meeting in reference to his job performance in CID. Investigator Martir further stated that he had been counseled by Sergeant Paugh in the past on his job performance and expected this meeting would be a follow up to evaluate his progress.

Investigator Martir told investigator that he used his personal digital audio recorder on April 11, 2012 to record the meeting between Sergeant Paugh, Lieutenant Gowan and himself. Investigator Martir was then asked if he was aware at the time that it was illegal to record another person or persons without that their knowledge and he replied, *"I was not thinking upon going into the meeting. It was a spontaneous action by myself and I didn't think about it prior, didn't think about it the entire day up to the time I was told hey look we're having a meeting."* Investigator Bennett then asked Investigator Martir if he advised either Sergeant Paugh or Lieutenant Gowan that he was recording the meeting and he stated, *"No sir."*

Investigator Martir was asked if he ever had to utilize a recorder for the purpose of recording a conversation while conducting an investigation and he said that he had a handful of times. Investigator Bennett asked Investigator Martir if he was familiar with Florida Statute 934.103 which pertains to the interception of communication, and he replied said he was. Investigator Martir was then asked if he had received any training in using recording devices to capture oral communications during an investigation and he stated that he did not. According to Investigator Martir, the only training that he received in utilizing recording devices was by other investigators.

Investigator Martir was asked why he recorded the meeting between Sergeant Paugh, Lieutenant Gowan and himself and he replied, *"I wanted to make sure that I completely understood what their expectations were of me...."* Investigator Martir was then asked why he didn't just take notes and he stated, *"I, like I said I wasn't thinking at the time."*

Investigator Bennett asked Investigator Martir if he sent an e-mail to Sergeant Paugh and Lieutenant Gowan after the meeting on April 11, 2012 from his personal e-mail account and he replied, "Yes sir." The subject of the e-mail was titled "Apology" and Investigator Martir wrote that he was sorry for recording their conversation. The last line of narrative in the e-mail read, "Just know that I meant no disrespect towards either of you and I was not clearly thinking when I walked into the office." (See Tab-F for transcript)

Investigator Martir's response to the policy violations:

26.2.118 Code of Ethics for Public Officers and Employees - Employees shall strictly adhere to the code of ethics for public officers and employees and shall not violate the Code of Ethics for Public Officers and Employees as set forth in Florida law and the County Merit System. *(Violation subject up to dismissal.)* Yes

26.2.99 Intentional Abuse of Equipment or Vehicles - Employees shall ensure the maintenance and utilization of Department or County equipment is in accordance with established procedures and shall not intentionally abuse, misuse or damage said equipment or vehicles. *(Violation subject up to a demotion.)* No

26.2.130 Commission of Felony - Department personnel shall not commit any act or crime defined by state or federal law as a felony, whether chargeable or not. *(Violation subject to dismissal.)* Yes

26.2.34 Failure to Follow Directive or Order - Employees shall adhere to all official Directives and/or orders, and shall faithfully execute all the duties and responsibilities of their assigned position. *(Violation subject up to a 5 day suspension.)* Yes

Sec. 86-45. Conduct of Employees (a) Employees of Volusia County government are employed to provide service to the citizenry of Volusia County and the public in general and are expected to conduct themselves in a manner that will reflect credit on the County government, public officials, fellow employees and themselves. Employees must avoid any action, which might result in, or create the impression of, using public office for private gain, giving preferential treatment to any person, or losing impartiality in conducting public business. No

86-453 (13) Volusia County Merit System Rules and Regulations - Any conduct, on or off duty, that reflects unfavorably on the County as an employer. *(This violation may be sufficient grounds for disciplinary action ranging from oral reprimand to dismissal, depending on the seriousness of the offense and other circumstances related to the situation.)* No

On May 30, 2012, Investigator Bennett verified that the digital audio recorder that Investigator Martir used to record the meeting on April 11, 2012 was not issued to him by the Sheriff's Office. Later that day the Sheriff's Office received official notification that State Attorney's Office filed a "No Information" of the criminal case. (See Tab-H for court disposition)

CONCLUSION:

On June 11, 2012, this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the below listed Department Standards Directives to be:

26.2.118	Code of Ethics for Public Officers and Employees-	Sustained
26.2.99	Intentional Abuse of Equipment or Vehicles-	Unfounded
26.2.130	Commission of Felony-	Sustained
26.2.34	Failure to Follow Directive or Order-	Sustained
Sec. 86-45	Conduct of Employees-	Sustained
86-453 (13)	Volusia County Merit Rules and Regulations-	Sustained

On June 14, 2012, Investigator Martir was served with the Intent to Terminate letter signed by the Sheriff. Investigator Martir scheduled an appointment to meet with the Sheriff on Friday June 22, 2012. *(See Tab-B for Official Correspondence)*

On June 22, 2012, Investigator Martir met with the Sheriff Johnson. After earnest consideration, Sheriff Johnson's decision remained unchanged and Investigator Martir was served with his final letter of Termination later that day. *(See Tab-B for Official Correspondence)*

EXHIBIT(S):

- A. Report of Investigation
- B. Official Correspondence
- C. Advisement of Rights and Administration of Oath/Perjury Warning
- D. Transcript of interview with Lieutenant Gowan
- E. Transcript of interview with Sergeant Paugh
- F. Transcript of interview with Investigator Martir
- G. Copy of e-mail
- H. Copy of Florida Statute 934 and court disposition
- I. Copy of Permission To Intercept Oral Communications form
- J. Audio CD of recorded interview

WITNESSES:

Lieutenant Sean Gowan
Volusia County Sheriff's Office

Sergeant Jessica Paugh
Volusia County Sheriff's Office

I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the suspect of the investigation of any rights contained in ss. 112.532 and 112.533, Florida Statutes.

INVESTIGATOR: _____ DATE: _____

**Investigator Glen Bennett
Internal Affairs Investigator**

APPROVED BY: _____ DATE: _____

**Chief Deputy Mike Coffin
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA**