

VOLUSIA COUNTY SHERIFF'S OFFICE INTERNAL AFFAIRS

REPORT OF INVESTIGATION

REPORT NUMBER: IA- 10-017

PERIOD COVERED: July 27, 2010

DATE REPORTED: August 10, 2010

SUBJECT(S) NAME: Deputy David Higgins #7034

INVESTIGATING OFFICER: Investigator James Gabriel

BASIS FOR INVESTIGATION:

On Tuesday August 10, 2010, Sergeant Jeff McDonnell authored an e-mail which addressed concerns regarding Deputy Higgins. According to the e-mail on August 4, 2010, Deputy Maxwell was dispatched to an address in Deltona in order to retrieve additional ammunition for a handgun that was allegedly turned into Deputy David Higgins on July 27, 2010. Sergeant McDonnell's investigation revealed that on July 27, 2010, Deputy Higgins did in fact respond to the residence. However, no original report was generated by Deputy Higgins, and the firearm was allegedly converted to his (Deputy Higgins) personal use.

OFFENSE(S):

26.2.95 Handling Monies and Property - Money or other property coming into the possession of Department personnel which does not belong to such personnel shall be delivered to the proper custodian, and a report shall be made of the transaction in accordance with the provisions of Chapters 17, 83 or 84, as applicable. *(Violation subject up to a 5 day suspension)*

26.2.96 Processing Property and Evidence - Property and evidence which have been received in connection with official duties will be processed in accordance with the provisions of Chapters 83 and 84. Department personnel shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property or evidence held in connection with an investigation or other official action except in accordance with established procedures. *(Violation subject up to dismissal)*

To Wit: 84.1.3 All property coming in to a Deputy's custody shall be turned in, complete with all proper documentation, as soon as possible after being received by the Deputy. All Property shall be

turned into a designated temporary evidence locker or the Evidence Section. Under no circumstances shall a Deputy or Investigator retain evidence or property beyond their tour of duty each day.

84.1.14 *All property shall be recorded as specified in Directive 83.1. This shall include a complete description of each item of property on the property report in the property listings section. Each report shall describe in detail how and why each piece of property came into the Deputy's possession.*

And, 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 August 17, 2010, Chief Deputy William Lee assigned the above-described incident to the Internal Affairs Unit for investigation. This report details the investigation conducted by Investigator James Gabriel.

On August 18, 2010, Investigator Gabriel of the Internal Affairs Unit, served Deputy David Higgins with a Notice of Internal Investigation and provided him with a copy of the Law Enforcement Officers Bill of Rights.

With regard to the e-mail sent by Sergeant McDonnell to Lieutenant Hughes it described in detail the sequence of events regarding the handling of the handgun and ammunition. On 08/04/10 Deputy Maxwell responded to a service call at 1525 N. Normandy Blvd. Deltona. Deputy Maxwell was delayed in his response he therefore called the reporting party Sharon Heaney and told her of the delay. He learned from her during that conversation that she wanted to turn in ammunition for a firearm that she had previously given to Deputy Higgins several days earlier. Deputy Maxwell then attempted to locate a case number for his supplement and found that no original case number existed. Deputy Maxwell then relayed this information to Sergeant McDonnell who in turn told Deputy Maxwell to clear himself from the case and he would follow up on it.

Sergeant McDonnell then contacted Ms. Heaney via telephone and learned from her that several days earlier her uncle had passed away and she had found a firearm in the residence. She then called the Sheriff's Office in order to turn the weapon in for destruction. (07/27/10) She indicated that it was Deputy Higgins who had responded to the residence. He told her that he would like to have the weapon for his personal use and would utilize it for a back up weapon while on duty as a Deputy Sheriff. She indicated that this was an acceptable solution and gave Deputy Higgins the weapon. No money had changed hands. Sergeant McDonnell informed her that a deputy would be by shortly to pick up the ammunition. Sergeant McDonnell then checked CAD and found that Deputy Higgins failed to obtain a case number. In addition he noticed Deputy Higgins cleared the call for service with a comment that read "*the family elected to make other plans*" in regards to

disposal of the weapon. After learning this Sergeant McDonnell then notified Lieutenant Hughes of the incident.

The e-mail also described how Deputy Martir had a brief involvement in the pending call to turn over the ammunition. Deputy Martir observed the pending call and proceeded to meet with Ms. Heaney. She told Deputy Martir that she had previously turned over a weapon to Deputy Higgins and now wanted him to have the ammunition as well. Deputy Martir, not realizing the "agreement" that she had made with Deputy Higgins, called Deputy Higgins to advise him about the ammunition. He advised Deputy Martir that he would get with him upon returning to work and retrieve the ammunition. Deputy Martir then advised Sergeant McDonnell about the call and was told to turn the ammunition over to Deputy Maxwell. Deputy Maxwell subsequently completed a found property report for the ammunition. (See case #10-24125) According to Deputy Maxwell's report he collected two empty Walther gun magazines, one empty 25 caliber magazine, eight individual 25 caliber rounds and one hundred individual .380 caliber rounds. (See Tab-E)

On August 24, 2010, Investigator Gabriel along with Sergeant Timothy Morgan conducted a recorded interview with Deputy David Higgins at the Sheriff's Administrative office located in Deland. (Deputy Higgins elected not to have a representative with him)

Deputy David Higgins

During Deputy Higgins sworn statement, he advised he has been employed as a Deputy Sheriff for approximately five years. He stated that his current assignment is Deltona District IV, and that he was indeed on duty on July 27, 2010. (The date of the incident) Deputy Higgins indicated that on that date he had been dispatched to 1525 N. Normandy Blvd. Deltona with regard to meeting with Ms. Sharon Heaney, and she wanted to turn her deceased family member's firearm over to VCSO for destruction.

Deputy Higgins stated that during his initial conversation with Ms. Heaney he told her that there were numerous options on how to handle the disposition of the weapon. One of the options included giving him the firearm as a "*back up weapon*." Ms. Heaney therefore agreed to turn it over to him for his personal use. Deputy Higgins stated he provided her a handwritten receipt that they both agreed upon and signed. There was no date on the receipt but the firearm (a colt .25) was listed as well as each of their signatures. The time of "*2010 hrs.*" was also written on the receipt. During the interview Deputy Higgins was shown a copy of the receipt and asked if he had composed it. He acknowledged that he indeed had written it. Deputy Higgins was asked why the time of 2010 hours was noted on the receipt but he had no explanation. (Note: he took possession of the firearm during the morning of July 27, 2010) Deputy Higgins further advised that no monies exchanged hands during the "transaction." Deputy Higgins advised he took possession of the firearm and three boxes of ammunition while at the residence. Additionally, he advised he failed to obtain a case number or complete an incident report. Deputy Higgins advised he also failed to advise his supervisor of the transaction.

This Investigator asked Deputy Higgins if he still had the firearm in his possession. He stated

that he had the firearm and three boxes of .25 caliber ammunition in his possession. (At his home) Deputy Higgins was asked what his "normal" procedure was for handling found property. He advised that he would normally pull a case number and complete a property report. (Note: during the interview he said that he knew of other Deputies that had done the same thing as in this case and had not completed a report.) He further advised that this was the only incident whereby he had taken possession of property from a reporting party and not completed a report. Deputy Higgins was then asked to look back on the incident and reflect on whether or not he should have completed a report. He stated that he should have generated a report and then turned the weapon into evidence.

During the interview Deputy Higgins advised he attempted to separate himself from the Sheriff's Office and was trying to portray himself as a private citizen during the transaction. However, he acknowledged that he was on duty and wearing a VCSO uniform and had been dispatched to the residence. Deputy Higgins advised he was responsible for providing Mrs. Heaney with the option of giving him the firearm for his personal use as a back up weapon.

At the conclusion of the interview each of the offenses listed on the Notification of Internal Investigation were read to him. He was then asked if he thought that he violated each of them. He acknowledged that he had indeed *violated* Department Directive 26.2.96 Processing Property and Evidence and Department Directive 26.2.95 Handling Monies and Property. However, he did not think that he violated 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. (See Tab-D for complete transcript)

Conclusion:

On August 31, 2010, this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the above listed Department Standards Directives to be: **Sustained**

On Thursday, September 9, 2010, Deputy David Higgins submitted a letter of resignation to Sheriff Ben Johnson.

EXHIBIT(S):

- A) Official Correspondence
- B) Property report #100024125 (Deputy William Maxwell)
- C) Copy of "receipt" composed by Deputy Higgins
- D) Transcript of interview - Deputy Higgins
- E) E-mail from Lieutenant Hughes to Lieutenant Goggin dated 08/10/10
- F) Call histories pertaining to this case

G) Compact Disc containing interview with Deputy Higgins

WITNESSES:

Mrs. Sharon Heaney
1525 N. Normandy Blvd. Deltona, Fl.

Sergeant Jeff McDonnell
VCSO District 4

Deputy William Maxwell
VCSO District 4

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.

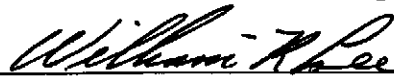
INVESTIGATOR: _____



Investigator James Gabriel
Internal Affairs Investigator

DATE: 10/7/10

APPROVED BY: _____



Chief Deputy William R. Lee
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA

DATE: 10/13/10