



Brevard County Sheriff's Office  
Titusville, Florida

**MEMORANDUM**

**TO:** Chief Michael J. Lewis  
**FROM:** Agent Kraig Hupfer, Staff Services Unit  
**DATE:** August 12, 2016  
**RE:** Command Inquiry 2016-CI-017

**I. Summary**

On June 04, 2016, Deputy Andrew Wimberly contacted the Titusville Police Department in reference to a domestic disturbance incident with the mother of his child, Cydney Justice, at the Shell Convenience store located at 3465 Garden Street in Titusville (Refer to TPD case#2016-00031743). Deputy Wimberly stated that they had agreed to meet at the Shell Convenience store to exchange their child pursuant to a court ordered child custody agreement. Deputy Wimberly stated that they were supposed to exchange the child the previous evening but the exchange was never completed. When Ms. Justice arrived with the child, Deputy Wimberly advised that he turned his cell phone camera on to record the exchange. Once Ms. Justice observed that he was recording their interaction, she told him to cease the recording. Deputy Wimberly refused her request so she advised him that she was not going to allow the exchange of their child. Ms. Justice returned to her vehicle at which time Deputy Wimberly alleged that Ms. Justice intentionally backed her vehicle at him in an accelerated manner striking him in the hip area. Deputy Wimberly claimed that he had to jump out of the way of the vehicle as he was in fear for his safety. Although he stated there was some swelling to his hip area, Deputy Wimberly refused medical treatment. TPD Officer Joyce stated in his case report that he was unable to observe any signs of physical injury to Deputy Wimberly therefore he did not take any photographs of him.

After completing Deputy Wimberly's statement, Officer Joyce retrieved the surveillance video from the Shell Convenience store and he reviewed the attempted child exchange between Deputy Wimberly and Ms. Justice. At the point where Ms. Justice was leaving the area in her vehicle, Deputy Wimberly was standing directly behind her vehicle. When the vehicle began to move in reverse, it abruptly came to a stop. Deputy Wimberly then slowly walked to the side of the vehicle at which time Ms. Justice left the area.

CONCURRENCE w/ findings  
schedule PRE-TERM  
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Officer Joyce stated in his report that at no time did the video depict Deputy Wimberly either reacting in a manner in which he was actually struck or was in fear of being struck by the vehicle.

Officer Joyce then met with Ms. Justice to obtain her statement. Ms. Justice stated that she has been having ongoing child exchange issues with Deputy Wimberly. She cited the previous night, June 03, 2016, they were supposed to exchange their child at the Shell Convenience store and he did not show up. When she did get in contact with him, she stated that Deputy Wimberly was irate about the situation so she decided not to complete the exchange with him. Ms. Justice stated that Deputy Wimberly has anger management problems and she does not feel comfortable turning their child over to him when he is upset. Deputy Wimberly then went to the BCSO North Precinct to make a complaint on her (Refer to BCSO case#2016-00188179). They then agreed to complete the child exchange on the following date, June 04, 2016, at the Shell Convenience store. When Ms. Justice arrived at the store, she observed that Deputy Wimberly was recording her so she also began to record the incident on her cellular telephone. *Ms. Justice was carrying the telephone in her hand so the video portion of the recording was mostly indiscernible however there was some audio statements on the recording. Ms. Justice also provided Officer Joyce with text messaging between her and Deputy Wimberly that pertained to the attempted child exchange on June 04, 2016.* Ms. Justice alleged that Deputy Wimberly was aggressive and angry in his demeanor so she refused to turn over custody of their child. When she attempted to leave the area, Deputy Wimberly stood behind her vehicle refusing to move. She placed her vehicle in reverse and went backwards a few inches. Ms. Justice stated that she did not hit him nor would she intentionally attempt to hit him with her vehicle. When he did move from behind the vehicle, Deputy Wimberly told her that she "almost" hit him to which she admitted responding with "I wish I would have." On the text messaging provided by Ms. Justice, Deputy Wimberly texted "you almost running me over" and "I did find the video of you almost hitting me."

Deputy Wimberly later contacted Officer Joyce to advise him that he had gone to an urgent care facility where he received medical attention for his injury. Deputy Wimberly stated that he was diagnosed by a doctor as having a pulled muscle. The doctor stated that Deputy Wimberly's injury was most likely not the result of being struck by a vehicle but due to the evasive movement he had made. Officer Joyce advised him that he had obtained surveillance video from the business which captured the child exchange incident with Ms. Justice. Deputy Wimberly revised his statement stating that his adrenaline was so high that it was possible that he had not been struck by the vehicle but it may have felt like it because of the way Ms. Justice accelerated her vehicle at him. Officer Joyce requested to meet with Deputy Wimberly again so that he could add to his sworn statement regarding his complaint against Ms. Justice.

After meeting with Officer Joyce, Deputy Wimberly advised him of his injury sustained during the incident with Ms. Justice. While describing his injury to Officer Joyce, Deputy Wimberly stated, "She may have hit me or she might have not." Officer Joyce had him clarify his statement at which time Deputy Wimberly stated his adrenaline was

so high that he was just trying to avoid being struck by the vehicle. Approximately five hours had elapsed from the first time he met with Deputy Wimberly so Officer Joyce asked again if he was struck by the vehicle. Deputy Wimberly responded that the incident happened so fast she "probably" did not hit him but at a minimum Ms. Justice came at him in her vehicle so it would still be an aggravated assault. Deputy Wimberly stated that he wanted to pursue criminal charges against Ms. Justice. Deputy Wimberly also provided Officer Joyce the audio/video recording from his telephone. On the recording, Deputy Wimberly stated "You almost just ran me over." Based on the cell phone videos and text messaging provided by Ms. Justice and Deputy Wimberly and store surveillance video, Officer Joyce determined that probable cause did not exist for any criminal charges therefore the investigation was closed as unfounded.

On June 12, 2016, the Brevard County Sheriff's Office West Precinct responded to the Lone Cabbage Fish Camp in Cocoa in reference to a physical altercation that had occurred on Possum's Bluff on the St. Johns River (Refer to BCSO case#2016-00198521). Upon their arrival, they met with Deputy Wimberly and his friend, Stephen Pace. Deputy Wimberly stated that he was at Possum Bluff with Pace when they were approached by a male known to them as David Holstein with whom he (Deputy Wimberly) has an adversarial relationship. An argument ensued at which time Pace attempted to separate them. When Pace attempted to separate them, Holstein punched Pace in the side of the head causing a laceration to his ear. Fearing that the altercation was escalating, Deputy Wimberly advised he retrieved his handgun from behind his boat seat and held it at his side until they were able to leave the area back to the boat ramp. Deputy Wimberly admitted to Deputy Rowell that he had consumed "a few beers" and that he had a "buzz" but stated that he was not driving. Pace also admitted to consuming alcoholic beverages while with Deputy Wimberly. While speaking with Deputy Wimberly and Stephen Pace, Deputy Rowell learned that Holstein's brother, Brandon Holstein, sustained serious injuries and had been knocked unconscious during the physical altercation by Pace. Deputy Rowell then contacted General Crimes Agent Balparda to respond to the scene to assume the investigation.

As the investigation continued, Major Singleton also responded to the boat ramp due to Deputy Wimberly being involved in the incident. Major Singleton was apprised of Deputy Wimberly and David Holstein's on-going feud and the allegation of Deputy Wimberly possibly pointing a handgun at people who were present during the altercation on Possum's Bluff. Major Singleton then made contact with Deputy Wimberly. Deputy Wimberly told Major Singleton that he had been attacked by David Holstein who had blamed him for being responsible for his arrest in a previous unrelated matter. Major Singleton inquired as to why he would go out to Possum's Bluff knowing that David Holstein was also there. Deputy Wimberly stated he did know David Holstein was at Possum's Bluff but he only came out to the island after receiving a telephone call from Pace who had requested a ride home. Deputy Wimberly admitted to displaying his handgun during the incident but denied ever pointing it at anyone.

Agent Balparda conducted several witness interviews to include David Holstein. Holstein stated he arrived on the island at approximately 1700 hours and Deputy Wimberly was already there. After a few hours, everybody was preparing to leave for the evening at which time he was walking by Deputy Wimberly's boat. As he was walking by his boat, they began to verbally argue. Holstein approached Deputy Wimberly's boat to continue the argument when he claimed Deputy Wimberly reached down from his boat and punched him on the side of his head. At that point, Pace disembarked from the boat and he punched his brother, Brandon Holstein, from behind knocking him unconscious. As the altercation escalated, David Holstein alleged that Deputy Wimberly retrieved a handgun and pointed it at him with a laser dot on his chest. Deputy Wimberly told Holstein that if he hit him that he would kill him. At that time, a male known to them as Jerry Bower intervened and he was able to take the handgun away from Deputy Wimberly. Although the verbal arguing continued, Deputy Wimberly was able to leave the island with Pace without further incident.

Mr. Bower was later interviewed by Agent Goff. As people were starting to leave Possum Bluff for the evening, Mr. Bower stated Deputy Wimberly and David Holstein engaged in a verbal argument over previous issues. Mr. Bower advised that he did not observe any physical altercation between Deputy Wimberly and David Holstein however he did observe Pace knocking Brandon Holstein unconscious. As the altercation escalated, Mr. Bower stated Deputy Wimberly got off his boat where he displayed and pointed a handgun at David Holstein as they continued to argue. Mr. Bower intervened in the altercation and he was able to deescalate the situation by having Deputy Wimberly voluntarily relinquish his handgun. Once he had possession of the handgun, Mr. Bower stated an unknown male took custody of the handgun from him. Deputy Wimberly's handgun was collected as evidence at the boat ramp by Agent Goff.

After all the witness interviews were completed, Agent Balparda provided Major Singleton an updated briefing of the incident. The investigation determined that Deputy Wimberly and Pace had arrived together at Possum's Bluff earlier in the day around 1600 hours on Deputy Wimberly's boat. Deputy Wimberly and Pace had been at the island for several hours consuming alcohol while David Holstein was also present at the island. Major Singleton returned to Deputy Wimberly to clarify his conflicting statements as to why he originally went to the river and whether or not he pointed his handgun at anyone. After consulting with his father and uncle, who were prior Sheriff's Office employees, Deputy Wimberly believed that he had not been untruthful with him. His father and uncle told him he should have been placed under oath prior to speaking with Major Singleton. Deputy Wimberly repeated this explanation to Major Singleton at which time Major Singleton told him he should not have to administer an oath for him to be truthful. Major Singleton ended his conversation with him and he had no further interaction regarding this incident.

On June 14, 2016, Chief Deputy Michael J. Lewis authorized an Administrative Investigation of these incidents.

On June 15, 2016, the Staff Services Office received this case for further investigation.

On June 15, 2016, Deputy Andrew Wimberly was served his notice of administrative investigation and he was placed on Administrative Suspension.

**II. Possible Policy Violations:**

- *400.00 General Professional Responsibilities*
- *400.06 Compliance with Law & Regulation*
- *400.68 Truthfulness*

**III. Witness Interview:**

**Deputy Marian Schwenn  
North Precinct Road Patrol**

On June 17, 2016, I conducted a sworn, audio-recorded interview with Deputy Marian Schwenn at the Staff Services Office in Titusville, Florida. Deputy Schwenn stated that, on June 03, 2016, she responded to the Sheriff's Office North Precinct in reference to a civil dispute (Refer to BCSO case#2016-188179). Upon her arrival, she met with Deputy Wimberly. Deputy Wimberly advised her that he had been having on-going child custody issues with the mother of their child, Cydney Justice. Deputy Wimberly stated that they were supposed to do a child exchange that evening however Ms. Justice did not allow for Deputy Wimberly to take custody of their child. While speaking with Deputy Wimberly, Deputy Schwenn observed that he was becoming angrier and more frustrated with the situation. The more he talked about his situation, the louder his voice became to the point she had to calm him down. Deputy Schwenn contacted Ms. Justice and she negotiated for them to attempt a second child exchange later that evening. At approximately 2015 hours, Ms. Justice contacted Deputy Schwenn to advise her that she had consulted with her attorney who recommended that she not complete the agreed upon child exchange. After receiving the telephone call, Deputy Schwenn had no further interaction with Deputy Wimberly or Ms. Justice.

**IV. Subject Interview:**

**Deputy Andrew Wimberly  
Jail Complex  
Subject Interview**

On July 28, 2016, Agent Landen and I met with Deputy Wimberly at the Brevard County Sheriff's Office Staff Services Office to conduct a sworn audio-recorded interview with him. Once Deputy Wimberly reviewed the case file to his satisfaction, I initiated a sworn

interview with him. Prior to asking Deputy Wimberly any questions, he was read the Administrative Investigation Warnings, which he acknowledged he understood and signed. During the interview, Deputy Wimberly was accompanied by Attorney Alan Diamond. I explained to Deputy Wimberly the nature of this investigation and asked him to explain what occurred at the Shell Convenience store on June 04, 2016 and on the St. Johns River on June 12, 2016. The following is a summary of the interview:

**Incident at the Shell Station:**

Deputy Wimberly stated that he has had on-going issues with his ex-girlfriend, Ms. Justice, involving their child. He stated that he has had to resort to recording their interactions with his cellular telephone to protect himself from Ms. Justice making false allegations against him. In recent attempts to conduct child exchanges, he has contacted law enforcement to document some of the issues that have occurred between them to contradict reports that she has filed (Refer to BCSO case reports 2016-188080, 2016-188179 and TPD case report 2016-031743). Although his interactions with Ms. Justice have been frustrating, Deputy Wimberly stated he has remained professional during his interactions with her.

On June 04, 2016, Deputy Wimberly arrived at the Shell Convenience store to complete the child exchange with Ms. Justice which was supposed to have occurred the previous date. When Ms. Justice arrived with their child, Deputy Wimberly began to record the exchange. Ms. Justice told him to stop the recording and when he refused she told him that she was not going to allow Deputy Wimberly to take custody of their child. Deputy Wimberly followed her back to her vehicle and he attempted to convince Ms. Justice to let him take their child as planned. Deputy Wimberly was standing directly behind Ms. Justice's vehicle when she put it in reverse and drove directly at him. Deputy Wimberly stated he "jumped" out of the way and quickly moved to avoid the vehicle. He told Ms. Justice that she "almost" hit him to which she responded, "I wish I would have." Deputy Wimberly stated he began to feel pain in his hip/leg area as he returned to his vehicle. Due to the pain, Deputy Wimberly felt that he had been hit by the vehicle and that was why he made his original statement to Officer Joyce of being struck by the vehicle.

After seeking medical treatment, the attending doctor told him that his injury was an internal injury and he diagnosed Deputy Wimberly with a pulled leg muscle. Deputy Wimberly further stated that he had previously sustained the same type injury of a pulled muscle in the same leg and the doctor told him that he would always be prone to aggravating it in the future. Based on the doctor's diagnosis, Deputy Wimberly contacted Officer Joyce to correct his statement. Deputy Wimberly told Officer Joyce that his adrenaline was so high that he thought that he had been hit by the vehicle however he now believed that his injury was due to his evasive movements. I asked Deputy Wimberly if he still thought that Ms. Justice "accelerated" her vehicle at him. In his haste to avoid being hit, Deputy Wimberly said he was not directly looking at the vehicle but he still believed she purposely came at him in her vehicle. I then asked if he felt the store surveillance video was an accurate depiction of him jumping or quickly moving away

from the vehicle. Deputy Wimberly stated that he thought the store video was not recorded in real time speed therefore it did not accurately depict his actual evasive movements. Deputy Wimberly stated he had provided Officer Joyce video from his own cell phone video which more accurately recorded the incident in real time however he had to delete it from his telephone because his storage capacity was full. *In Officer Joyce's report, he does annotate that he reviewed cell phone video footage that Deputy Wimberly sent him. I attempted to obtain a copy of the video but I was informed by the Titusville Police Records Unit that they did not have any record of the video in the case package. I reviewed the store surveillance video and it appears that it was recorded in regular speed. Although the surveillance camera angle is from a distance, I believe it is an accurate depiction of the incident.*

**Incident at Possum Bluff:**

On June 12, 2016, Deputy Wimberly went out to the St. Johns River with his friend, Stephen Pace. He stated that he initially went out to the river at approximately 1630 hours to assist another friend whose boat had broken down by towing the boat back to the boat ramp. After assisting his friend with the tow, he went out to Possum Bluff with Pace at approximately 1700 hours. Upon his arrival, there was a lot of people present and he was unaware that David Holstein was amongst them. By approximately 1900 hours, the majority of the people had already departed the area at which time the remaining crowd began preparations to leave as well. It was during this time that Deputy Wimberly realized Holstein also was there. Deputy Wimberly described Possum Bluff as a large area and he estimated that Holstein had been approximately one hundred yards away from where he moored his boat. At some point, Holstein had walked down to the area where Deputy Wimberly was located and an argument ensued. According to Deputy Wimberly, Holstein believed that he was responsible for a previous arrest involving an unrelated battery investigation. Holstein entered onto Deputy Wimberly's boat and began to threaten him with bodily harm. Holstein's behavior became more belligerent and aggressive as he continued to threaten him. Deputy Wimberly described Holstein as being much larger than him and he believed that Holstein had training in the martial arts. Although Deputy Wimberly never observed Holstein with a weapon, he still feared for his safety and retrieved his handgun from behind the boat seat. Deputy Wimberly could not clearly remember if he pointed his weapon at Holstein but if he did it would have only been for a brief moment. Given the circumstances, Deputy Wimberly believed he was justified in displaying his weapon at Holstein. Holstein verbally baited Deputy Wimberly by telling him to pull the trigger but he eventually disembarked from the boat. Deputy Wimberly denied Mr. Bower's witness statement that his weapon was taken from him in his attempt to deescalate the situation. Deputy Wimberly stated he placed the weapon back behind the boat seat after Holstein got off his boat. By this time, the remaining crowd had gathered near Deputy Wimberly's boat. It was after Holstein was back on shore that a physical altercation began. Deputy Wimberly stated he did not observe any of the physical altercation because he was busy pushing his boat off shore so that he could leave the area and go back to the boat ramp. Deputy Wimberly also denied Holstein's claim that he punched Holstein in the head.

Upon arriving at the boat ramp, Deputy Wimberly met with responding deputies who began to conduct witness interviews. Deputy Wimberly disputed Deputy Rowell's report quoting him as having a "buzz." Deputy Wimberly stated that he would never use that terminology and that Deputy Rowell may have heard that from another person in the group. Deputy Wimberly did admit to having a couple of beers during that day but he stated that he was not impaired in any way. Deputy Wimberly further admitted that he had requested, and received permission, from Deputy Rowell to consume a beer while he waited to be interviewed. Deputy Wimberly advised that he did so because he had been out on the boat for several hours and they had been waiting at the boat ramp to be interviewed for an extended period of time. He stated he was extremely thirsty and that was the only beverage available for him to drink. During his subject interview, Deputy Wimberly acknowledged that his decision to consume a beer at the boat ramp was not good judgement on his part.

While Deputy Wimberly was waiting to be interviewed, Major Singleton arrived at the boat ramp and he was given a brief synopsis of the incident by deputies on scene. After receiving the initial briefing, Major Singleton made contact with Deputy Wimberly. Major Singleton asked him why he would be out on Possum's Bluff knowing that Holstein, a convicted felon, was also there. Deputy Wimberly originally told Major Singleton that he did not come out to the river with anybody and that the only reason he did was because he had received a call from Stephen Pace who had requested a ride home. Deputy Wimberly admitted that was an inaccurate statement and what he meant to say was that he and Pace had received a call from another friend, Dustin, whose boat had broken down. Deputy Wimberly and Pace then responded to the river to assist his friend Dustin. When he further explained to Major Singleton that he did not go to Possum Bluff with anybody, he was attempting to say that he did not go there with Holstein or anybody in Holstein's group and he was unaware that Holstein was there prior to his arrival.

As it pertained to his statement of not being placed under oath and therefore not being untruthful in his first statement to Major Singleton, Deputy Wimberly stated that is not what he wanted to say. Deputy Wimberly claims what he meant to say was that he gave a much more detailed statement to Agent Balparda while under oath. He stated his initial conversation with Major Singleton was a rushed, approximately one minute conversation, as opposed to his statement with Agent Balparda where he was able to relax, gather his thoughts, and provide a much more detailed statement. Deputy Wimberly stated he was extremely nervous and scared with the entire situation and his intent was not to lie or be deceitful to Major Singleton. Deputy Wimberly attempted to clarify his statements with Major Singleton however he stated that Major Singleton appeared to be aggravated with him and he did not allow for him to correct his statement. When directly asked if his statement to Major Singleton was untruthful, Deputy Wimberly said he didn't say the right things and he admitted that it was in fact untruthful. He reiterated that he was nervous and felt his statements to Major Singleton were rushed therefore he did not verbalize his statements accurately.



## **V. Other Investigative Efforts**

I obtained a copy of Titusville Police Department's case report package (TPD case#2016-00031743) which included a case report and audio/video recordings. A review of the TPD case package, revealed that Deputy Wimberly provided conflicting statements to Officer Joyce that were not consistent with the store surveillance video. During the child exchange in the parking lot of the Shell Convenience store, Deputy Wimberly originally alleged that Ms. Justice accelerated her vehicle at him striking him in the side of the leg as he jumped out of the way. Upon learning that Officer Joyce obtained store surveillance video, Deputy Wimberly revised his statement stating that it was "possible" that he had not been struck by the vehicle but he sustained a pulled muscle from his evasive actions to avoid being struck from the vehicle. Deputy Wimberly was persistent that Ms. Justice's intent was to run him over with her vehicle. A review of the video showed Deputy Wimberly and Ms. Justice attempting to conduct the child exchange in the parking lot. Ms. Justice can be seen walking towards Deputy Wimberly's vehicle with the child and then return to her vehicle with the child still in her custody. Deputy Wimberly then followed Ms. Justice where he stood directly behind her vehicle. Ms. Justice placed her vehicle in reverse, came to an abrupt stop, and then Deputy Wimberly slowly walked to the side of the vehicle. Although the vehicle did move a small distance backwards, the video did not depict Deputy Wimberly being struck or in fear of being struck by Ms. Justice's vehicle. At the conclusion of the investigation, Officer Joyce determined there was not any evidence to support criminal allegations therefore he referred his investigation to file as unfounded.

On June 17, 2016, I attempted to contact Ms. Justice to offer her the opportunity to provide a statement in reference to this administrative investigation. Ms. Justice did not answer her telephone so I left her a message to get in contact with me in reference to this investigation. On July 07, 2016, Ms. Justice contacted the Staff Services Unit and left a message stating she was returning my call. I attempted to return her telephone call however she again did not answer her telephone to which I left a second message to contact me. As of this date, Ms. Justice has not contacted the Staff Services Unit. Ms. Justice had previously met with Corporal Vecchio to file a harassment report against Deputy Wimberly (Refer to BCSO case#2016-188886). She eventually decided not to proceed with her complaint against Deputy Wimberly. Corporal Vecchio's investigative efforts with Ms. Justice coincided with my investigative efforts to obtain a witness statement from her. Corporal Vecchio also annotated in his report that he had difficulty obtaining documentation from her during the course of his investigation. During her interaction with Corporal Vecchio, she advised that she had obtained legal counsel and she was going to attempt to get an injunction against Deputy Wimberly. On June 28, 2016, Judge McKibben heard, and denied, Ms. Justice's request for an injunction against Deputy Wimberly.

## **VI. Recommendation**

On June 04, 2016, Deputy Wimberly contacted the Titusville Police Department to report that the mother of his child, Cydney Justice, attempted to run him over in her vehicle. Deputy Wimberly and Ms. Justice were attempting to conduct a child exchange in the parking lot of the Shell Convenience store in Titusville. Deputy Wimberly gave conflicting statements as to whether or not he was struck by Ms. Justice's vehicle. In his original sworn statement, Deputy Wimberly stated that Ms. Justice "accelerated in reverse at me which her car hit the side of my leg as I was jumping out of the way." Deputy Wimberly claimed that he could feel swelling in the hip area but he refused any medical treatment. Officer Joyce was able to retrieve the store surveillance video that recorded the attempted child exchange and subsequent interaction between Deputy Wimberly and Ms. Justice. In the video, Deputy Wimberly can be seen following Ms. Justice as she returned to her vehicle with the child. Deputy Wimberly positioned himself directly behind the vehicle as Ms. Justice prepared to leave the area. Ms. Justice placed her vehicle in reverse and moved backwards a short distance before coming to an abrupt stop due to Deputy Wimberly standing in the direct path of her vehicle. At no time did Deputy Wimberly act in a manner which could be perceived as being struck or in fear of being struck by her vehicle. Once the vehicle came to a stop, Deputy Wimberly walked to the driver's side of the vehicle at which time Ms. Justice left the area.

Several hours later, Deputy Wimberly again contacted Officer Joyce stating that he had gone to an urgent care center for medical treatment. Deputy Wimberly advised that the doctor told him that he had a pulled muscle and there was fluid in his leg. The doctor told him that the injury was not likely the result of being struck by a vehicle but due to the movement he made to evade the vehicle. Upon learning there was a video recording, Deputy Wimberly revised his statement by saying his adrenaline was so high that it was possible that he was not struck by the vehicle but it only seemed that way because of the way Ms. Justice accelerated her vehicle at him. Officer Joyce requested to meet with Deputy Wimberly again so that he could supplement his original statement. Officer Joyce again had him clarify his statement to which Deputy Wimberly stated the incident happened so fast that he "probably" was not struck by the vehicle but "it was still an aggravated assault." During his subject interview, Deputy Wimberly stated that he was not watching Ms. Justice's vehicle because he was too focused on jumping out of the way. Based on the audio/video recordings, text messages provided by Deputy Wimberly and Ms. Justice and store surveillance video, Officer Joyce determined there was not any evidence to support the criminal allegations therefore he referred his investigation to file as unfounded. I have also reviewed all of the material available to include the TPD case report and store surveillance video from the incident. After reviewing the video evidence, Deputy Wimberly's sworn statements are not consistent with the store surveillance video obtained by Officer Joyce. Based on my review, I concur with Officer Joyce's findings that there was no probable cause to support a violation of Florida Statutes as it pertains to the alleged aggravated assault. The store surveillance video and Deputy Wimberly's own medical doctor refute his original sworn statement that Ms. Justice had intentionally hit him with her vehicle.

In regards to the incident at the Shell Convenience store, I recommend following:

That the allegation against Deputy Wimberly that he violated **400.00 General Professional Responsibilities** be closed as “**Sustained.**”

That the allegation against Deputy Wimberly that he violated **400.68 Truthfulness** be closed as “**Sustained.**”

On June 12, 2016, Deputy Wimberly went out to the St. Johns River with his friend, Stephen Pace. Deputy Wimberly arrived at Possum’s Bluff with Pace and stayed there for approximately two or three hours. When he was preparing to leave, Deputy Wimberly was approached by David Holstein with whom he has an adversarial relationship. Deputy Wimberly stated Holstein was with a group of friends approximately one hundred yards away and he was unaware that he was there. As they were preparing to leave, Holstein walked up to his boat and a verbal argument ensued. As they argued, several witnesses stated a physical altercation erupted. It was unclear from the witness statements as to who initiated the physical altercation. According to witnesses, an altercation occurred between Pace and Holstein’s brother, Brandon Holstein who had come to David Holstein’s aid. During the fracas, Brandon Holstein was knocked unconscious by Pace. Witnesses advised that was when Deputy Wimberly retrieved a handgun, disembarked from his boat and pointed it at David Holstein. Another witness, Jerry Bower, intervened by disarming Deputy Wimberly and he assisted Deputy Wimberly and Pace get back on their boat so that they could leave the area. Mr. Bower stated that an unknown male then took custody of the handgun from him.

During Deputy Wimberly’s sworn statement with responding deputies and subject interview, he disputed witness accounts of the altercation. As his argument with David Holstein escalated, Deputy Wimberly stated that Holstein entered onto his boat and threatened him with bodily harm. Due to Holstein’s size (6’01” & 200lbs) and alleged martial arts background, Deputy Wimberly said he was in fear for his well-being so he retrieved his handgun. When asked by Agent Balparada if he pointed the gun at Holstein, Deputy Wimberly gave conflicting statements. Initially he denied pointing his handgun at Holstein but then stated he “may have, I probably did.” During his subject interview, Deputy Wimberly claimed he could not clearly remember if he pointed the handgun at Holstein. He said that if he did point the handgun at Holstein, it would have only been for a brief moment. When Holstein disembarked from his boat, Deputy Wimberly secured his handgun back behind the boat seat. Deputy Wimberly vehemently denied Mr. Bower’s statement that he (Mr. Bower) took possession of his handgun as he attempted to deescalate the altercation. According Deputy Wimberly, the physical altercation did not begin until Holstein disembarked from his boat. Again, this was in direct conflict with witness statements. Several witness statements alleged that the physical altercation first began on shore at which time Deputy Wimberly produced his handgun, went on shore, and pointed it at Holstein. During Pace’s second interview with agents, Pace stated that he never observed Holstein on Deputy Wimberly’s boat and that

the entire incident occurred on shore. Pace also stated that he never saw anybody with a handgun and he denied punching David or Brandon Holstein.

After reviewing the affidavit associated with the *capias* request and audio interviews, the Brevard/Seminole State Attorney's Office, State Attorney Greg Koneska, determined that there was not enough evidence to proceed with a criminal case against Deputy Wimberly. I have also reviewed all of the material available to include the BCSO case reports, and interviews. Based on my review, I believe a physical altercation did occur on Possum Bluff and that Deputy Wimberly did point his handgun at David Holstein. I believe that Deputy Wimberly's display and handling of his handgun in this situation was improper and unwarranted. Holstein never insinuated or displayed a firearm/weapon and he only threatened Deputy Wimberly with physical harm. Although he later claimed to be in fear for his safety, David Holstein originally challenged Deputy Wimberly to shoot him when the handgun was pointed at him. Deputy Wimberly's decision to escalate the situation to a deadly force scenario while consuming alcoholic beverages was in violation of **Florida Statutes 790.10 Improper Exhibition of a Firearm** and **790.151 Use of a Firearm While Under the Influence of Alcohol**.

As it pertains to Deputy Wimberly's statements to Major Singleton, I believe Deputy Wimberly was not accurate in his statements to him. When asked why he went out to Possum Bluff, Deputy Wimberly initially told Major Singleton that he went out to the St. Johns River by himself because his friend, Stephen Pace, had called him for a ride home. During the altercation that ensued, he denied pointing his handgun at anyone during the incident. After receiving a briefing from investigating agents, Major Singleton learned that Deputy Wimberly had gone to the river with Pace on his boat, spending several hours on Possum's Bluff, and that the investigation indicated that he did point his handgun at Holstein while on shore. Major Singleton went back to Deputy Wimberly to clarify the conflicting statements that he made to the investigating agents. Deputy Wimberly then made a statement that, because he had not been placed under oath, he had not been untruthful. During his subject interview, Deputy Wimberly stated that was not what he meant to say. Deputy Wimberly explained that his initial conversation with Major Singleton was very brief and rushed and he was extremely nervous and scared. During his interview with Agent Balparda, he had time to calm down and provide a more detailed and accurate statement. Deputy Wimberly stated his intent was not to lie or be deceitful but he understood why Major Singleton would have perceived his statement as being untruthful. When he attempted to clarify his statements, Deputy Wimberly stated Major Singleton appeared to be aggravated with him therefore he was not able to correct his statements to him. During his subject interview, Deputy Wimberly acknowledged that he did not say the right things and he admitted that his statement to Major Singleton was ultimately untruthful.

Based on the facts set forth in this administrative investigation, I recommend the following:

That the allegation against Deputy Wimberly that he violated **400.00 General Professional Responsibilities** be closed as **"Sustained."**

That the allegation against Deputy Wimberly that he violated **400.06 Compliance with Law & Regulation** be closed as **"Sustained."**

That the allegation against Deputy Wimberly that he violated **400.68 Truthfulness** be closed as **"Sustained."**

**VII. Enclosures**


- Copy of Titusville P.D. case report with audio/video recordings (C/R#2016-00031743)
- Copy of BCSO case reports with audio recordings (C/R#2016-188179, 2016-188886, 2016-00198521)
- Memorandum from Chief Lewis to Commander Donn titled "Authorization for Administrative Investigation"
- Memorandum from Chief Lewis to Deputy Andrew Wimberly titled "Administrative Leave"
- Memorandum from Major Singleton to Lieutenant Fischback titled "2016-198521"
- Notice of Administrative Investigation
- Administrative Investigation Warning

**VIII. Oath**

I, Agent Kraig Hupfer, do hereby swear, under 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 subject of the investigation of any of the rights contained in ss. 112.532 and 112.533, Florida Statutes.

Signed   
Agent Kraig Hupfer, ID 210

Sworn to and subscribed before me, the undersigned authority, this 12th day of August, 2016.

Signature   
NOTARY PUBLIC/LAW ENFORCEMENT OFFICER  
IN PERFORMANCE OF OFFICIAL DUTIES

