



Brevard County Sheriff's Office
Titusville, Florida

MEMORANDUM

TO: Chief Deputy Doug Waller
FROM: Agent Kraig Hupfer, Staff Services Unit
DATE: May 01, 2017
RE: Command Inquiry 2017-CI-010

D. Waller
5/1/17
** Counsel with*
Finances
** Subsequent*
DELEGATION HEARINGS

I. Summary

On April 12, 2017, Sergeant Michael Mitaly of the Jacksonville Sheriff's Office was traveling northbound on I-95 in the Daytona Beach area. He advised he was driving in his marked patrol vehicle when he observed a red 2011 Hyundai pass him driving in excess of 90 mph. Sergeant Mitaly caught up to the vehicle at which time the vehicle accelerated, and began to travel at speeds at or about 100 mph. Sergeant Mitaly coordinated a traffic stop of the vehicle with deputies from the St. John County Sheriff's Office where they identified the driver of the vehicle as BCSO Deputy Heather Bivins. During the traffic stop, Sergeant Mitaly stated Deputy Bivins displayed behavior that was extremely disrespectful towards him and the St. John County Deputies. Sergeant Mitaly stated that Deputy Bivins acknowledged that she knew that he was a law enforcement officer as they traveled northbound on I-95, however, she also knew that he was not in his jurisdiction. At the conclusion of the traffic stop, St. Johns County Deputy Mangold issued Deputy Bivins a written warning for exceeding the speed limit (Warning Citation #113380-WN) and she was released from the scene.

On April 13, 2017, Sergeant Mitaly documented his encounter with Deputy Bivins in a formal letter and he forwarded it to Lieutenant Rob Lape.

On April 13, 2017, Chief Deputy Waller authorized an Administrative Investigation of this incident.

On April 13, 2017, the Staff Services Office received this case for further investigation.

On April 17, 2017, Deputy Heather Bivins was served her Notice of Administrative Investigation.

II. Possible Policy Violations:

- *400.00 General Professional Responsibilities*
- *400.06 Compliance with Law & Regulation*
- *400.07 Conduct Towards Superior & Subordinate Personnel*

III. Witness Interviews:

**Sergeant Michael Mitaly
Duval County Sheriff's Office**

On April 13, 2017, I conducted a sworn, audio-recorded interview with Sergeant Michael Mitaly at the University of North Florida in Jacksonville, Florida. Sergeant Mitaly advised that, on April 12, 2017, he was returning to Jacksonville in his marked patrol vehicle from a department training in Orange City, Florida. He stated he merged onto northbound I-95 from I-4 in the Daytona Beach area and he set his cruise control to approximately 78 mph. Shortly thereafter, near the Volusia/ Flagler County line, he observed a red 2011 Hyundai with a female driver pass him in the far right lane driving approximately 90-95 mph. Once the vehicle passed him, Mitaly said the vehicle immediately cut over to the far left lane directly in front of him. Mitaly advised he caught up with the vehicle so he could coordinate a traffic stop with the Florida Highway Patrol. Sergeant Mitaly stated that he eventually caught up to the vehicle and began to follow it while communicating with FHP. Upon catching up to the vehicle, Sergeant Mitaly stated that the vehicle then accelerated to approximately 100 mph and was weaving continuously through the three lanes of traffic in a reckless manner. As he followed the vehicle for approximately (25) twenty-five miles through moderate to heavy traffic, Mitaly advised that the vehicle's driving pattern disrupted the driving pattern of other vehicles as it continued to weave through the three lanes of traffic. At one point, Mitaly stated the vehicle swerved from the far right lane back over to the far left lane narrowly causing a collision with a Ford Escape. Sergeant Mitaly stated the Florida Highway Patrol then transferred him to the St. Johns County Sheriff's Office. Sergeant Mitaly remembered telling the dispatcher that, if the vehicle made it as far as Duval County, he was going to arrest the driver of the vehicle for reckless driving. *A review of Sergeant Mitaly's 911 call confirmed that he advised the dispatcher, if the vehicle crossed the Duval County Line, he was going to take the driver to jail.* The St. Johns County dispatcher told Mitaly that they had an available patrol unit that would assist him in a traffic stop of the vehicle. Upon reaching the area of mile marker 318 (State Road 16), the vehicle passed the assisting marked St. Johns County Sheriff's Office patrol vehicle. Mitaly estimated the speed of the vehicle to be approximately 93 mph as it passed the marked patrol vehicle. As soon as the driver observed the marked patrol vehicle, Mitaly advised the driver of the vehicle "slammed on the brakes", immediately decelerated its speed by approximately 20 mph and it swerved from the far left lane across three lanes of traffic to the shoulder area of I-95 where it came to an abrupt stop. According to Mitaly, this action was prior to any emergency lights being activated and it

caused him to take evasive action so that he did not have a rear end collision with the vehicle.

Once the vehicle was stopped, he and the St. Johns County Sheriff's Office deputy, Deputy Mangold, made contact with the driver of the vehicle who identified herself as Heather Bivins. He could not clearly hear the initial conversation due to the traffic noise but Mitaly heard Deputy Bivins say something about transferring the probable cause to Deputy Mangold. Mitaly then heard Deputy Mangold ask Deputy Bivins if she possessed a valid driver's license to which she responded "yes". When she did not retrieve it, he said Deputy Mangold asked if he could see it at which time Deputy Bivins told him it was in her purse where she possessed a handgun. Deputy Mangold had Deputy Bivins hand him the entire purse so that he could take possession of the handgun for officer safety reasons. As Deputy Mangold took possession of the handgun, Mitaly stated he observed Deputy Bivins "nonchalantly" display her BCSO credentials. Upon observing the BCSO credentials, Mitaly heard Deputy Mangold ask what agency she worked for to which she replied, "Brevard". Learning that she was a deputy sheriff, Deputy Mangold then asked Deputy Bivins if she thought that the speed in which she was traveling was appropriate. Mitaly heard Deputy Bivins respond, "It depends what you believe is appropriate." When Deputy Mangold answered that anything over 70 mph was inappropriate, Mitaly stated Deputy Bivins responded, "I guess it's inappropriate then" and she went on to state that it must have been okay for an unknown silver Ford Mustang in front of her to be traveling at the same rate of speed, but not for her. Up to this point, Mitaly said that Deputy Bivins never once made eye contact with either of them, and was either playing or texting on her telephone the entire time. He thought she displayed a negative demeanor that he described as an "attitude" like the encounter was a complete waste of her time. While answering Deputy Mangold's questions, Mitaly stated Deputy Bivins' responses were short answers and she did not offer any explanations. Due to her attitude towards them, Mitaly told Deputy Bivins that she was a disgrace to law enforcement to which she replied, "Sorry you feel that way."

As Deputy Mangold was verifying Deputy Bivins driver's license and handgun, Mitaly advised him that, although he had never issued a citation to another law enforcement officer in his twenty-one years of service, he believed Deputy Bivins should get a traffic citation for the observed traffic violations. Deputy Mangold was reluctant to issue a criminal traffic citation and he opted instead to issue a warning citation to Deputy Bivins. When Deputy Mangold returned to the vehicle, he issued the warning citation to Deputy Bivins at which time Mitaly observed her "throw" the citation on the passenger seat. She then stuck her empty holster out the window without saying or looking at Deputy Mangold, Mangold then placed the handgun in the holster and he returned it back to Deputy Bivins therefore concluding the traffic stop. At the conclusion of the traffic stop, Mitaly stated Deputy Bivins accelerated her vehicle at a high rate of speed as she left the area northbound on I-95 further displaying her total lack of respect towards himself and Deputy Mangold.

Deputy Kenneth Mangold
St. Johns County Sheriff's Office

On April 13, 2017, I conducted a sworn, audio-recorded interview with St. Johns County Deputy Kenneth Mangold at the St. Johns County Sheriff's Office Central Command in St. Augustine, Florida. Deputy Mangold advised that he was contacted by his communications center in reference to a reckless driver traveling northbound on I-95 which was being followed by an off-duty JSO deputy in a marked patrol vehicle. Deputy Mangold recalled the computer dispatch notes advising that the reckless driver was traveling at speeds of 95-100 mph, tailgating other vehicles, weaving through all three lanes of traffic and it had passed the JSO marked patrol vehicle like it was "standing still." Deputy Mangold positioned himself at mile marker 318 (S.R.16) in anticipation of intercepting the reckless driver and the JSO marked patrol vehicle. Shortly thereafter, Deputy Mangold stated he observed the reckless driver in the far left lane approach his marked patrol vehicle driving what he visually estimated to be 90 mph. As soon as he pulled his patrol vehicle onto the highway to catch up to the reckless driver, Deputy Mangold stated he observed the vehicle's brake lights illuminate, deaccelerate to approximately 70-75 mph and it abruptly went from the far left lane to the right lane without using its directional signals. Upon the vehicle entering the shoulder area of the highway, Deputy Mangold said he observed it come to an abrupt stop causing the JSO patrol vehicle to initiate his brakes extremely hard in order to avoid a rear-end collision with the vehicle. This action caused a second vehicle to take evasive action to avoid making contact with the JSO patrol vehicle.

After the vehicle came to a stop, Deputy Mangold stated he and the Mitaly approached the vehicle on the driver's side where they made contact with the driver. Deputy Mangold said he identified himself and he asked the driver, later identified as Heather Bivins why she was traveling at speeds of 95-100 mph on the interstate. Deputy Mangold said the driver immediately asked "Is he transferring his PC to you?" Deputy Mangold requested Deputy Bivins' driver's license to which she responded in a negative tone, "Do you see my gun over there?", referring to a handgun which was located in her purse on the passenger seat. Deputy Mangold affirmed that he had observed the handgun and he asked if Deputy Bivins had a concealed weapons permit to which she replied that she did. Up to this point, Deputy Mangold advised that Deputy Bivins still had not identified herself as a law enforcement officer. During the entire initial contact with Deputy Bivins, Deputy Mangold stated that she had her foot placed up on the dashboard, never made eye contact with him and she was continuously texting on her telephone. Deputy Mangold then had Deputy Bivins give him the entire purse so that he could remove the handgun for officer safety reasons and he returned the purse back to her. He again asked Deputy Bivins if she had a concealed weapons permit at which time she produced a small black wallet with BCSO credentials and she advised that she was a Brevard County Sheriff's Office Deputy. Deputy Mangold asked again why she was traveling at such a high rate of speed and he stated she did not reply with an answer or explanation. Deputy Mangold took Deputy Bivins' driver's license and handgun back to his patrol vehicle so that he could verify her driver's license information and handgun. After confirming her driver's

license as valid and the handgun as not stolen, Deputy Mangold issued Deputy Bivins a warning citation (St. Johns County traffic warning citation #113380-WN) for exceeding the speed limit and he returned the handgun to her. As he was concluding the traffic stop, Deputy Mangold stated he told Deputy Bivins that the type of behavior she displayed towards him would not have been acceptable at his agency. Deputy Mangold said she did not verbally respond to him, but instead he said he observed Deputy Bivins roll her eyes and display an "are you done?" type of attitude. When Deputy Mangold terminated the traffic stop, he advised that Deputy Bivins rapidly accelerated her vehicle back onto the interstate as though she was "mad" that she was stopped.

During the entire traffic stop, Deputy Mangold stated Deputy Bivins' demeanor was "nonchalant" or "bothered" and what he described as an "I don't care" type of attitude. Deputy Mangold said he had to repeat his questions several times due to Deputy Bivins not turning towards him causing her low voice to carry towards the front of the vehicle as opposed to facing him when she spoke. He said that Deputy Bivins responses were short with a negative tone of voice and she never offered an explanation or apology for her driving infractions. Deputy Mangold stated he was "surprised" upon learning that Deputy Bivins was a law enforcement officer due to the type of attitude and lack of respect he was getting from her. Deputy Mangold further stated he would have been "ashamed" of his behavior if he would have displayed the same type of demeanor or attitude that Deputy Bivins exhibited towards him.

Deputy Ezekiel Kelly
St. John County Sheriff's Office

On April 13, 2017, I conducted a sworn, audio-recorded interview with St. Johns County Deputy Ezekiel Kelly at the St. Johns County Sheriff's Office Central Command in St. Augustine, Florida. Deputy Kelly advised, that on April 12, 2017, he was working his assigned shift when he heard the communications center dispatch a call in reference to a reckless driver traveling northbound on I-95 at speeds exceeding 90 mph, swerving through traffic and that it had passed a marked JSO patrol vehicle. Deputy Kelly responded to the area however Deputy Mangold had already initiated a traffic stop of the vehicle therefore he did not observe any of the alleged traffic violations. Deputy Kelly exited his vehicle and he positioned himself alongside of the passenger side of the stopped vehicle. He advised that the windows were down so he was able to hear some of the conversation between Deputy Bivins, Mitaly and Deputy Mangold. Deputy Kelly stated he heard Deputy Mangold ask Deputy Bivins if she felt it was appropriate for her to be driving in a reckless manner above the posted speed limit. Deputy Kelly advised Deputy Bivins' response was "I think going with the flow of traffic is fine." Deputy Kelly stated that Sergeant Mitaly intervened by telling Deputy Bivins that she was not going with the flow of traffic, but she was in fact driving at speeds of 90 mph and she passed a marked patrol vehicle. That is when he heard Deputy Bivins reply, "Well, you are not even in your jurisdiction so it doesn't matter." When Deputy Mangold returned to his patrol vehicle, Deputy Kelly heard Sergeant Mitaly telling Deputy Bivins that he had never in his twenty years of law enforcement met anyone who had such a total disregard

for fellow law enforcement officers and for a marked patrol vehicle. Deputy Kelly was unable to clearly hear Deputy Bivins' response but he thought it was something to the effect of "whatever." Once he determined he was not needed at the traffic stop, Deputy Kelly stated that he left the area.

Deputy Kelly's observations of Deputy Bivins' demeanor and attitude were consistent with the observations of Deputy Mangold and Sergeant Mitaly. Deputy Kelly said everyone had a polite tone during their conversation but he believed Deputy Bivins was not receptive to the concerns about her driving patterns and her subsequent interaction with them. He described Deputy Bivins' demeanor as a "whatever" or "I don't care" type of attitude. Deputy Kelly further described her behavior as an extremely negative, nonchalant attitude which he felt was very unprofessional for someone being in law enforcement.

IV. Subject Interview

Deputy Heather Bivins Subject Interview

On April 18, 2017, Agent McLaughlin and I met with Deputy Heather Bivins at the Brevard County Sheriff's Office Staff Services Office to conduct a sworn, audio-recorded interview with her. Once Deputy Bivins reviewed the case file to her satisfaction, I initiated a sworn interview with her. Prior to asking Deputy Bivins any questions, she was read the Administrative Investigation Warnings, which she acknowledged she understood and signed. Deputy Bivins also acknowledged she understood she could have a representative with her during the interview but she chose not to. I explained to Deputy Bivins the nature of this investigation and asked her to explain what occurred on I-95 in the St. Augustine area on April 12, 2017. The following is a summary of the interview:

On April 12, 2017, Deputy Bivins advised she was traveling northbound on I-95 to the Jacksonville area to meet with family members. She stated she had a deposition earlier that morning and she was running behind schedule. Deputy Bivins admitted at one point to traveling at speeds of approximately 90 mph, but she did not believe she ever drove at 100 mph. Deputy Bivins further admitted that driving at that speed was "unacceptable" and that running late did not justify her exceeding the speed limit. When she approached the Palm Coast area, Deputy Bivins said that was when she observed the marked patrol vehicle that she recognized to be from the Jacksonville Sheriff's Office. She stated it was not until she was parallel to the JSO patrol vehicle that she realized she was passing a marked patrol vehicle. As she passed the patrol vehicle, Deputy Bivins said she "tapped" her brakes but she could not recall exactly what her speed was at that time. Deputy Bivins recalled changing back to the far left lane and at which time she observed the JSO patrol vehicle driving directly behind her. Although she was traveling at speeds of 90-92 mph, Deputy Bivins stated that she never drove in a reckless manner and she disputed Sergeant Mitaly's statement that she accelerated once she passed by him. Even when the

JSO patrol vehicle began to closely follow her, Deputy Bivins admitted that she never slowed down to the legal speed limit. When asked for why she did not slow down with a marked patrol vehicle behind her, Deputy Bivins could not provide an explanation other than "I just didn't. I don't know."

Deputy Bivins disputed Sergeant Mitaly's description of her driving in a reckless manner. She admitted to making several lane changes with the marked patrol behind her but she said that she did so without affecting other vehicles on the highway. She said this was also the reason she did not feel the need to utilize her directional signals, as mentioned by Sergeant Mitaly, due to the fact there was no vehicles behind her. Deputy Bivins also disputed the allegation that she almost had a collision with a Ford Escape or any other vehicle as mentioned by Sergeant Mitaly. I asked if she felt her driving pattern and her admitted speed of 90-92 mph for approximately 20-25 miles was disrespectful to the Sergeant Mitaly who was operating a marked patrol vehicle. Deputy Bivins replied that the average speed of vehicles in that area of I-95 was 80 mph and she cited Sergeant Mitaly stating in his interview that he was traveling at 78 mph. She further stated that, while Sergeant Mitaly was "tailgating" her, she never slammed on the brakes, attempted to elude, or get away from him. Deputy Bivins stated she did not believe she was being disrespectful stating "I didn't do anything to him." I then asked if she felt her actions up to this point as a deputy sheriff was appropriate behavior for a member of the Brevard County Sheriff's Office. She replied by asking specifically if I meant the speeding or the fact she passed a marked patrol vehicle. Deputy Bivins then answered by saying passing the marked patrol vehicle was not a good representation of the Sheriff's Office. She later modified her statement by saying her actions as "a whole" were not appropriate. As far the excessive speed, Deputy Bivins stated that she should have been driving "slower," but she believed that 80 mph was "acceptable" on the interstate.

Although she knew the patrol vehicle was from Duval County, Deputy Bivins said she was not thinking about jurisdictional issues as she was driving. When asked about jurisdiction, Deputy Bivins responded by saying Sergeant Mitaly could have had another agency conduct a traffic stop, but she did not believe he would have been able to traffic stop her unless she was involved in a forcible felony.

I then asked, if the roles were reversed and she was in Sergeant's Mitaly's position, what her reaction would be if a vehicle sped by her at speeds exceeding 90 mph. Deputy Bivins said she "guess she would be upset" but she reiterated that, although she was speeding, she did not believe that she was driving recklessly. She continued by saying, "would I have tailgated them for as far as we went? No." I asked if she understood why Sergeant Mitaly would feel disrespected by her actions. Deputy Bivins paused before conceding he might have felt disrespected.

When Deputy Bivins approached mile marker 318, she observed the St. Johns County marked patrol vehicle staged on the side of the interstate. When the patrol vehicle entered onto the interstate as she passed it, Deputy Bivins knew that she was going to be stopped. Deputy Bivins disputed the St. Johns County deputy's estimated speed of her

vehicle at approximately 90 mph and his statement that she “slammed” on her brakes. She stated that the flow of traffic in front of her immediately slowed upon observing his patrol vehicle and this caused her to adjust to the change of speed of the other surrounding vehicles. She estimated her speed at the time to be approximately 85 mph. With the flow of traffic and her estimated average speed of the other vehicles being 80 mph, Deputy Bivins believed her speed of 85 mph to be appropriate. Deputy Bivins said that she safely moved from the far left lane to the shoulder area of the interstate to wait for the St. Johns County patrol vehicle.

When Deputy Mangold made contact with her, Deputy Bivins did state that she asked him if the JSO deputy was transferring his PC to him because she did not believe the St. Johns County deputy observed her speeding. Deputy Bivins adamantly denied making any statement towards Sergeant Mitaly about not being in his jurisdiction as previously stated by Deputy Kelly. Deputy Mangold then asked for her driver’s license at which time Deputy Bivins said she told him about her handgun in her purse. She said Deputy Mangold removed the handgun from her purse and returned it to her at which time she provided him with her driver’s license. Once he had her driver’s license and handgun, Deputy Mangold returned to his patrol vehicle to run her driver’s license. A short time later, Deputy Mangold returned to her vehicle and she stated he gave her a written warning for the excessive speed. Deputy Bivins denied “throwing” the warning citation stating she placed it on the passenger seat as she retrieved the holster to her handgun. She then gave Deputy Mangold the holster so that he could safely return her handgun back to her. Deputy Bivins said that Deputy Mangold released her from the traffic stop and she left the area. She denied that she left the scene in an aggressive manner as stated by Deputy Mangold and Sergeant Mitaly.

During her verbal interactions with Deputy Mangold and Sergeant Mitaly, Deputy Bivins disagreed with all three deputy’s assessment of her being rude or exhibiting a negative attitude. She stated that because of her personality type and interpersonal communications, Deputy Bivins believed the three deputies mistook her attitude and demeanor as negative when in fact she believed she was acting appropriately. She described herself as not a big speaker and her responses are typically short and non-elaborative. Deputy Bivins said she never raised her voice, made insults or used any profane language. Deputy Bivins said that is just who she is and that she has been told in the past she is not a very personable person. Deputy Bivins advised that she never made eye contact with the St. Johns County deputy due to him standing behind her driver’s seat. She said she had neck surgery approximately one month ago and she did not want to extend her head back that far. She did recall that she may have had her foot up on the driver’s seat but not on the dashboard as described by Deputy Mangold. Deputy Bivins said she did have direct verbal communications with Sergeant Mitaly because he was standing directly at the driver’s side door where she was able to turn towards him. Deputy Bivins stated that Sergeant Mitaly began to yell and insult her and admitted to saying, “I’m sorry you feel that way.” When he continued to lecture her, Deputy Bivins realized she was not going to be able to change his opinion about her so she “just took it” and focused on her telephone while he continued to speak to her. Deputy Bivins advised

that Deputy Mangold also lectured her about her driving behavior but, as opposed to Sergeant Mitaly, she felt his lecture was "appropriate" given the circumstances. She also denied "rolling her eyes" while Deputy Mangold was speaking with her restating that she understood why Deputy Mangold was lecturing her. Deputy Bivins stated she never offered an explanation for her driving actions because there was no excuse for her driving behavior. Although she did not offer one, Deputy Bivins believed now, that given the situation, she should have offered an apology for her actions.

I then asked what she would have done differently in the same set of circumstances. Deputy Bivins advised she would have slowed down and not passed the JSO marked patrol vehicle at such a high rate of speed and she would not have maintained her speed while the JSO deputy was following her. She also would have waited for the St. Johns County deputy to catch up to her to initiate a traffic stop as opposed to immediately pulling over to the side of the interstate. She then stated she would have apologized to the *St. Johns County* deputy for her actions. Deputy Bivins continued that the JSO Sergeant had "set the atmosphere" with his lecture and insults so, at the end of the traffic stop, she was "ready to go."

V. Other Investigative Efforts

In addition to the audio recorded statements, both Sergeant Mitaly and St. Johns Deputy Mangold provided written statements, which were consistent with my witness interviews with them. These written statements will be included with this investigative report.

I obtained the communications center dispatch and 911 audio recordings from the St. Johns County Sheriff's Office. The communications center also provided the call history, computer CAD comments and a copy of the warning citation. A review of the audio recordings corroborated Sergeant Mitaly's statement of him coordinating a traffic stop and describing Deputy Bivins' driving pattern. I confirmed Sergeant Mitaly's statement that he advised the communications dispatcher that he was going to take the driver of the vehicle to jail if it made it to the Duval County line. The CAD comments also documented Deputy Bivins' driving pattern, as described by Mitaly, and the report was closed with comments of the driver being a BCSO deputy with a "very poor attitude" and "an attitude not becoming of an officer." The audio recordings and CAD comments will be included with this investigative report.

VI. Recommendation

On April 12, 2017, Deputy Heather Bivins was off-duty and traveling northbound in her privately owned vehicle towards the Jacksonville area. Deputy Bivins was traveling at speeds of approximately 90 mph when she passed a Jacksonville Sheriff's Office Sergeant driving a marked patrol vehicle. Sergeant Mitaly then began to follow her in his marked patrol vehicle for approximately twenty-five miles while he attempted to

coordinate a traffic stop with other agencies of Deputy Bivins' vehicle. While he was attempting to coordinate the traffic stop, Sergeant Mitaly stated that Deputy Bivins was driving recklessly by weaving through all three lanes of traffic, she was speeding and at one point was driving in excess of 100 mph.

When asked about her driving behavior, Deputy Bivins only conceded that she was speeding and admitted that it was "unacceptable." Deputy Bivins admitted to traveling at speeds of approximately 90-95 mph, but disputed she ever drove at speeds of 100 mph. Deputy Bivins attempted to justify some of her speeds by stating that the flow of traffic was 80 mph and she cited Sergeant Mitaly's statement that he was traveling at 78 mph. Deputy Bivins acknowledged she knew the marked patrol vehicle was, in her words "tailgating" her, however, she did not believe her driving pattern was disrespectful towards him stating that she "did not do anything to him." She further denied that her driving pattern was reckless. While traveling, Deputy Bivins said she safely changed lanes and that her driving never disrupted any other vehicles on the interstate as described by Sergeant Mitaly.

During the course of the traffic stop, all three deputy witnesses indicated a pattern of rude and unprofessional behavior exhibited by Deputy Bivins. The three witness statements consistently described Deputy Bivins' behavior as extremely negative, "nonchalant" and displaying an attitude that the traffic stop was a waste of her time. All three deputies also believed that Deputy Bivins behavior as a fellow law enforcement officer was completely unacceptable and they were surprised to learn that she was a deputy sheriff. Deputy Bivins has claimed that the three deputies misunderstood her demeanor stating that this was her normal personality of providing short, non-elaborative answers. As for Sergeant Mitaly, Deputy Bivins stated that he had "set the atmosphere" and that she did ignore him when he continued to lecture her.

Based on the witness statements and, in part her own admissions, Deputy Bivins exhibited a lack of professional behavior towards deputies with the Jacksonville and St. Johns County Sheriff's Offices. Deputy Bivins further admitted to exceeding the lawful speed limit, which she stated was "unacceptable." Deputy Bivins never attempted to provide an explanation for her driving behavior nor did she attempt to offer an apology to any of the on-duty personnel that were involved in this traffic stop.

Sergeant Mitaly and Deputy Mangold both stated that Deputy Bivins was traveling at speeds in excess of 90 mph. Upon seeing the marked patrol vehicle, they also both similarly described the manner in which she traveled from the left lane to the far right lane as rapidly deaccelerating and suddenly pulling into the emergency lane causing Sergeant Mitaly to take evasive action to avoid striking her vehicle. Sergeant Mitaly stated that he believed that Deputy Bivins' actions were in violation of *Florida State Statute 316.192 Reckless driving, a misdemeanor*. As described, her actions would, at a minimum, put her in violation of *Florida State Statute 316.1923 Aggressive careless driving, an infraction*.

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

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

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

That the allegation against Deputy Bivins that she violated **400.07 Conduct Towards Superior & Subordinate Personnel** be closed as **"Sustained."**


VII. Enclosures

- Memorandum from JSO Sergeant Mitaly summarizing his complaint of Deputy Bivins
- Written statement from St. Johns County Deputy Mangold summarizing the traffic stop of Deputy Bivins
- Copy of audio recordings (radio dispatch & 911 call) from St. Johns County Sheriff's Office
- Copy of Florida statutes 316.192 and 316.1923
- Memorandum from Chief Deputy Waller to Commander Donn titled "Authorization for Administrative Investigation"
- Notice of Administrative Investigation
- Administrative Investigation Warning

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  210
Agent Kraig Hupfer, ID 210

Sworn to and subscribed before me, the undersigned authority, this 01st day of May, 2017.

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





Brevard County Sheriff's Office
Titusville, Florida

MEMORANDUM

DATE: May 05, 2017
TO: Deputy Heather Bivins
FROM: Chief Deputy Doug Waller
RE: Final Action
 Command Inquiry 2017-CI-010

A TRUE COPY	
TIME <u>6:00</u>	P.M.
DATE <u>5-5-17</u>	
BREVARD COUNTY SHERIFF'S OFFICE	
Received By: Dep. Heather Bivins	
<u>[Signature]</u>	
Signature of Employee Served	
Served by:	
<u>[Signature]</u> 210	
Signature of Agent/Deputy	

Administrative Investigation 2017-CI-010 is now closed. The final action regarding this investigation is the determination of "**Sustained**" charges and the application of appropriate corrective action.

After a review of the Administrative Investigation, and in consideration of the comments you provided during your pre-deprivation hearing on May 05, 2017, I have determined that your actions were in violation of the established policies and procedures of the Brevard County Sheriff's Office. Specifically, your actions were in violation of Policy and Procedure; **400.00 General Professional Responsibilities, 400.06 Compliance with Law & Regulation** and **400.07 Conduct Towards Superior & Subordinate Personnel**.

During a traffic stop on April 12, 2017, three Deputy Sheriff witnesses described your demeanor and attitude towards them as extremely negative and unprofessional. During your Pre-Deprivation hearing on May 5, 2017, you displayed behavior that I would describe as angry and defensive. Although, you admitted that the excessive rate of speed you were traveling was unacceptable, you failed to acknowledge the seriousness of your actions or to acknowledge that your personal interactions with the deputies from the Jacksonville Sheriff's Office and the St. Johns County Sheriff's Office was considered rude and unprofessional. Although you were off duty at the time of this stop, you identified yourself as a member of the Brevard County Sheriff's Office to the on duty Deputy Sheriffs that had stopped you, once this occurred you had an obligation to conduct yourself in a manner that is befitting of a member of this agency. We expect you to represent yourself, your agency and your citizens in a positive and professional manner at all times. I do believe that you will use this incident as a learning opportunity and seek immediate improvement in your interpersonal and communication skills.

The disciplinary action concerning this matter will be a **twelve hour (12) suspension without pay**. Additionally, based on my understanding of this incident, as well as my observations during your hearing, I am concerned that there may be other issues affecting

May 05, 2017

Page 2

your performance and demeanor that need to be addressed. For that reason, I am directing our Human Resources Manager, Lisa Gillis, to contact you and set up a Management Referral to our Employee Assistance Program. Additionally, to move your closer to your residence, I am transferring you from your current assignment at the East Precinct to North Precinct patrol with the hope that a fresh start will help you to improve and correct your deficiencies.

Barring a Civil Service Appeal or Collective Bargaining Grievance of the proposed disciplinary action, the unpaid suspension will be served at the discretion of Commander Dan Singleton prior to your transfer, which will be effective on May 20, 2017.

If you file a Civil Service Appeal or Collective Bargaining Agreement grievance in regards to the proposed disciplinary action, the period of unpaid suspension will be postponed until the appeal or grievance process is completed.

As provided by the Civil Service Act, Chapter 83-373, Laws of Florida and the Collective Bargaining Agreement with the Police Benevolent Association, and the Brevard County Sheriff's Office, you may appeal to the Civil Service Board or file a disciplinary grievance to this action. To appeal or grieve this discipline, you must file a petition for review within ten (10) days of receipt of this memorandum. The petition for review shall be filed United States Mail, registered, return receipt requested, or in person with Manager Lisa Gillis, Human Resources, 700 South Park Avenue, Titusville, Florida 32780. A copy of any petition should also be directed to myself at the same address.

You are forewarned that any subsequent violations could lead to progressive discipline up to, and including, termination of your employment.

If you have any questions or require any clarifications regarding this matter, please contact my office at your convenience.

cc: Commander Clifton Singleton
Human Resource Manager Lisa Gillis
CFO Greg Pelham
File 2017-CI-010

I waived my right to a civil service hearing or grievance hearing so I may serve my suspension before the 10 day appeal date. CLB 5/5/17