



Department of Public Protection

TO: George Recktenwald, Director
Department of Public Protection

FROM: David Vanis, Captain
Department of Public Protection
Internal Affairs Unit

DATE: May 29, 2014

SUBJECT: Case # IA-2014-323, Officer Joshua Marlett, Beach Safety Division

References:

1. Memo DPP14-045 from Director Recktenwald directing Internal Investigation.
2. Notice of Internal investigation addressed to Officer Joshua Marlett.
3. Memo and supporting documentation from Director Swanson requesting Internal Investigation.
4. Complainant (Daniel Lowry) interview transcript (Dated May 5, 2014).
5. Daniel Lowry's notes documenting the incident.
6. Trespass history for Daniel Lowry
7. Officer Joshua Marlett interview transcript (Dated May 15, 2014).
8. Email from Rita Houghton
9. Rita Haughton interview transcript (Dated May 20, 2014).
10. Gretchen Brenton interview transcript (Dated May 20, 2014).

Complainant:

Daniel Lowry
4 Raymonde Circle
Ormond Beach, FL, 32176
(386)9831987

Complaint:

On May 2, 2014, Daniel Lowry contacted the front desk at Beach Headquarters and requested to speak with Deputy Chief Petersohn in reference to a complaint about Officer Marlett. On this date, I was assigned as the Acting Deputy Chief of Operations. DC Petersohn was not scheduled to return from his vacation until May 12, 2014.

I returned Lowry's call on the same day. He told me that on April 8, 2014 he had gone into the backyard of one of his neighbor's houses to check on a barking dog. This house is next to Ofc. Marlett's wife's house. Later that evening, at approximately 9-9:20 pm, Ofc. Marlett confronted Lowry at Lowry's residence (4 Raymonde Circle, Ormond-by-the-Sea). Ofc. Marlett told Lowry to stay away from his wife's house and threatened to shoot him if he returned. I asked Lowry if he had reported this incident to the Volusia County Sheriff's Office. Lowry responded that he did

not wish for this incident to rise to that level and had been advised by several friends to report the incident to Beach Safety since Ofc. Marlett is a Beach Safety Officer. Due to the nature of the threat, I asked Lowry if Marlett was armed or if Lowry believed that Marlett was armed at the time of the threat. Lowry responded that Marlett was armed as it was part of his uniform. Lowry then clarified that Marlett had responded to his residence that evening in a marked, Volusia County Beach Safety vehicle and was wearing his issued uniform including a firearm. At this point in the conversation, I advised Lowry that I would notify the Beach Safety Director so he could decide how to best investigate the incident. I advised that I would contact him at a later date to gather additional information.

Due to the nature of the complaint and potential for adverse action based on the allegations, I did not discuss this incident with Officer Marlett.

Information:

I verified, through CAD records, that Officer Marlett was on duty the evening of April 8, 2014. Based upon the times given by Lowry, Marlett was not assigned to a call at the time of the incident. I reviewed Officer Marlett's AVL (GPS) data from 2000-2200 hours on April 8, 2014. The GPS data indicates that the vehicle that Marlett was operating during his shift was on Raymonde Circle from 2117 hours through 2140 hours. Officer Marlett's vehicle was parked in front of 4 Raymonde Circle (Mr. Lowry's residence) for approximately 1.5 minutes at 2126 hours.

Records indicate that Officer Marlett's mailing address is, and has been since 2009, [REDACTED].

During the early to middle part of the month of April, Officer Marlett contacted me by telephone and advised that he may be receiving a citizen's complaint. At this point in time, I was Officer Marlett's direct supervisor. Marlett advised that he had been in a verbal argument with a neighbor after he found the neighbor walking around the side of his wife and children's' house at night with a flashlight. While I didn't ask, I assumed that this incident occurred while Marlett was off duty due to the nature of the incident. My next day in the office, I advised Deputy Chief Petersohn of what I had been told by Marlett. DC Petersohn advised that he had already been contacted by the complainant and that he (DC Petersohn) would address the complaint.

I advised Director Swanson of the conversation with Mr. Lowry and provided him with GPS records and CAD data relating to Ofc. Marlett's activity on April 8, 2014.

I conducted a sworn interview with Daniel Lowry on May 5, 2014 at his residence.

Daniel Lowry:

During the voluntary sworn interview, Lowry advised me that he has had ongoing issues with several of his neighbors, not including Ofc. Marlett. Lowry advised that he has been accused of

looking into windows. Lowry expressed to me that he felt that several people in the neighborhood "are just gunning for me."

Lowry told me that on April 5, 2014 he noticed a dog in Ofc. Marlett's yard that "looked like it was in distress." Lowry stated that he knocked on the house's door but did not receive an answer. Lowry retrieved a bucket of water for the dog and placed it in Marlett's yard for the dog. A couple days later, approximately April 7th, Lowry returned to Marlett's house after dark and knocked on the door again. Lowry told me that he did not receive an answer at the door and walked around to the back of the house with a flashlight. Lowry made a third trip to Ofc. Marlett's house on April 8th. Lowry did not knock on the door this time and walked up and retrieved the bucket he had left several days earlier.

Subsequent to his third visit to Ofc. Marlett's house Lowry speculates that a "nosy neighbor" contacted Ofc. Marlett and gave him false information. Lowry told me that Ofc. Marlett came to his (Lowry's) house and the following took place:

He threatened to fill me full of holes I think were his exact words. He did not actually say shoot me, but he said he was gonna fill me full of holes if I ever trespassed on his property again. He got right up in my face hollering "do you understand me?" I mean really loud and really aggressive kind of nature, 3 or 4 times. I said "Josh I told you 3 or 4 times now that I understand what you're saying" and then he went into this "Oh are you gonna have an attitude with me now?" kind of a thing, and I tried to explain to him what the situation was, and uh, he just basically didn't seem to care about anything that I said. Um, so that was pretty much the end of that incident, ok. Um, he left and I thought about it that night, so the next day I called your office and requested for Josh to contact me. And at that time I tried to explain again to him what my motivation was, ya know I saw this dog in distress and I just wanted to help it out and such, and uh, I was going to ask him for the names of the people that had bad mouthed me. He hung the phone up on me, I never did get to finish the conversation, and so at that point I decided I needed to contact his supervisor. So I called your office again, spoke with uh, Kathy? Yeah, Kathy answered the phone, I explained the situation to her, she gave me, she put me in touch with um, Deputy Chief Petersohn, Scott Petersohn. I never got a, I did not get a return phone call from Chief Petersohn when I left him a message, but later that night I got a call from Josh, and he, the first words out of his mouth basically were "don't call, don't call my work", and uh, so I had to have a little bit more of a stern discussion with him, but I was able to explain the situation to him, and I asked him to please provide me the names and what was said bad mouthing me, because I need to, I need to, I need to address this issue.

I then questioned Lowry as to whether he believed that Ofc. Marlett was on duty. Lowry responded that he believed, but wasn't sure if Ofc. Marlett was on duty and did not notice if he was wearing a uniform and/or firearm. Lowry explained that he took the threat of "fill you full of holes if you trespass again" as a very serious threat and felt that Ofc. Marlett used his position as a Law Enforcement Officer to intimidate him. Lowry also added that he did not believe there were any witnesses to this interaction with Ofc. Marlett.

Lowry initially tried to contact Ofc. Marlett through Beach Safety so that he could explain his situation. Ofc. Marlett returned his call but again threatened to "fill him full of holes if he trespassed again. On or about April 14th Lowry felt that he needed to contact Ofc. Marlett's supervisor and subsequently called DC Petersohn at Beach Safety Headquarters. Lowry stated that the same day he first contacted DC Petersohn, he received a phone call from Ofc. Marlett

on a restricted number. The first thing Ofc. Marlett told Lowry was "for me to not call his workplace."

Lowry was questioned as to whether he would like to pursue a criminal complaint in regards to aggravated assault. He responded that he did not wish for this to rise to that level. When questioned about the level of discipline he would like to see from the Administrative Complaint, Lowry was very insistent about being able to speak with Ofc. Marlett and determine the level of involvement of his other neighbors' actions in this situation. When I advised Lowry that I wasn't sure if that outcome would be possible, he responded:

I would like to see Josh maybe recognize that he was out of line, maybe he could learn from it. I know that you guys go through a lot of stress in your job and I'm not looking to get him in trouble. I'm looking to address this issue which caused him to feel like he had to come down here and threaten me, ok, which is the civil thing, you know the civil situation that I was discussing, I was describing earlier. As far as Josh goes with his work, I just would like for it to be recognized that he came down threatening me and maybe, you know maybe deal with his stress somehow or something, ya know? I just don't want him thinking he can come down and give me shit anytime he feels like it and get away with it.

During the course of the interview I noticed that Lowry was referring to his notebook several times for dates and times. He allowed me to take pictures of his notebook. Lowry's notes were added as item 6. This interview was transcribed and is listed under tab 4.

Officer Joshua Marlett:

I conducted a sworn subject interview with Ofc. Marlett on May 15, 2014. Prior to the interview, Ofc. Marlett was given an opportunity to review the complainant's interview and all other associated documents pertaining to this case. Ofc. Marlett voluntarily waived his right to representation during this portion of the investigation. Ofc. Marlett has been employed by Volusia County for 14 years and has been serving as sworn Senior Lifeguard for the last 5 years.

Ofc. Marlett acknowledged that he was on duty and in full uniform to include his issued firearm and other less lethal weapons on the evening of April 8, 2014. He further advised that he made contact with Mr. Lowry at Lowry's residence on this evening while he was on duty.

When question as to the reason for his contact with Lowry on April 8th, Ofc. Marlett told me the following:

On April 8th, 2014 at approx 9:18pm I was on duty in full uniform & I was driving a marked Volusia County Beach Patrol vehicle. I was going to my children's residence, which I own but do not reside at to pick up my evening meal, which I'm permitted to pick up a meal. When I was approaching the front door, my neighbor from directly across the street flagged my down in reference to Daniel Lowry prowling on my property. She stated Lowry had a flashlight & he entered the rear of my property on the evening approx 3 or 4 days prior to today, which was April 8th. She advised he was looking through the west side door window which is a window adjacent to the garage. Once Lowry realized he was being watched and, excuse me, once Lowry realized he was being watched he shook his fist in an angry manner at the neighbor across the street at which time he left

my property. She stated he was on my property again this evening near the west side of my property.

Ofc. Marlett then explained the conversation that he had with Lowry at Lowry's residence:

Taking this as an immediate threat I addressed Mr. Lowry & went to his residence & asked Lowry if he had been on my property recently, if so and why. Lowry stated he took Lola, which is my children's dog, the dog in question, a bowl of water earlier in the day & that he had simply retrieved it, the bowl, from the front of my property. I then asked him why he had been on my property with a flashlight a few days prior. Lowry stated he was looking for Lola. Self incriminating, immediately. I then asked him why he was on my property at night with a flashlight, going into my backyard & looking through my side window. This is when Lowry began stuttering as if he had attempted to solidify his reason for prowling on my property...

I told Lowry to stay off my property & he has no reason to be on, to ever be on anyone's property that has not given permission to be on. Lowry did not acknowledge my demand & he continued to provide me with the excuse he was looking for my dog. After three times of asking him if he understood my demands to stay off this property, he acknowledged & stated he'd stay off my property. Mr. Lowry continued to go on a rant about how neighbors think he's always looking into other people's property. I then warned him, [REDACTED] & I both have firearms, if he enters my property, both [REDACTED] & I, will take this as an immediate threat to my children's lives & we will exercise our rights outlined in Florida State Statute 776.013 known as, commonly known as, stand your ground law, or castle doctrine & he would be shot on sight. At no time did I say I was going to come down & shoot him. He would be shot on sight, which is my right as a Florida resident. I was very firm on my orders & with what the repercussions would be for endangering the safety of my children. It is, I told him it is completely inexcusable for being on my property at night with a flashlight, especially when my children are home alone with their mother. I was not attempting to use my authority as a law enforcement in any way, shape or form, nor to intimidate Lowry. I was not threatening him, excuse me, I already said that. I have every right to warn Lowry of my intentions to exercise my Florida resident rights. I felt this was necessary to prevent any harm to my children, & to inform Lowry of the legal repercussions as well as his own self preservation for making the mistake to prowl on any person's property in the state of Florida. Mr. Lowry has been known & investigated for prowling, or trespassing on multiple properties in this neighborhood. The conversation was brief, I was very firm, & no way, shape or form I was threatening him, I was simply exercising my rights as a Florida resident. All of Lowry's actions were suspicious & criminal in nature. That was the majority of that conversation, it was very short, I would say 45 seconds to a minute, maybe.

Ofc. Marlett told me that he does not believe that telling Lowry that he, or his wife will shoot him on sight if he is prowling on his property is a "threat." Ofc. Marlett believed this to be his right as a Florida resident and he was just informing Lowry of possible repercussions for future violations. He denied being "in his face" and stated that he was not yelling at Lowry but was speaking sternly.

Ofc. Marlett could not recall ever using the phrase "I'll fill you full of holes if you ever trespass on my property again," even though this was the exact language he used when Director Swanson ordered him not to initiate any contact with Lowry on May 6, 2014.

Ofc. Marlett told me that he did not use his position as a Law Enforcement Officer to influence Lowry. He took Lowry's presence on his property as a threat to his family and would have handled the situation the same had he been off duty and not wearing a uniform.

Ofc. Marlett told me that he did not notify the Volusia County Sheriff's Office of the prowling/trespassing incident when learned of it "Because there was nothing that could be done. The only thing that could be done is trespass. That's it." Ofc. Marlett told me that he intended to have Lowry trespassed from his property by the Sheriff's Office at some point but had not done so at the time of this interview nearly five weeks after the incident. He did state that he told a deputy about the incident but no call was generated as a result of this conversation with the deputy that works in the area of this incident.

Ofc. Marlett acknowledged that he called Lowry a day or two after the original incident. This was in response to Lowry's request for contact through Beach Safety Headquarters. Ofc. Marlett stated that he did not tell Lowry during this conversation that he would be shot if he trespassed again. He described the conversation as "cordial" and he simply told Lowry that he had nothing else to say other than to stay off of his property. Ofc. Marlett called Lowry on one more occasion after he learned that Lowry had been trying to contact DC Petersohn. During this conversation, he told Lowry to "stop harassing my job." Ofc. Marlett did not believe that telling Lowry this violated Beach Safety Policy 27.01.02 which states that employees will not interfere, discourage or intentionally delay the making of complaints against employees. Ofc. Marlett told me that he did not believe that Lowry was filing a complaint even though he had contacted me shortly after the incident to tell me that he may be receiving a complaint. Ofc. Marlett told me that he made no other calls to, nor had any other contact with Lowry since that point.

Given the opportunity to handle the situation differently, Ofc. Marlett told me that he would like to address Lowry differently, but is not sure how. He did not feel that contacting VCISO and having him trespassed would be affective given Lowry's history with other neighbors. He went on to say:

So I don't feel I would've done anything different. Whether I would've done something different, I wish, I wish there was a better way, but the, in all reality with all political nonsense aside, there is no way to get through individuals with this type of mental instability of thinking they can do whatever they want & have it be affective. Not one time in my experience, ever.

I asked Ofc. Marlett if he believed that his actions violated any of the listed Division Policies, County Merit Rules, and Florida Administrative Codes. The following are his responses to those violations:

No **Beach Safety policy 11.01.44 Neighborhood & Domestic Disputes:** *employee shall not, shall avoid personal involvement in neighborhood controversies, domestic or family disputes. Such disputes shall be investigated by impartial on-duty Beach Safety Officers. Beach Safety Officers shall not attempt to exercise authority to make arrests in their own quarrels, but shall contact the local jurisdiction who shall cause the matter to be investigated & action taken by an impartial Beach Safety officer having no personal interest in this dispute.*

No **Beach Safety policy 11.01.57 Harassment:** *Employee shall not use their position to harass, threaten or coerce anybody.*

- Yes **Beach Safety policy 11.01.** *It shall be the policy of the division that employees maintain command of temper, patience & discretion, they shall not engage in any conduct which constitutes neglect of duty, or which is likely to adversely affect the discipline good order or reputation of the division, even though such conduct may not be specifically set forth in this chapter.*
- No **Florida Administrative Code 11B-274(C)2 Misuse of an Official Position.** *defined by Florida Statute 112.313 subsection 6.*
- No **Volusia County Merit Rules, section 86-453. Reasons for disciplinary action.** *Criminal dishonest or other conduct which interferes with effective job performance or has an adverse effect on the officials of Volusia County service*
- No **Volusia County Merit Rules section 86-453, reasons for disciplinary action subsection 13.** *Any conduct on or off duty that reflects unfavorably on the county as an employer*

Rita Houghton:

I was contacted by Mrs. Houghton on May 19, 2014 in reference to this case via email (See Item 8). I conducted a sworn interview with Mrs. Houghton on May 20, 2014. Mrs. Houghton identified herself as Ofc. Marlett's neighbor. She resides directly across the street from Ofc. Marlett's house at 26 Raymonde Circle. She stated that on April 8, 2014 she had observed Mr. Lowry walking around Ofc. Marlett's house with a flashlight looking in windows and checking door knobs. This was the third occurrence that she noted in several days leading up to this date. She attempted to call Ofc. Marlett's wife to notify her of Lowry's actions, but was unsuccessful. When Ofc. Marlett arrived several minutes after Lowry had left the area, she told him about the incident. Mrs. Houghton explained that she has had several negative interactions with Lowry in the past. She requested that Ofc. Marlett go to Lowry's house and address the current situation. She added that she wanted Ofc. Marlett to inform Lowry that he could be shot for going on to other people's property. She added that Ofc. Marlett was very composed and calm with her. He even attempted to calm her down as she was frantic at the time. Mrs. Houghton did not witness the interaction between Lowry and Ofc. Marlett but was on the phone with Gretchen Brenton who lived nearby Lowry during the interaction. Mrs. Houghton told me that she believed that Ofc. Marlett was very professionally when speaking with Lowry.

This interview was transcribed and added as item 9.

Gretchen Brenton:

Mrs. Brenton was contacted by Mrs. Houghton while I was at her residence. Mrs. Brenton agreed to speak with me in regards to what she observed on April 8th. Mrs. Brenton told me that she lives across the street and one house over from Lowry at 5 Raymonde Circle. She received a call from Mrs. Houghton and stood outside her house while Ofc. Marlett addressed Lowry on April 8th. She estimated that she was approximately 150 feet from Lowry and Marlett. She told me that she did not hear any yelling and that both were approximately 5 feet apart during the entire conversation. Mrs. Brenton did not hear any of the conversation due to the distance.

This interview was transcribed and added as item 10.

Conclusion:

On April 8, 2014, Ofc. Marlett was on duty when he went to his residence to pick up his dinner near 2100 hours. While there, Mrs. Houghton notified Ofc. Marlett that Daniel Lowry had been walking around his house with a flashlight while looking in windows and checking door handles. Ofc. Marlett did not contact the law enforcement agency having jurisdiction over the area (VCSO) to request an investigation of the incident. Ofc. Marlett went to Lowry's residence to inquire about Lowry's actions. While there, Lowry told Ofc. Marlett that he was at his residence checking on his dog's well being. Ofc. Marlett demanded several times that Lowry not return to his residence. After Lowry acknowledged Ofc. Marlett's demands, Ofc. Marlett told Lowry that both he and his wife possess firearms and if he enters the property it will be viewed as a threat to his children's lives and Lowry will be shot on sight. Ofc. Marlett viewed this as his right as a Florida citizen pursuant to FSS 776.013.

Lowry states that he was again told that he would be shot (Filled full of holes if he trespassed again) after Ofc. Marlett called him a day or two after the incident as requested. Marlett again called Lowry after he learned that Lowry had been in contact with DC Petersohn. During this conversation, Ofc. Marlett told Lowry to "Stop harassing my workplace." This was the last time that Ofc. Marlett and Lowry interacted.

Findings:

Based upon supporting documentation and sworn testimony the following allegations against Beach Safety Officer Joshua Marlett are **sustained**:

Merit System Rules and Regulations Sec. 86-45. Conduct of employees. (a) Code of conduct. Employees of the county government are employed to provide service to the citizenry of the 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.

Merit System Rules and Regulations Sec. 86-453. Reasons for disciplinary action. (8) Criminal, dishonest or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service.

Sec. 86-453. Reasons for disciplinary action. (13) Any conduct, on or off duty, that reflects unfavorably on the county as an employer.

Beach Safety policy 11.01: It shall be the policy of the Division that employees maintain command of temper, patience and discretion. They shall not engage in any conduct which constitutes neglect of duty or which is likely to adversely affect the discipline, good order or reputation of the Division, even though such conduct may not be specifically set forth in this chapter.

Beach Safety policy 11.01.44 Neighborhood & Domestic Disputes: employee shall not, shall avoid personal involvement in neighborhood controversies, domestic or family disputes. Such disputes shall be investigated by impartial on-duty Beach Safety Officers. Beach Safety Officers shall not attempt to exercise authority to make arrests in their own quarrels, but shall contact the local jurisdiction who shall cause the matter to be investigated & action taken by an impartial Beach Safety officer having no personal interest in this dispute.

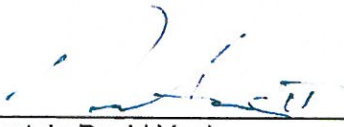
Based upon supporting documentation and sworn testimony the following allegations against Beach Safety Officer Joshua Marlett are **not sustained**:

Florida Administrative Code 11B-274(C)2 Misuse of an Official Position. defined by Florida Statute 112.313 subsection 6.

Concluding Statement:

Unless otherwise directed, this investigation is considered closed, and is submitted for review and action as deemed appropriate. The original attachments of interviews and other documents pertaining to this investigation remain on file with the Internal Affairs Unit.

"I, the undersigned, 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 Statute."



Captain David Vanis

5/29/14

Date



INTER-OFFICE MEMORANDUM
Department of Public Protection
125 W. New York Ave., Suite 183
DeLand, FL 32720
386-740-5120 – FAX 386-740-5283

TO: Officer Joshua Marlett
Division of Beach Safety

DATE: June 16, 2014

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP14-062

SUBJECT: Notice of Intent to Suspend Without Pay

REFERENCE:

REC. BY THE
COUNTY OF VOLUSIA

JUN 16 2014

DEPT. OF PUBLIC
PROTECTION

Purpose: The purpose of this memorandum is to provide notice of intent to suspend without pay for three (3), twelve (12) hour shifts. The intended action is the result of your violation of County Policy in regards to unprofessional conduct.

Background: Per the internal affairs investigation dated May 29, 2014, it was determined that your conduct, while on duty as a sworn Law Enforcement Officer with the Division of Beach Safety, was unprofessional and reflected unfavorably on the county.

On May 2, 2014, Daniel Lowry contacted the front desk at beach headquarters and requested to speak with Deputy Chief Scott Petersohn in reference to a complaint about you. As Deputy Chief Petersohn was on vacation, Captain David Vanis, working that day as Acting Deputy Chief of Operations, returned Mr. Lowry's call. The complainant (Daniel Lowry) advised that you came to his house on the evening of April 8, 2014 and confronted him about being on your wife's property earlier that day.

Mr. Lowry stated to Captain Vanis that he had gone into the backyard of one of his neighbor's houses to check on a barking dog. The neighbor's house is adjacent to your wife's backyard. He stated that later that evening you confronted him at his residence (4 Raymonde Circle, Ormond by the Sea) and told him to stay away from your wife's house and threatened to shoot him if he returned. When asked if he had reported this incident to the Volusia County Sheriff's office, Mr. Lowry responded that he did not wish for this incident to rise to that level and that he had been advised by several friends to report it to Beach Safety since you are a Beach Safety Officer. When Mr. Lowry was asked if you were armed at the time of the threat he stated that he thought you were armed as it was part of your uniform. Mr. Lowry then clarified that you had responded to his residence in a marked Volusia County Beach Safety vehicle and were wearing your issued uniform and firearm. At this point Mr. Lowry was advised by Captain Vanis that he would notify the Beach Safety Director so he could decide how to best investigate the incident.

Information: Based on the complaint and per the request of Beach Safety Division Director Mark Swanson, I directed an internal investigation be conducted. Captain Vanis conducted interviews with you, the complainant, Daniel Lowry, and two neighbors who were witnesses.

(continued)

On May 5, 2014 Captain Vanis interviewed Mr. Daniel Lowry.

On April 8, 2014, Mr. Lowry said you came to his home and threatened to "fill him full of holes" if he ever trespassed on your property again. Mr. Lowry said you got up in his face hollering really loud and really aggressive. He said while he tried to explain, you didn't seem to care about anything that he said.

Mr. Lowry said he tried to call you at your place of employment the next day to explain again what his motivation was and to get the name of the people who bad mouthed him but said you hung up on him before he could finish his explanation. Mr. Lowry then decided to contact your supervisor and left a message for him to call back. But instead of hearing back from Deputy Chief Scott Petersohn (who was on leave), you called him back later that evening and told him not to call your workplace.

When Captain Vanis asked Mr. Lowry if he wanted to pursue a criminal complaint in regards to aggravated assault, Mr. Lowry advised he did not want it to rise to that level. He said he wanted you to recognize that you were out of line and maybe learn from it. He didn't want you thinking you could come down and give him "shit" anytime you feel like it and get away with it.

On May 20, 2014 Captain Vanis interviewed two eye witnesses. One witness provided confirmation that Mr. Lowry was on your property walking around your house with a flashlight looking in windows and checking door knobs and the other witness stated she never heard any yelling and that both of you were about five feet apart during the entire conversation.

On May 15, 2014, Captain Vanis conducted a sworn interview with you. You acknowledged that you were on duty and in full uniform (this includes your issued firearm and other less lethal weapons) when you made contact at Mr. Lowry's residence on the evening of April 8, 2014. You were going to your home to pickup dinner when notified by Mrs. Houghton of Mr. Lowry walking around your home with a flashlight while looking in windows and checking door handles. You did not contact the Volusia County Sheriff's office to request an investigation be conducted as you felt nothing could be done. Instead, you went to Mr. Lowry's residence to inquire about his actions. While Mr. Lowry attempted to provide explanation, you demanded several times for him not to return to your residence. After Mr. Lowry acknowledged, you stated you told Mr. Lowry that both you and your wife possess firearms and if he entered your property it would be viewed as a threat to your children's lives and he would be shot on site. You did not view this as a threat but as your right as a Florida citizen pursuant to FSS 776.013. You also advised that at no time did you say you would come down and shoot him.

During the interview you also stated you were not attempting to use your authority as law enforcement in any way, shape or form, nor to intimidate Mr. Lowry. You felt you had the right to warn him of your intentions as a Florida resident to prevent any harm to your children and to inform Mr. Lowry of the legal repercussions as well as his own self preservation for making the mistake to prowl on any person's property in the state of Florida.

You stated you were brief and firm during your conversation with Mr. Lowry and that the conversation was very short and lasted 45 seconds to a minute.

Violation: Your actions have violated the following County of Volusia Merit System Rules and Regulations, as well as, Volusia County Beach Safety Policies.

Based upon the information gathered during the internal affairs investigation, the following Volusia County and divisional policies were violated:

Volusia County Merit System Rules and Regulations:

Sec. 86-45. Conduct of employees. (a) Code of conduct. Employees of the county government are employed to provide service to the citizenry of the 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.

Sec. 86-453. Reasons for Disciplinary action (8) and (13).

(8) ...other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service.

(13) Any conduct, on or off duty, that reflects unfavorably on the county as an employer.

Volusia County Beach Safety Policies and Procedures:

11.01 It shall be the policy of the Division that employees maintain command of temper, patience and discretion. They shall not engage in any conduct which constitutes neglect of duty or which is likely to adversely affect the discipline, good order or reputation of the Division, even though such conduct may not be specifically set forth in this chapter.

11.01.44 Neighborhood & Domestic Disputes. employees shall not, shall avoid personal involvement in neighborhood controversies, domestic or family disputes. Such disputes shall be investigated by impartial on-duty Beach Safety Officers. Beach Safety Officers shall not attempt to exercise authority to make arrests in their own quarrels, but shall contact the local jurisdiction who shall cause the matter to be investigated & action taken by an impartial Beach Safety officer having no personal interest in the dispute.

Conclusion: Accordingly, and based on close review of the actions surrounding this event, I am issuing this letter of intent to suspend you without pay for three (3) twelve (12) hour shifts.

You stated you did not recall ever using the phrase "I'll fill you full of holes if you ever trespassed on my property again," but, that was the exact language you used when Beach Safety Division Director Mark Swanson, ordered you not to initiate contact with Mr. Lowry on May 6, 2104. While you may not have intended, or felt that you did not use your law enforcement authority when going to Mr.

Lowry's home while on duty and in your county issued attire, you created that appearance by doing just that. Instead, the correct way to handle this matter would have been to contact the Volusia County Sheriff's Office to report the incident. You had an eye witness who could have provided a statement as to the allegation of Mr. Lowry looking into the windows and trying the door knobs of your home. Instead, you attempted to handle a dispute that you could not remain impartial with; you violated county and division policies and procedures.

Continuation of this behavior is detrimental to the standards of professionalism expected from Beach Safety Personnel. You are advised that any continued adverse behavior or performance may result in more severe disciplinary actions to include dismissal.

Action: In accordance with section 86-455 (c) (4) of the Merit System Rules and Regulations you may respond to me either orally or in writing within three (3) calendar days of receipt of this letter. If you wish to respond, such response will not be accepted after Thursday, June 19, 2014 at 16:30 hours. If you wish to meet with me in person, you must contact me within the time limit stated above. I may be reached at 386-740-5120 or by email at: greectenwald@volusia.org. If you do not contact me by the time indicated, it will be assumed that you have waived this right. Should your response be inadequate or should you fail to respond in a timely manner, this action will proceed.


This notice of intent is an intervening action and is not a final decision. The three-day appeal response period process is part of the pre-disciplinary investigation. This investigation will be concluded and a final disciplinary decision will be rendered upon the expiration of the three-day period or upon deliberation from a requested meeting/telephone call.

Pursuant to Volusia County Merit System Rule Section 86-455, the Volusia County Legal Department and Human Resource Director have reviewed and concur with this action.

GR/tab

cc: Terry Sanders, Deputy Director of Public Protection Tom Motes, Human Resource Director
 Mark Swanson, Director of Beach Safety Tammy King, EEO Coordinator
 County Attorney

I certify that I have read this notification and acknowledge receipt of the original copy.



Employee Signature (Or Witness, if Employee Refuses to sign)

06/15/2014
(Date of Signature)



INTER-OFFICE MEMORANDUM
Department of Public Protection
125 W. New York Ave., Suite 183
DeLand, FL 32720
386-740-5120 – FAX 386-740-5283

TO: Officer Joshua Marlett
Division of Beach Safety

DATE: June 26, 2014

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP14-064

SUBJECT: Notice of Suspension Without Pay

REFERENCE: DPP14-062 - NOIS

REC. BY THE
COUNTY OF VOLUSIA
JUN 27 2014
DEPT. OF PUBLIC
PROTECTION

Purpose: The purpose of this memorandum is to provide you notice of suspension without pay for three (3), twelve (12) hour shifts. This action is the result of your violation of County Policy in regard to unprofessional conduct. The dates of your suspension without pay will be effective on Monday - July 14, 2014, Tuesday - July 15, 2014 and Friday - July 18, 2014. You will return to work on Saturday, July 19, 2014.

You received my notice of intent to suspend without pay on Monday, June 16, 2014. You contacted my office that same day requesting to speak with me. Terry Boczkus asked if you were calling in regard to receipt of the memorandum and whether you were requesting to meet with me or just speak on the telephone. You said a meeting would be great. The next day, June 17, 2014, you called my office and advised Ms. Boczkus that you didn't need to meet with me and that you had accepted the terms in the memorandum.

I appreciate that you have taken responsibility for your actions. Please understand it is imperative that you not engage in this type of behavior in the future. You must remain composed and contact proper authorities and/or supervision when dealing with a situation that involves your family.

I am proceeding with the intended action. The suspension is to be served as noted above, and you are advised that there shall be no voluntary overtime allowed in this pay period to make up the time. You are also required to contact Barbara Brooke, the County LPN, at 386-736-5984, to schedule an appointment with the Employee Assistance Program (EAP) within five (5) days of receipt of the memorandum for an evaluation to identify any assistance you may need; for which you are to comply.

Background: Per the internal affairs investigation dated May 29, 2014, it was determined that your conduct, while on duty as a sworn Law Enforcement Officer with the Division of Beach Safety, was unprofessional and reflected unfavorably on the county.

On May 2, 2014, Daniel Lowry contacted the front desk at beach headquarters and requested to speak with Deputy Chief Scott Petersohn in reference to a complaint about you. As Deputy Chief Petersohn was on vacation, Captain David Vanis, working that day as Acting Deputy Chief of Operations, returned Mr. Lowry's call. The complainant (Daniel Lowry) advised that you came to his house on the evening of April 8, 2014 and confronted him about being on your wife's property earlier that day.

Mr. Lowry stated to Captain Vanis that he had gone into the backyard of one of his neighbor's houses to check on a barking dog. The neighbor's house is adjacent to your wife's backyard. He stated that later that evening you confronted him at his residence (4 Raymonde Circle, Ormond by the Sea) and told him to stay away from your wife's house and threatened to shoot him if he returned. When asked if he had reported this incident to the

(continued)

Officer Joshua Marlett
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Volusia County Sheriff's office, Mr. Lowry responded that he did not wish for this incident to rise to that level and that he had been advised by several friends to report it to Beach Safety since you are a Beach Safety Officer. When Mr. Lowry was asked if you were armed at the time of the threat he stated that he thought you were armed as it was part of your uniform. Mr. Lowry then clarified that you had responded to his residence in a marked Volusia County Beach Safety vehicle and were wearing your issued uniform and firearm. At this point Mr. Lowry was advised by Captain Vanis that he would notify the Beach Safety Director so he could decide how to best investigate the incident.

Information: Based on the complaint and per the request of Beach Safety Division Director Mark Swanson, I directed an internal investigation be conducted. Captain Vanis conducted interviews with you, the complainant, Daniel Lowry, and two neighbors who were witnesses. On May 5, 2014, Captain Vanis interviewed Mr. Daniel Lowry.

On April 8, 2014, Mr. Lowry said you came to his home and threatened to "fill him full of holes" if he ever trespassed on your property again. Mr. Lowry said you got up in his face hollering really loud and really aggressive. He said while he tried to explain, you didn't seem to care about anything that he said.

Mr. Lowry said he tried to call you at your place of employment the next day to explain again what his motivation was and to get the name of the people who bad mouthed him but said you hung up on him before he could finish his explanation. Mr. Lowry then decided to contact your supervisor and left a message for him to call back. But instead of hearing back from Deputy Chief Scott Petersohn (who was on leave), you called him back later that evening and told him not to call your workplace.

When Captain Vanis asked Mr. Lowry if he wanted to pursue a criminal complaint in regards to aggravated assault, Mr. Lowry advised he did not want it to rise to that level. He said he wanted you to recognize that you were out of line and maybe learn from it. He didn't want you thinking you could come down and give him "shit" anytime you feel like it and get away with it.

On May 20, 2014, Captain Vanis interviewed two eye witnesses. One witness provided confirmation that Mr. Lowry was on your property walking around your house with a flashlight looking in windows and checking door knobs and the other witness stated she never heard any yelling and that both of you were about five feet apart during the entire conversation.

On May 15, 2014, Captain Vanis conducted a sworn interview with you. You acknowledged that you were on duty and in full uniform (this includes your issued firearm and other less lethal weapons) when you made contact at Mr. Lowry's residence on the evening of April 8, 2014. You were going to your home to pick up dinner when notified by Mrs. Houghton of Mr. Lowry walking around your home with a flashlight while looking in windows and checking door handles. You did not contact the Volusia County Sheriff's office to request an investigation be conducted as you felt nothing could be done. Instead, you went to Mr. Lowry's residence to inquire about his actions. While Mr. Lowry attempted to provide explanation, you demanded several times for him not to return to your residence. After Mr. Lowry acknowledged, you stated you told Mr. Lowry that both you and your wife possess firearms and if he entered your property it would be viewed as a threat to your children's lives and he would be shot on site. You did not view this as a threat but as your right as a Florida citizen pursuant to FSS 776.013. You also advised that at no time did you say you would come down and shoot him.

During the interview, you also stated you were not attempting to use your authority as law enforcement in any way, shape or form, nor to intimidate Mr. Lowry. You felt you had the right to warn him of your intentions as a Florida resident to prevent any harm to your children and to inform Mr. Lowry of the legal repercussions as well as his own self preservation for making the mistake to prowl on any person's property in the state of

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Florida. You stated you were brief and firm during your conversation with Mr. Lowry and that the conversation was very short and lasted 45 seconds to a minute.

You stated you did not recall ever using the phrase "I'll fill you full of holes if you ever trespassed on my property again," but, that was the exact language you used when Beach Safety Division Director Mark Swanson, ordered you not to initiate contact with Mr. Lowry on May 6, 2104. While you may not have intended, or felt that you did not use your law enforcement authority when going to Mr. Lowry's home while on duty and in your county issued attire, you created that appearance by doing just that. Instead, the correct way to handle this matter would have been to contact the Volusia County Sheriff's Office to report the incident. You had an eye witness who could have provided a statement as to the allegation of Mr. Lowry looking into the windows and trying the door knobs of your home. Instead, you attempted to handle a dispute that you could not remain impartial with. As a result, you violated county and division policies and procedures.

Violation: Your actions have violated the following County of Volusia Merit System Rules and Regulations, as well as, Volusia County Beach Safety Policies.

Based upon the information gathered during the internal affairs investigation, the following Volusia County and divisional policies were violated:

Volusia County Merit System Rules and Regulations:

Sec. 86-45. Conduct of employees. (a) Code of conduct. Employees of the county government are employed to provide service to the citizenry of the 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.

Sec. 86-453. Reasons for Disciplinary action (8) and (13).

(8) ...other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service.

(13) Any conduct, on or off duty, that reflects unfavorably on the county as an employer.

Volusia County Beach Safety Policies and Procedures:

11.01 It shall be the policy of the Division that employees maintain command of temper, patience and discretion. They shall not engage in any conduct which constitutes neglect of duty or which is likely to adversely affect the discipline, good order or reputation of the Division, even though such conduct may not be specifically set forth in this chapter.

11.01.44 Neighborhood & Domestic Disputes. employees shall not, shall avoid personal involvement in neighborhood controversies, domestic of family disputes. Such disputes shall be investigated by impartial on-duty Beach Safety Officers. Beach Safety Officers shall not attempt to exercise authority to make arrests in their own quarrels, but shall contact the local jurisdiction who shall cause the matter to be investigated & action taken by an impartial Beach Safety officer having no personal interest in the dispute.

(continued)

Officer Joshua Marlett
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June 26, 2014
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Conclusion: Accordingly, and based on close review of the actions surrounding this event, I am issuing you this letter of suspension without pay for three (3) twelve (12) hour shifts. The dates of your suspension without pay will be effective on Monday - July 14, 2014, Tuesday - July 15, 2014 and Friday - July 18, 2014. You will return to work on Saturday, July 19, 2014. The suspension is to be served as noted above, and you are advised that there shall be no overtime allowed in this pay period to make up the time. You are also required to contact Barbara Brooke, the County LPN, at 386-736-5984, to schedule an appointment with the Employee Assistance Program (EAP) within five (5) days of receipt of the memorandum for an evaluation to identify any assistance you may need; for which you are to comply.

Continuation of this behavior is detrimental to the standards of professionalism expected from Beach Safety Personnel. You are advised that any continued adverse behavior or performance may result in more severe disciplinary actions to include dismissal.

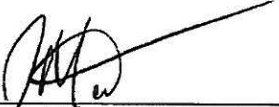
Action: In accordance with section 86-485 (a) (3) of the Merit System Rules and Regulations you have ten (10) working days from receipt of this letter to request an appeal of this action before the County Personnel Board. A request for appeal must be submitted in writing to the Human Resources Director. If you do not contact the Human Resources Director at 230 N. Woodland Blvd., Suite 262, DeLand, FL., 32720 by the time indicated, it will be assumed that you have waived this right.

Pursuant to Volusia County Merit System Rule Section 86-455, the Volusia County Legal Department and Human Resource Director have reviewed and concur with this action.

GR/tab

cc: Terry Sanders, Deputy Director of Public Protection Tom Motes, Human Resource Director
 Mark Swanson, Director of Beach Safety Tammy King, EEO Coordinator
 Charles D. Hargrove, Deputy County Attorney

I certify that I have read this notification and acknowledge receipt of the original copy.



Employee Signature (Or Witness, if Employee Refuses to sign)

06/27/2014
(Date of Signature)



Department of Public Protection

TO: George Recktenwald, Director
Department of Public Protection

FROM: David Vanis, Captain
Department of Public Protection
Internal Affairs Unit

DATE: October 7, 2014

SUBJECT: Report correction Case # IA-2014-323, Officer Joshua Marlett, VCBS

It has recently been brought to my attention that I had used the incorrect case number on the report regarding this Internal Affairs case. The case number IA2014-322 was incorrectly listed as the case number. The case number assigned to this incident is IA2014-323. I have attached a corrected face sheet for this report that reflects the correct case number. Please accept this memo as a correction to this report. This memo shall be retained along with both the corrected and original face sheet in the case file. I apologize for the typographical error.