

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

REPORT OF INVESTIGATION

REPORT NUMBER: IA-14-017

PERIOD COVERED: June 24, 2014
DATE REPORTED: June 24, 2014
SUBJECT(S) NAME: Sergeant Keith Peck 2358
INVESTIGATING OFFICER: Sergeant Thomas Tatum 2405

BASIS FOR INVESTIGATION:

On Wednesday, July 29, 2014, Sergeant Thomas Tatum received a supervisor's inquiry conducted by Lieutenant Brian Henderson. The inquiry alleged that Sergeant Keith Peck was disrespectful when speaking with Lieutenant Henderson and the Sheriff's Office Legal Advisor John MacConnell. Sergeant Peck is also alleged to have provided erroneous direction to deputies under his command. The complaint stemmed from a request for assistance call in Oak Hill, FL, from the Department of Children and Families (DCF). Chief Deputy Mike Coffin assigned the case for investigation by the Internal Affairs Unit. The supervisor's inquiry is referenced by memo number 053M033.14 and is attached and made part of this investigation. *(See Tab - C)*

OFFENSE(S):

26.2.41 Negligence Associated with Safety of Persons or Property - Employees shall be attentive to job duties and shall not violate official Directives, orders, supervisory instructions, or knowingly refrain and cause another to refrain from the performance of lawful duties required for the safety of persons or property. *(Violation subject up to a demotion.)*

26.2.121 Respect Towards Superiors - Employees shall display respect and shall address supervisors and superior officers by proper rank or title. *(Violation subject up to a 1 day suspension.)*

26.2.133 Repeated failure to maintain necessary skills, knowledge and abilities after counseling and instruction shall result in increasing the severity of disciplinary actions. *(Violation subject up to dismissal.)*

INVESTIGATIVE SUMMARY:

On July 29, 2014, Chief Deputy Mike Coffin assigned the above-described incident to the Internal Affairs Unit for investigation. This report details the investigation conducted by Sergeant Thomas Tatum.

On July 30, 2014, Sergeant Tatum served Sergeant Keith Peck with a Notice of Internal Investigation at Taylor Rd. and Williamson Blvd. in Port Orange, FL. Sergeant Peck was provided with a copy of the law enforcement officer bill of rights.

John MacConnell

On August 14, 2014 Sergeant Tatum conducted a sworn recorded interview of Volusia County Sheriff's Office Legal Advisor John MacConnell in his office in DeLand, FL. The following is a summary of the interview.

Mr. MacConnell has been the Legal Advisor for the Sheriff's Office for the past 13 years. He has previous law experience as a prosecutor for eight and a half years and he was a defense attorney for fourteen years.

Mr. MacConnell advised as the legal advisor he routinely assists deputies regarding legal questions applicable to incidents they encounter in the performance of their duties. Mr. MacConnell stated he received a phone call on June 24, 2014, from Sergeant Keith Peck regarding an assist call with a Department of Children and Families (DCF) investigator. Mr. MacConnell explained that Sergeant Peck made reference to making entry into a home in order to remove children at the request of the DCF investigator. Mr. MacConnell stated based on the conversation with Sergeant Peck, he surmised the parents had some involvement with drugs which prompted the DCF investigator to call the Sheriff's Office for assistance in taking custody of the children. Mr. MacConnell said Sergeant Peck was under the impression that he was empowered under Florida Statute 39.401 to make forcible entry into the residence and remove the children. Mr. MacConnell advised he was under the assumption that Sergeant Peck was on scene reciting the facts. It was learned later Sergeant Peck was not on scene.

Mr. MacConnell stated there was no information provided by Sergeant Peck that would indicate the children were in immediate danger nor were there exigent circumstances that would allow unauthorized entry to the residence. Mr. MacConnell said Sergeant Peck felt very strongly that he was empowered to make forced entry and they disagreed on that point. According to Mr. MacConnell, Sergeant Peck felt that he [Mr. MacConnell] was not interpreting the statute correctly. Sergeant Peck told Mr. MacConnell that he had worked for DCF in the past and used that statute many times to make entry into residences. Sergeant Peck told Mr. MacConnell that he was wrong and he had an angry tone. Mr. MacConnell said he felt Sergeant Peck was directed to call him for the legal guidance.

Mr. MacConnell stated it was hard for him to say if Sergeant Peck was disrespectful when speaking to him. He added, "...*He didn't like it... as far as being disrespectful; it's hard to*

really say you know Keith, Keith has strong emotions. He tries to do the right thing. I think he was trying to do the right thing here...” Mr. MacConnell said at no point did Sergeant Peck use foul or profane language when speaking to him. Mr. MacConnell explained that he had a conversation with Lieutenant Brian Henderson expressing his views and they were on the same page in regard to no entry being made.

When asked if Mr. MacConnell thought the conversation was unprofessional, he said, *“It would have been unprofessional if it had been done in public or in front of other people. The fact that he had strong feelings about it, was argumentative, I didn’t think it as being unprofessional to me. I mean he was mistaken. And he thought he was right. I don’t get really upset about stuff like that.”* Mr. MacConnell stated he did not think Sergeant Peck intended to show a lack of respect towards him and added, *“I don’t think he intended to show a lack of respect for my position as a legal advisor. I don’t think it ever got that point you know he strongly believed in his position and I essentially said no you’re wrong we’re not going do that.”* (See Tab x for Official Transcript)

Deputy Andrew Davis

On September 10, 2014, Sergeant Tatum conducted a sworn recorded interview with Deputy Andrew Davis at the District Five office in New Smyrna Beach, FL. The following is a summary of the interview:

Deputy Davis has been with the Volusia County Sheriff’s Office for three years and is currently assigned to District Five as a patrol deputy. Deputy Davis has no previous law enforcement experience.

Deputy Davis advised he was dispatched to 184 Halifax Avenue in Oak Hill, FL reference to an escort for the Department of Children and Families. Deputy Davis explained the details in the call indicated DCF had attempted to remove the children from that residence earlier in the day and the parents fled from them. Deputy Davis said he was contacted on the radio by Sergeant Peck and was told that if anybody interfered they would go to jail. Deputy Davis advised he arrived at the call and contacted Sergeant Peck by telephone after approximately twenty minutes. He explained that Sergeant Peck recanted his previous instruction regarding arresting anybody who interferes with DCF and told him not to take any action until they figure out what was going on. Deputy Davis stated he did not recall Sergeant Peck giving him instruction to make forced entry or even any talk about making entry to the residence.

Deputy Davis explained he spoke with Sergeant Peck a second time on the telephone and Sergeant Peck asked him to find out from DCF what the statute was pertaining to the removal of children from the parents. Deputy Davis spoke with the DCF investigator and then provided the statute to Sergeant Peck who at that time was speaking with Mr. MacConnell. Deputy Davis stated Sergeant Peck made a comment after speaking with Mr. MacConnell that he did not know what he was talking about, but said nothing else about his conversation. No entry was made into the residence. (See Tab x for Official Transcript)

Deputy Robert Delahanty

On September 10, 2014, Sergeant Tatum conducted a sworn recorded interview with Deputy Robert Dehahanty at the District Five office in New Smyrna Beach, FL. The following is a summary of the interview:

Deputy Delahanty has been with the Volusia County Sheriff's Office for the past two years and is currently assigned to District Five as a patrol deputy. Deputy Delahanty has no previous law enforcement experience.

Deputy Delahanty stated he was dispatched to 184 Halifax Avenue in Oak Hill, FL reference to an assist for DCF. He advised that prior to responding to the call, he spoke with the zone unit from dayshift who responded to the address earlier in the day and was told the people fled with the children when DCF attempted to contact them. Deputy Delahanty said he met with DCF investigators who gave him the background and he was under the belief there was an emergency order to remove the children. He called Sergeant Peck for guidance and told him they did not have an emergency order in hand and the primary concern was for the children. Sergeant Peck told him to go in there and "do what he needs to do" to get the children. Deputy Delahanty stated he asked DCF about the emergency order and was told they did not have one in hand but they had twenty four hours to go in front of a judge to have one signed. Deputy Delahanty explained how the situation was escalating and the parents were yelling to get the kids out of the house. Sergeant Peck told him that if anybody stepped in front of them to deal with it accordingly as resisting a lawful order.

Deputy Delahanty advised a short time later Sergeant Peck called him back and told him to stand by because he was talking with the legal advisor John MacConnell. Deputy Delahanty said he was close to making entry to the residence before Sergeant Peck called him and gave the order to stand by. Deputy Delahanty explained he was familiar with the residence and the multiple complaints about drug activity and could see a concern for the safety of the children. According to Deputy Delahanty, Sergeant Peck did not express his any personal opinion regarding his conversation with Mr. MacConnell or the Watch Commander. *(See Tab x for Official Transcript)*

Lieutenant Brian Henderson

On September 11, 2014, Sergeant Tatum conducted a sworn recorded interview with Lieutenant Brian Henderson at a private address in Port Orange, FL. The following is a summary of the interview:

Lieutenant Henderson has been with the Volusia County Sheriff's Office for the past twelve years and is currently assigned as the Watch Commander on the Alpha/Bravo rotation. Lieutenant Henderson's role as the watch commander is to provide supervision at a command level for patrol operations in unincorporated Volusia County.

Lieutenant Henderson advised Sergeant Peck contacted him by telephone and advised his

deputies were on scene with DCF and they were attempting to remove minor children. He stated Sergeant Peck seemed to be a little agitated when speaking to him. Sergeant Peck told Lieutenant Henderson that he gave direction to his deputies to make entry to the residence and forcefully remove the children; due in part to DCF. Lieutenant Henderson advised he had concern about the direction provided to the deputies by Sergeant Peck. When Lieutenant Henderson attempted to ask Sergeant Peck questions regarding the circumstances involved with the removal of the children; Lieutenant Henderson said Sergeant Peck repeatedly talked over him on the phone. Lieutenant Henderson stated he had to tell Sergeant Peck to stop and that they would not be making entry to someone's home without further information. Lieutenant Henderson said at that point it appeared Sergeant Peck became enraged on the phone. He explained how Sergeant Peck raised his voice even higher and told him they could do that because he had the authority under chapter 39 [Florida State Statute] to do so because he worked for DCF. Lieutenant Henderson said Sergeant Peck could not answer basic questions regarding the call and it was evident he was not on scene. One of the questions he asked was if there was a court order and Sergeant Peck did not have the answer but speculated they did not. Lieutenant Henderson stated based on the conversation he speculated Sergeant Peck was operating under the premise of probable cause to remove the children which there was not sufficient evidence to authorize an entry to the residence.

Lieutenant Henderson said Sergeant Peck felt there were exigent circumstances which he strongly disagreed with. The exigent circumstances provided by Sergeant Peck were based on "what if's" not facts provided by DCF. Lieutenant Henderson stated he has had conversations with Sergeant Peck in the past and did not have any issues, but in this incident he felt as they were battling. Lieutenant Henderson directed Sergeant Peck to contact the legal advisor John MacConnell for a legal opinion. In response to the direction, Sergeant Peck told him he didn't have faith in Mr. MacConnell and he would direct them to walk away. According to Lieutenant Henderson, this statement was made in a disgusted tone. Lieutenant Henderson said he began to second guess Sergeant Peck's ability to fulfill the needs of the call and carry it out. Once Lieutenant Henderson addressed the tone and attitude of Sergeant Peck, he became more respectful. He gave instructions to Sergeant Peck to call the deputies on scene and obtain additional information to pass along to Mr. MacConnell because he couldn't answer the questions he had. A short time later Lieutenant Henderson said he received a telephone call from Mr. MacConnell asking him about the call for service because Sergeant Peck was "flying off the handle". Lieutenant Henderson said Sergeant Peck did not have the details which lead him to believe Sergeant Peck did not call his deputies to obtain the additional information. Lieutenant Henderson explained that Mr. MacConnell said Sergeant Peck was being difficult and he definitely didn't agree with Mr. MacConnell.

Lieutenant Henderson stated he checked Sergeant Peck's automated vehicle locator (AVL) when he contacted him the first time and noticed he was at a traffic homicide crash on the beach at the Dunlawton Ave. approach. He advised Deputy Conrad, Daytona Beach Shores Department of Public Safety and Beach Patrol officers, and Florida Highway Patrol were on the scene of the crash. Lieutenant Henderson said he checked Sergeant Peck's AVL a short time later and notice he was still on scene at the crash. Lieutenant Henderson said he ordered Sergeant Peck to depart the crash and respond to Oak Hill. Lieutenant Henderson advised he was on Granada Ave. in Ormond Beach, FL, and arrived in Oak Hill before Sergeant Peck.

Lieutenant Henderson stated once he arrived on scene, there was a lot of moving parts to the call due to the multiple people on scene. Lieutenant Henderson had a conversation with the DCF employees to ascertain the circumstances involved with the removal of the children. He was able to determine there was no court order and the reason for having the children removed was due to the parent's substance abuse involving methamphetamine. Lieutenant Henderson also mentioned DCF suspected the parents of manufacturing methamphetamine, which there was no indication of while on scene. Lieutenant Henderson advised he spoke with the mother who told him the children were not at that residence, they were down the street at another house.

Sergeant Tatum asked Lieutenant Henderson if the direction initially provided by Sergeant Peck to his deputies that evening potentially placed them in danger, he said yes. He also said he felt Sergeant Peck displayed a lack of respect for his position as the watch commander. *(See Tab x for Official Transcript)*

Sergeant Keith Peck

On September 19, 2014, Sergeant Tatum and Lieutenant Jessica Paugh conducted a sworn recorded interview with Sergeant Keith Peck at the Sheriff's administrative office in Deland, FL. The following is a summary of the interview:

Sergeant Peck has been with the Volusia County Sheriff's Office for the past twenty years and is currently assigned as a patrol supervisor for District Five in New Smyrna Beach, FL. He has eleven years prior law enforcement experience in Oklahoma as a police officer. He has 5 years previous experience as a DCF investigator in the State of Florida.

Sergeant Peck stated he was working on June 24, 2014, and heard deputies dispatched to a call in Oak Hill reference an assist for DCF. Sergeant Peck was aware of DCF's attempt earlier in the day to contact and remove the children, however; the parents put the children in a vehicle and fled from them. During shift briefing that day, he told Deputy Davis to respond to the call when it came in so there would be two deputies on scene. Sergeant Peck advised he was en route to the call when there was a call for a traffic fatality on the beach. He diverted to the beach because dispatch advised him the Beach Patrol was requesting investigators from the Sheriff's Office Major Case Unit respond. Sergeant Peck said it was his understanding that if there is a Major Case incident on the beach, the patrol supervisor for that area was to respond and take charge of the situation and determine if Major Case will respond. Due to the fact it was a traffic crash, Sergeant Peck knew Major Case would not be responding and continued to assess the situation.

Sergeant Peck told investigators that he arrived at the crash within a few minutes and described the scene as chaotic and nobody was giving direction on what should be done. Sergeant Peck described how the suspect was still seated in the vehicle with the keys in the ignition and the victim was lying on the ground behind the vehicle. He added that the victim's family was yelling and screaming and there was no crime scene initiated. Sergeant Peck stated he made arrangements to have the family taken to the beach patrol office and began giving direction to establish a crime scene because people were walking through the tire tracks in the sand of the suspect vehicle. He also coordinated with the Daytona Beach Shores Department of Public

Safety supervisor and made arrangements to have the suspect moved to a beach patrol vehicle to prevent him from wondering off. Sergeant Peck said his experience as a traffic homicide investigator was beneficial in this situation.

Sergeant Peck said while on the crash scene, he received a phone call from one of his deputies who was on scene in Oak Hill with DCF. The deputy told him the parents were defiant and refused to give DCF the children. Sergeant Peck said he told his deputy to try and talk to the parents and calm them down. If they still refused to give the children to DCF it would be considered interference with child custody and they would be arrested. Sergeant Peck stated he told deputies to assist DCF in any way possible but he never told them to make a forced entry into the house. Sergeant Peck said his thinking was that if the parents were arrested, they would be able to make entry into the residence to retrieve the children. Sergeant Peck advised that if a DCF investigator is out after regular work hours there is a concern for the safety of the children. He also took into consideration that the parents fled with the children earlier in order to evade DCF. One of the children was five months old. Sergeant Peck said the basis for DCF taking the children into custody was the parents tested positive for narcotics. Sergeant Peck said they have heard from people on the streets that the parents were selling narcotics, however this was never verified other than through their drug history.

Sergeant Peck explained he spoke with Lieutenant Henderson on the telephone and told him DCF was trying to take the children into custody and the parents were refusing to cooperate. He told Lieutenant Henderson they were probably going to arrest the parents and go inside the house and get the children. Sergeant Peck said Lieutenant Henderson asked him if DCF had a court order and he told him they did not. Sergeant Peck said Lieutenant Henderson told him they could not do that and Sergeant Peck referred to Florida Statute 39.401 which said he could. Sergeant Peck said Lieutenant Henderson was not familiar with the statute and he did not feel like DCF had the authority to take action without a court order or warrant.

Sergeant Peck said he became frustrated with Lieutenant Henderson during the conversation because it seemed like he didn't care and discounted his previous experience as a DCF investigator. Sergeant Peck stated he did not attempt to speak over Lieutenant Henderson, he was trying to explain his experience and Lieutenant Henderson said to stop talking over him. Sergeant Peck said Lieutenant Henderson kept interrupting him and said he didn't think that was right and they did not have the authority to take the children. Lieutenant Henderson told him they would need a court order or search warrant to take action, which he disagreed with. Sergeant Peck said his voice probably did get raised, that happens when he is passionate about something he speaks about. Sergeant Peck said it was not his intent to be disrespectful to Lieutenant Henderson. He was trying to tell Lieutenant Henderson he had taken hundreds of children into custody without a court order when he worked for DCF. Sergeant Peck said when he worked for DCF he would not leave the children in a bad situation to get a court order; they would use Statute 39.401 to remove the children.

Sergeant Peck said Lieutenant Henderson told him to contact the legal advisor for guidance. Lieutenant Henderson told Sergeant Peck to contact his deputies and have them stand by until they spoke with Mr. MacConnell. Sergeant Peck told investigators he may have made a comment to Lieutenant Henderson that Mr. MacConnell may not understand the statute and

would tell them to walk away. Sergeant Peck contacted Mr. MacConnell who was not familiar with the statute and had to research it.

Mr. MacConnell called Sergeant Peck back and said the statute does give them the authority to take the children into custody without a court order, but his concern was there was no force clause. Sergeant Peck said the Sheriff's Office is the enforcement arm and the deputies could not just walk away and take the chance of something happening to the children and that would look bad on the news. Sergeant Peck said Mr. MacConnell advised him they would need to call out an investigator and have a search warrant written which included a force clause. Sergeant Peck stated a search warrant would tie up all of his deputies for an extended period of time. Sergeant Peck said there was a disagreement in the interpretation of Statute 39.401 between him and Mr. MacConnell in terms of what was considered as taking by force. Sergeant Peck said,

"...My understanding was gonna be that my guys were saying if we wind up arresting these people then we're going into somebody's house. Once we're going into somebody's house then you know we're forcibly removing the child because we're arresting them so it wasn't a kick in the door, kick in the window you know kind of thing. It was a we're gonna arrest these people and we're gonna take these kids and we're going to give them to the state so that was, that was my understanding and, and I think maybe we misunderstood each other as far as you know he thought we were going down there kicking in doors, busting out windows and you know that was you know not that intent..."

Sergeant Peck stated his voice was probably raised during his conversation with Mr. MacConnell, but he didn't think he said anything that would be considered disrespectful or unprofessional. He said ultimately Mr. MacConnell is the attorney and he does consider him part of the chain of command, therefore; if he is told not to do something, he will not do it. Sergeant Peck said he and Mr. MacConnell had the same concerns; the safety of the children.

Sergeant Peck told investigators he responded to the scene in Oak Hill and met with the deputies. Upon his arrival he observed Lieutenant Henderson speaking with the mother of the children. After a conversation with the mother, Lieutenant Henderson was able to determine that the children were not at the house and they were located at another residence down the street and taken into custody. Affidavits were filed against the parents for interference of child custody.

Sergeant Peck was questioned if he felt he violated the below listed policies regarding this investigation. The following are his responses to the alleged violations:

26.2.41 Negligence Associated with the Safety of Persons or Property	No
26.2.121 Respect towards Superiors	No
26.2.133 Repeat Failure to Maintain Required Skills Knowledge and Abilities	No

(See Tab x for Official Transcript)

Conclusion:

On October 14, 2014 this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the below listed Department Standards Directives to be:

26.2.41 Negligence Associated with the Safety of Persons or Property	Not Sustained
26.2.121 Respect towards Superiors	Sustained
26.2.133 Repeat Failure to Maintain Required Skills Knowledge and Abilities	Not Sustained

Sheriff Johnson determined the discipline for Sergeant Peck to be a Letter of Reprimand which will be completed by Lieutenant Henderson. *(See Tab D for LOR)*

EXHIBIT(S):

- A. Report of Investigation
- B. Official Correspondence
- C. Complaint
- D. Administration of Oath/Perjury Warning
- E. Official Transcript of John MacConnell
- F. Official Transcript of Deputy Andrew Davis
- G. Official Transcript of Deputy Robert Delahanty
- H. Official Transcript of Lieutenant Brian Henderson
- I. Official Transcript of Sergeant Keith Peck
- J. Miscellaneous Documents
- K. Digital Media

WITNESSES:

John MacConnell
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Deland, FL
386-736-5961


Deputy Andrew Davis
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Deland, FL
386-423-3301

Deputy Robert Delahanty
Volusia County Sheriff's Office
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386-423-3301

Lieutenant Brian Henderson
Volusia County Sheriff's Office
Deland, FL
386-736-5961

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

INVESTIGATOR:  DATE: 10/29/14
Sergeant Thomas Tatum
Internal Affairs Investigator

APPROVED BY:  DATE: 10/29/14
Chief Deputy Mike Coffin
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA