

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

REPORT OF INVESTIGATION

REPORT NUMBER: IA-15-002

PERIOD COVERED: January 19, 2015
DATE REPORTED: January 21, 2015
SUBJECT(S) NAME: Deputy James Matthewman #8066
INVESTIGATING OFFICERS: Investigator Glen Bennett #1452

BASIS FOR INVESTIGATION:

On January 19, 2015, District-4 deputies responded to a burglar alarm at a business located in the 2100 block of Saxon Boulevard in Deltona, Fl. A short time after the initial alarm, deputies made contact with three adult males at a gas station located across the street from where the alarm sounded. Deputy Katie Campbell obtained the personal information from the three male subjects as Deputies Brian Howard and James Matthewman arrived as backup.

During the encounter, Deputy Matthewman allegedly asked one of the males for consent to search his backpack but was denied. After being denied consent to search, Deputy Matthewman reportedly advised the man that he would be arrested unless he allowed the search.

Moments later, Deputy Matthewman was observed searching the backpack and removing a baggy which allegedly contained a small amount of cannabis. After being questioned about the legality of the search by deputies on scene, Deputy Matthewman gave the suspected cannabis back to the male subject, who immediately left the scene.

OFFENSES:

This investigation is relevant to an alleged violation of Department Standards Directive:

26.2.131 Job Knowledge and Performance - Failure to maintain required skills, knowledge and abilities within acceptable levels shall result in counseling, instruction or training. *(Violation subject up to a written reprimand.)*

26.2.134 Knowledge of Official Directives - Department personnel are required to possess a sound working knowledge of the policies and procedures established by the Standards Directives. *(Violation subject up to 5 day suspension)*

RE: 1.7 Search and Seizure

INVESTIGATIVE SUMMARY:

On January 30, 2015, Chief Deputy Mike Coffin assigned the above incident to the Internal Affairs Unit. This report details the internal affairs investigation conducted by Investigator Glen Bennett. Deputy James Matthewman was served with a Notification of Internal Investigation in Deltona. *(See Tab – C for Official Correspondence)*

On February 3, 2015, Investigator Bennett reviewed the supervisor's inquiry authored by Sergeant Charles Whitener. According to the inquiry, on Wednesday January 21st, Deputies Campbell and Howard advised Sergeant Whitener of an alleged illegal search that Deputy Matthewman had conducted on Monday January 19th.

Sergeant Whitener conducted a preliminary administrative investigation which included interviews with Deputies Campbell, Howard and Matthewman. Based on his findings, the case was turned over to internal affairs for further investigation. *(See Tab – B for Supervisors Inquiry)*

Deputy Katie Campbell

On February 4, 2015, Investigator Bennett conducted a sworn recorded interview with Deputy Katie Campbell at the Sheriff's administrative offices in Deland. The following is a summary of that interview:

Deputy Campbell has worked for the Sheriff's Office since 2011 and has been assigned to patrol duties in District-4 for approximately two years. On January 19th at approximately 0100 hours, District-4 deputies responded to a burglar alarm at 2120 Saxon Boulevard in Deltona. While canvassing the area, Deputy Campbell located three adult males directly across the street from where the alarm occurred. As Deputy Campbell made contact with the subjects, Deputies Howard and Matthewman arrived on scene as backup.

As Deputy Campbell stood by her patrol car speaking to Central Communications (Central) on her portable radio, she observed Deputies Howard and Matthewman speaking to the three male subjects. Deputy Campbell said she was unable to hear the conversation since she was approximately thirty feet away; however, Deputy Howard approached and advised her that Deputy Matthewman had asked for consent to search a backpack belonging to one of the individuals but was denied. Deputy Campbell said she was then told by Deputy Howard, "*He [Deputy Matthewman] said well after he asked for consent for the male to go through his backpack, he [the male] said no. Deputy Matthewman said; well if you don't let me go through your backpack I'll just arrest you for loitering and prowling [Loitering and Prowling FSS 856.021].*"

According to Deputy Campbell, Deputy Howard told her that Deputy Matthewman began going through the subject's backpack and recovered a baggy that contained what was believed to be

approximately 4 – 5 grams of cannabis. Furthermore, Deputy Matthewman asked Deputy Howard if he would take the arrest since he was behind on two incident reports he had to write. Deputy Howard reportedly responded, “...well it’s kind of hard for you [Deputy Matthewman] to arrest him now since you got it [the contraband] illegally.”

Deputy Campbell said she witnessed Deputy Matthewman throw the contraband back to the male subject, before he left the scene. Deputy Campbell explained, “I watched him [Deputy Matthewman] throw it [contraband] at him and then at that point I figured there was still something in it because one of the other males said thanks for your officer discretion and they all just took off running.” Deputy Campbell said she then walked over to Deputy Matthewman and stated;

“I said did you just give that guy back, his marijuana and he said yeah. And I said why did you do that? And he said, he didn’t answer me again. I said did you do that because you got it illegally? And he said basically.”

After the three subjects left on foot, Deputy Campbell was dispatched to a priority call; therefore, unable to search for the subject with the contraband. Since the priority call went for several hours, it wasn’t until February 21st, her next duty shift, that she was able to advise her sergeant of what occurred. (See Tab – E for Official Correspondence)

Deputy Brian Howard

On February 9, 2015, Investigator Bennett conducted a sworn recorded interview with Deputy Brian Howard at the Sheriff’s administrative offices in Deland. The following is a summary of that interview:

Deputy Howard started with the Sheriff’s Office in September 2012 and has been assigned to patrol duties in District-4 Deltona since March of 2013.

Deputy Howard recalled working patrol on January 19th when he responded to the 2100 block of Saxon Boulevard in Deltona to back up Deputy Campbell. Deputy Campbell had located and detained three subjects across the street from an alarm at a business. Upon Deputy Howard’s arrival, he said he observed Deputies Campbell and Matthewman speaking to three adult males.

According to Deputy Howard, Deputy Campbell obtained the personal information from the three subjects as Deputy Matthewman engaged them in conversation. As Deputy Howard was seated in his patrol car, he observed Deputy Matthewman motioning for him to come over. Deputy Matthewman then asked Deputy Howard for a pair of latex gloves which he went to retrieve from the trunk of his patrol car. While Deputy Howard was at his trunk, Deputy Matthewman was engaged in conversation with one of the male subjects. When Deputy Howard returned with the latex gloves, Deputy Matthewman reportedly said, in front of the subject, “...this guy here doesn’t want me looking in his bag even though he’s across the street

from a business burglary. So I [Deputy Matthewman] guess I'll just have to arrest him for L&P [Loitering and Prowling FSS 856.021] and then search his bag...or you [male subject] can just let me look now." Deputy Howard recalled the male subject response, "... [He] looked at us like at a shock; he's like come on man."

Deputy Howard said he tried to intervene by breaking up the conversation instead of telling Deputy Matthewman he was wrong in front of the subject. Deputy Howard asked the subject why he didn't want the deputy to look in his backpack and the subject responded, "...because I did nothing and it's my right to say no." Deputy Howard acknowledged the subject's statement and walked over to Deputy Campbell who advised him that the three subjects had nothing to do with the business burglary. It was at that point when Deputy Howard asked Deputy Campbell if she heard what Deputy Matthewman said to the male subject holding the backpack. While speaking to Deputy Campbell, Deputy Howard said he looked over and observed the male subject, "...holding it [backpack] open you know, restricted but open enough where Matthewman has his flashlight shining down into the backpack and then reaches into the backpack and then I remember him saying, what are those needles?" The male subject replied, "That's my diabetic kit."

According to Deputy Howard, Deputy Matthewman continued looking in the backpack and explained, "His [Deputy Matthewman] hands then go down into the backpack and that's when he pulls out a, I would say a large, maybe a quart or a large sandwich bag size, clear Ziploc type bag with probably one-one and half inches of the bottom containing a suspected cannabis, marijuana." Deputy Howard said he walked back over to Deputy Matthewman and he recalled smelling the odor of cannabis emanating from the Ziploc baggy. Deputy Howard stated that he remembered the subject not wanting us to search his backpack and explained, "My last contact with Matthewman, the guy told us no he wanted us to get, he didn't want us to look in his stuff so when I smelled the cannabis, how'd you [Deputy Matthewman] get to that [finding the contraband] ...He [Deputy Matthewman] said he opened it for me..."

Deputy Howard said he was then discussing what to do with the bag of contraband that was taken out of the man's backpack. Deputy Howard said, "Matthewman looks at me. He's saying I'm already down 2 reports what should I do? Arrest him? Or just take it, or just take the cannabis as found property? I said I don't care what you do with him. It'd be kind of hard to arrest him." Deputy Howard was asked if he believed there was probable cause to search the backpack and he responded, "Based on what I saw, everything I had the whole time I was involved in this incident, no. There was no probable cause that I was aware of or saw."

According to Deputy Howard, at some point after he walked away, Deputy Matthewman gave the contraband back and all three of the subjects left the area on foot. It was around that time; the deputies received a high priority call and left the scene. Deputy Howard said he began thinking about the incident approximately two hours later. He stated that he wasn't as concerned with the contraband as much as how Deputy Matthewman obtained the contraband.

Deputy Howard explained that he was unable to report the incident to his sergeant until his next scheduled work day. *(See Tab – F for Official Correspondence)*

Deputy James Matthewman

On February 19, 2015, Investigator Bennett and Sergeant Justin Sawicki conducted a sworn recorded interview with Deputy James Matthewman at the Sheriff's administrative offices in Deland. Also present for the interview were Teamster Representatives Josh Vedder and Jeffrey Wingard.

Deputy Matthewman has worked for the Sheriff's Office since September 2012 and has been assigned to patrol duties in Deltona since July 2013.

On January 19th, Deputy Matthewman responded to a burglar alarm at a business on Saxon Boulevard in Deltona. While on scene, Deputy Campbell made contact with three male subjects across the street from his location. Deputy Matthewman went across the street where he came upon Deputies Campbell and Howard along with the three male subjects.

Deputy Matthewman said he engaged the three males in conversation while Deputy Campbell obtained their personal information. According to Deputy Matthewman, the three subjects were not free to leave and one of the subjects was in possession of a backpack which he asked for consent to search. Deputy Matthewman explained;

"I asked him if he had anything in this bag that would lead me to believe that he was involved in the burglary. He said no. I asked if I could search the bag and he said no because he didn't do anything wrong....I asked Deputy Howard to step out of his car and I made a comment to Deputy Howard that you know if he didn't want us to search him then we could just take him for loitering & prowling and search him incident to arrest."

The conversation between Deputy Matthewman and Deputy Howard took place in front of the subject holding the backpack. After Deputy Matthewman made the comment about affecting an arrest, the subject reportedly opened up his backpack to be searched. Deputy Matthewman stated that he consented to the search after he said he was only looking for evidence related to the burglary across the street. Upon looking into the backpack, Deputy Matthewman recovered a plastic bag containing approximately 4 – 5 grams of cannabis.

Deputy Howard was in close proximity to Deputy Matthewman when the contraband was recovered from the backpack. Deputy Matthewman said, as he showed Deputy Howard the contraband, *"...I kind of realized it was like, ok these guys aren't free to go and maybe I pushed a little too hard."* Deputy Matthewman indicated to Deputy Howard that he had two reports to write on unrelated calls and, *"I said I'm not trying to do anything with a misdemeanor weed charge right now and you know he [Deputy Howard] kind of shrugged his shoulders and the guy*

said come on man you know you said you weren't gonna do anything, anything other than the burglary and I, I gave him back the, the weed so."

Deputy Matthewman did not take the contraband for disposal nor did he write an incident report. Deputy Matthewman explained;

"...it was just a misdemeanor amount [contraband] and I, I shouldn't have given it back, I should have put it in for disposal is what I should have done, but uh what lead me to this, you know the search wasn't great, really a good search based on the fact that he wasn't free to leave...And based on my comments about loitering and prowling. And that's why I wasn't going to make an arrest."

While on scene, Deputy Matthewman said he was asked by Deputy Campbell if he gave the contraband back because he searched the backpack without proper consent and he replied, *"I said well yeah, pretty much, that wasn't a good search..."* Shortly after the three subjects left the scene the deputies were dispatched to a high priority call that lasted the remainder of the shift. Looking back, Deputy Matthewman said he should have taken the contraband, put it in evidence for disposal and wrote a report.

Prior to the interview, Deputy Matthewman completed two training classes; Online Fundamentals of Search and Seizure and Online 4th Amendment Practical Guidelines for Search and Seizure. (See Tab – G for Official Transcript)

Deputy Matthewman was asked if he violated the following policies:

26.2.131 Job Knowledge and Performance - Failure to maintain required skills, knowledge and abilities within acceptable levels shall result in counseling, instruction or training. **Yes**

26.2.134 Knowledge of Official Directives - Department personnel are required to possess a sound working knowledge of the policies and procedures established by the Standards Directives. **Yes**

RE: 1.7 Search and Seizure

CONCLUSION:

On March 17, 2015, this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the below listed Department Standards Directive to be:

26.2.131 Job Knowledge and Performance - Failure to maintain required skills, **Sustained** knowledge and abilities within acceptable levels shall result in counseling, instruction or training.

26.2.134 Knowledge of Official Directives - Department personnel are required **Sustained** to possess a sound working knowledge of the policies and procedures established by the Standards Directives.

RE: 1.7 Search and Seizure

On March 20, 2015, Investigator Bennett served Deputy Matthewman with a Notice of Intent to Suspend letter in Deltona. *(See Tab – B for Official Correspondence)*

On April 13, 2015, Deputy Matthewman met with the Sheriff in reference to his final discipline. As a result of the findings documented in the internal affairs report, the Sheriff's final decision was to suspend Deputy Matthewman without pay for eight work hours.

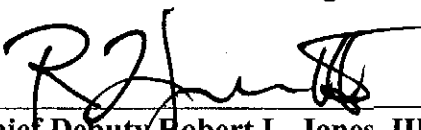
On April 15, 2015, Investigator Bennett served Deputy Matthewman with a Final Suspension letter in Deltona. *(See Tab – B for Official Correspondence)*

EXHIBITS:

- A. Report of Incident
- B. Supervisors Inquiry
- C. Official Correspondence
- D. Advisement Administration of Oath/Perjury Warning/Garrity Warning
- E. Official Transcript of Deputy Katie Campbell
- F. Official Transcript of Deputy Brian Howard
- G. Official Transcript of Deputy James Matthewman
- H. Miscellaneous Documents
- I. Digital Media

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: 4/16/15
Investigator Glen Bennett
Internal Affairs Investigator

APPROVED BY:  DATE: 04-17-15
Chief Deputy Robert L. Jones, III
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA