

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

REPORT OF INVESTIGATION

REPORT NUMBER: IA-13-027

PERIOD COVERED: December 2, 2013
DATE REPORTED: December 9, 2013
SUBJECT(S) NAME: Civilian Process Server Michael Burton #2206
INVESTIGATING OFFICER: Investigator James Gabriel #2201

BASIS FOR INVESTIGATION:

On December 9, 2013, Sergeant Timothy Webster conducted a Florida Driver's License verification of CPS Michael Burton. This verification was conducted pursuant to the Volusia County Sheriff's Office Directive 41.6.39 and D.A.V.I.D. was utilized to verify the license's status. The verification revealed that CPS Burton's license was suspended for failure to maintain Personal Injury Protection (PIP) insurance. The effective date of the suspension was December 2, 2013. Sergeant Webster immediately notified CPS Burton that his license was suspended and ordered him not to return to work until the matter was resolved. CPS Burton's reaction to this information caused him to reply, "This means I will get suspended." He further advised that he had recently sold a car and that may have caused the suspension.

On December 9, 2013, Sergeant Webster notified Lieutenant Bertolami about his findings. Lieutenant Bertolami instructed Sergeant Webster to conduct a supervisory inquiry referenced by memo 072M032.13. On December 9, 2013, at approximately 1836 hours, CPS Burton contacted Sergeant Webster. He advised that he had discovered the reason for the suspension. He stated that he had recently given his car back to the dealership and also sold his truck. He could not keep up with the payments. He also stated that his wife had not called his insurance company to take the vehicles off the policy.

On December 10, 2013, Sergeant Webster made telephone contact with the Progressive Insurance Company. The Progressive Insurance representative advised Sergeant Webster that if CPS Burton did not make payment by October 11, 2013 his policy would be canceled. Payment was not received therefore, the insurance company notified DHSMV of the non-compliance on October 11, 2013.

On December 10, 2013, Sergeant Webster contacted the State of Florida Department of Highway Safety and Motor Vehicles (Daytona Beach Office). Their representative advised that they received notification from Progressive Insurance on October 11, 2013 that CPS Burton was not in compliance with the state law requiring PIP. Therefore, the DHSMV mailed a letter on November 12, 2013 and

advised CPS Burton that his driver's license would be suspended if he did not gain compliance by December 2, 2013.

On December 10, 2013, CPS Burton faxed a hand written letter to the DHSMV that enabled his license status to be changed to "valid." (The letter conveyed that he was no longer the owner of the two vehicles that had previously been insured by the Progressive Insurance Company). At approximately 1400 hours, Sergeant Webster checked the status of the driver's license assigned to CPS Burton and learned that it was now "valid."

Sergeant Webster's investigation revealed that CPS Burton was well aware of the pending suspension of his driver's license and he had ample opportunity to prevent the suspension. *Additionally, this is the second similar violation concerning his driver's license that has occurred.* On May 1, 2012, Sergeant Webster found that CPS Burton's driver's license was suspended for failure to maintain personal injury protection. This violation was documented by Sergeant Webster by utilizing an employee performance counseling notice that was kept "in house." (See Tab C Supervisory Inquiry dated December 10, 2013)

OFFENSE(S):

26.2.107 Untruthfulness in an Official Proceeding (not under oath) - Employees shall not knowingly make false statements to a supervisor or to any official of a government agency during an official proceeding of the Department or other government agency even though such statements are not made under oath.
(Violation subject up to dismissal.)

26.2.129 Misdemeanor Injurious to the Department - Department personnel shall adhere to all federal, state and local laws and shall not commit any act or crime defined as a misdemeanor, first or second degree, whether chargeable or not, which brings discredit upon the Department or otherwise impairs the operation and efficiency of the Sheriff's Office and/or which is likely to impair the ability of personnel concerned to perform assigned duties.
(Violation subject to dismissal.)

INVESTIGATIVE SUMMARY:

On December 17, 2013, Chief Deputy Mike Coffin assigned the above case to the Internal Affairs Unit for investigation. Investigator Gabriel reviewed the supervisory inquiry completed by Sergeant Timothy Webster (memo 072M032.13). This report details the internal affairs investigation conducted by Investigator James Gabriel.

On December 18, 2013, at 1545 hours Investigator Gabriel and Sergeant Tom Tatum served CPS Burton with his Notification of Internal Investigation at the Volusia County Sheriff's Civil Office located at 250 N. Beach Street, Daytona Beach, Florida.

Sergeant Timothy Webster

On December 23, 2013, Investigator Gabriel and Lieutenant Erik Eagan conducted a sworn recorded interview with Sergeant Timothy Webster. The interview was held at the VCSO Administrative Internal Affairs Office. The following is a summary of the interview.

Sergeant Webster is a fourteen (14) year veteran of the Volusia County Sheriff's Office. He is currently assigned as the eastside civil sergeant for District Three. He has held this position for approximately three (3) years. His other previous assignments include the following: patrol supervisor in District Two and District Four; enforceable and non-enforceable deputy in District Three and District Five; and as a Deputy in District Two. Sergeant Webster has no prior law enforcement experience.

Sergeant Webster has supervised CPS Burton since January 2012. Sergeant Webster described CPS Burton as a very hard worker who only makes general mistakes that are common to all civilian process servers.

Sergeant Webster advised that he had previously disciplined CPS Burton verbally for a previous incident on May 1, 2012. He conducted a routine check of CPS Burton's driver's license and discovered that it was suspended for failure to maintain the required PIP insurance. (The reason for the suspension given at that time was due to the reissue of a bank debit card, which left no funds available for the insurance company). As a result, Sergeant Webster issued CPS Burton the "in house" counseling.

On December 9, 2013, Sergeant Webster conducted another monthly verification of CPS Burton's driver's license. This verification revealed that CPS Burton's driver's license was suspended for financial responsibility (Failure to maintain the required PIP insurance). It was suspended on December 2, 2013.

On December 9, 2013, at approximately 1633 hours Sergeant Webster telephoned CPS Burton who was off duty at this time. He informed CPS Burton that his driver's license was suspended. Sergeant Webster stated that CPS Burton's response to this news was "This means I will get suspended." He explained to Sergeant Webster that the possible cause of the suspension was that he had recently sold a car. Sergeant Webster indicated that he sounded surprised but not overly surprised at the news.

Sergeant Webster indicated that as a result of his supervisor's inquiry it was a possibility that CPS Burton already knew of the suspension. Sergeant Webster contacted Progressive Insurance and the DHSMV. Sergeant Webster was advised by each of these organizations that cancellation letters and suspension notification correspondence had been mailed to [REDACTED]. The respective letters had not been "returned to sender."

Sergeant Webster also advised that CPS Burton sold one of his vehicles and turned another one of his vehicles back into the dealership. These actions took place in November 2013. Sergeant Webster asked him why he didn't immediately advise the DHSMV that he no longer had the

vehicles. He indicated that it was his wife's responsibility to do this.

Sergeant Webster said that on December 10, 2013, at approximately 1310 hours, CPS Burton provided him with a copy of the paperwork that he had faxed to the DHSMV. This hand written paperwork indicated that he had sold a 2005 black Chevrolet truck and turned back in a 2012 Mitsubishi Outlander to the dealership. At approximately 1400 hours Sergeant Webster ran CPS Burton in D.A.V.I.D. and learned his license was now valid.

Sergeant Webster's interpretation of the incident was that CPS Burton was well aware of the pending suspension of his driver's license. When formally notified of the suspension by Sergeant Webster his initial response was that the suspension had been caused by "getting rid of a car." Sergeant Webster discovered that CPS Burton had in actuality not made his Progressive Insurance Company premium payments. The premiums were due September 15, 2013. The vehicles were relinquished by CPS Burton on November 13, 2013 and November 27, 2013 respectively (*Approximately two months later*).

Investigator Gabriel asked Sergeant Webster if he thought CPS Burton had been entirely forthright with the reasons that his license was suspended. Sergeant Webster believed that CPS Burton had **not** been entirely forthright. He believed that CPS Burton knew the actual reasons for the suspension based on the reception of the letters from the Progressive Insurance Company and the DHSMV. CPS Burton's original explanation to him was that the selling of a vehicle was the cause of the suspension. According to Sergeant Webster, CPS Burton should have taken measures to prevent the impending driver's license suspension. (*See Tab-E For Complete Transcript of Interview*)

On December 27, 2013, Investigator Gabriel made telephone contact with Mr. Lawrence McDermott, who is the landlord of [REDACTED]. Mr. McDermott advised that he has known Civilian Process Server Burton for approximately twelve (12) years. He advised that CPS Burton has lived on his commercial property for approximately two (2) years. Mr. McDermott said that he does miscellaneous jobs for him on the property; and as a result gets a "break" on rent and utilities. He stated that CPS Burton has received mail on site for the past couple of months.

On December 30, 2013, Investigator Gabriel made telephone contact with CPS Burton's wife, [REDACTED] ([REDACTED]). [REDACTED] was asked if she had been receiving mail in South Carolina for her husband. She advised that she had undergone back surgery in Florida recently and had returned to South Carolina just three (3) weeks ago. [REDACTED] said her husband was receiving mail at his current residence in South Daytona. [REDACTED] said any further questioning would have to be directed to her husband. She then terminated the telephone call.

Civil Process Server Michael Burton

On January 6, 2014 at 0922 hours Investigator Gabriel and Investigator Bennett conducted a sworn recorded interview with CPS Michael Burton within the Internal Affairs Office of the Volusia County Sheriff's Office.

CPS Burton advised that he is currently employed by the Volusia County Sheriff's Office as a Civilian Process Server. He has held this position for approximately three (3) years. Prior to holding this position he was employed by the Volusia County Sheriff's Office as a Deputy Sheriff for approximately twenty- one (21) years. CPS Burton was also previously employed for a short time by the Ormond Beach Police Department and the Ontario, Ohio Police Department.

CPS Burton advised that when Sergeant Webster called and advised him that his driver's license was suspended his reaction was that he was "pissed" and thought that he was going to get suspended. He further advised that he told Sergeant Webster he had turned in a car because he couldn't make the payments. CPS Burton advised that he did not know his license was suspended prior to Sergeant Webster's notification. CPS Burton said his response to this notification by Sergeant Webster was "truthful."

CPS Burton was requested to explain why he did not tell Sergeant Webster that the *reason* the license was suspended was that he did not make his insurance payments. He replied that he did not know the payments had not been made. He stated his vehicle insurance company was Progressive Insurance. He stated that his wife makes the payments monthly when her social security check arrives. (Note: [REDACTED] resides at [REDACTED] and Civilian Process Server Burton resides at [REDACTED]).

CPS Burton advised that he rarely checks his mail because he doesn't get any bills and that was why he told Sergeant Webster he did not check his mail. He stated that all of his bills are paid online. CPS Burton said he did not receive the mail cancellation notice from Progressive Insurance Company and the suspension notification from the DHSMV. He said his wife had not alerted him about any pending insurance cancellations. (Note: As stated above in Sergeant Webster's interview, Progressive Insurance Company and the DHSMV advised Sergeant Webster that they each mailed notices to [REDACTED], Florida and the mail was **not returned to sender**). CPS Burton told Investigator Gabriel that he told his wife to contact the DHSMV. During this interview, the recurring theme presented by CPS Burton was that his wife handled the vehicle insurance bills and he entrusted her to take care of them. As stated above by [REDACTED] during the abbreviated phone call, she indicated that CPS Burton has mail delivered to his "home" in [REDACTED]. Additionally, the insurance company and the DHSMV advised Investigator Gabriel that their respective notices were sent to [REDACTED].

CPS Burton acknowledged that it was his responsibility to maintain a valid driver's license. CPS Burton was adamant that when Sergeant Webster told him about the suspension of his driver's license his response to Sergeant Webster had been "truthful." CPS Burton also advised that he did not know that his insurance premiums had lapsed. Investigator Gabriel then read each of the alleged policy violations listed in the notification of internal investigation. CPS Burton was then requested to state whether or not he had violated either of them. His reply was that he had **not** violated either policy. (See Tab-F for Complete Transcript of Interview)

26.2.107 Untruthfulness in an Official Proceeding (not under oath) - No
Employees shall not knowingly make false statements to a supervisor or to any official of a government agency during an official proceeding of the Department or other government agency even though such statements are not made under oath. *(Violation subject up to dismissal.)*

26.2.129 Misdemeanor Injurious to the Department - Department personnel shall adhere to all federal, state and local laws and shall not commit any act or crime defined as a misdemeanor, first or second degree, whether chargeable or not, which brings discredit upon the Department or otherwise impairs the operation and efficiency of the Sheriff's Office and/or which is likely to impair the ability of personnel concerned to perform assigned duties. *(Violation subject to dismissal.)* No

CONCLUSION:

On January 28, 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:

26.2.107 Untruthfulness in an Official Proceeding (not under oath) Not-Sustained
(Violation subject up to dismissal)

26.2.129 Misdemeanor Injurious to the Department - Not-Sustained
(Violation subject to dismissal)

26.2.124 Compliance With Direct Order of a Superior or Competent Authority- Sustained

The Sheriff tentatively determined CPS Burton was to be suspended for a total of eighty (80) work hours or ten (10) work days. Additionally, he determined that upon the receipt of the Intent to Suspend letter his status as a Voluntary Reserve Deputy was to be immediately terminated.

On February 3, 2014, Investigator Gabriel served CPS Burton with his Intent to Suspend letter at his residence. *(See Tab-B For Official Correspondence)*

On February 11, 2014, Investigator Gabriel served CPS Burton with his Final Suspension letter at his residence. *(See Tab-B For Official Correspondence)*

EXHIBITS:

- A. Report of Investigation
- B. Official Correspondence
- C. Supervisory Inquiry- (file: 072M032.13)
- D. Advisement Administration of Oath/Perjury Warning/ Garrity Warning
- E. Official Transcript of Sergeant Timothy Webster
- F. Official Transcript of Civilian Process Server Michael Burton
- G. Miscellaneous Documents
- H. Digital Media

WITNESSES:

Sergeant Timothy Webster
Volusia County Sheriff's Office
386/254/4661

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: *James Gabriel* DATE: 2/17/14
Investigator James Gabriel
Internal Affairs Investigator

APPROVED BY: *M. D. Coffin* DATE: 2/17/14
Chief Deputy Mike Coffin
SHERIFF PAUL JOHNSON
VOLUSIA COUNTY FLORIDA