

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

REPORT OF INVESTIGATION

REPORT NUMBER: IA-14-027

PERIOD COVERED: March 21, 2014
DATE REPORTED: November 05, 2014
SUBJECT(S) NAME: Sergeant Keith Peck 2358
INVESTIGATING OFFICER: Sergeant Justin Sawicki 7179

BASIS FOR INVESTIGATION:

On Wednesday, November 05, 2014, Sheriff Ben Johnson received a letter from Attorney Eric J. Friday on behalf of Mr. Todd Hardy. The letter stated on March 21, 2014, Mr. Hardy was stopped by several deputies and a New Smyrna Beach Police officer, in New Smyrna Beach, FL, for the open-carry of a firearm. Mr. Hardy was on a bicycle traveling to the jetties in New Smyrna Beach to go fishing. The letter alleges the Volusia County Sheriff's Office (VCSO) sergeant [Sergeant Keith Peck] was unprofessional, lacked knowledge, and refused to educate himself on Florida State Statute (FSS). Additionally, the letter alleges Sergeant Keith Peck referred to Mr. Hardy as "retarded", "too stupid to own a gun", and questioned if Mr. Hardy was a lawyer. Included with the letter was a digital recording (audio only) of the encounter, recorded by Mr. Hardy. The letter was dated October 31, 2014, and signed by Attorney Eric J. Friday. The complaint was forwarded to the Internal Affairs Unit for Administrative Review. The letter composed by Attorney Eric J. Friday and the audio recording are attached and made part of this investigation. *(See Tab - C)*

OFFENSE(S):

26.2.47 Courtesy - Employees shall be civil and respectful toward each other and toward the public in general. They shall be especially courteous to visitors, guests, speakers and instructors. *(Violation subject up to a 1 day suspension.)*

26.2.132 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.)*

INVESTIGATIVE SUMMARY:

On November 05, 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 Justin Sawicki.

On November 14, 2014, Sergeant Thomas Tatum served Sergeant Keith Peck with a Notice of Internal Investigation at US Highway 1 and Art Center Avenue, New Smyrna Beach, FL. Sergeant Peck was provided with a copy of the law enforcement officer bill of rights. *(See Tab – B for Official Correspondence)*

On November 19, 2014, Sergeant Sawicki reviewed all case documents to include the audio recording. The following is a summary of those documents:

Sergeant Sawicki reviewed the call information from the VCSO Computer Aided Dispatch (CAD). On March 21, 2014, at 1624 hours, Deputy William Weaver notifies VCSO Central Communications (Central) he is stopping a white male on a bicycle with a gun. Central provides Deputy Weaver with “emergency traffic” at 1625 hours. Per CAD, the following units responded as backup: 1B52 – Deputy Jerome Childers; 1B53 – Deputy Andrew Davis and Deputy Matthew Myers; and 9A16 – New Smyrna Beach Police Department (NSBPD) Officer Jason McCarthy. At 1627 hours, deputies notify Central the subject is secured in handcuffs and “emergency traffic” is released from radio channel LE-7. Sergeant Sawicki noted at no point in the CAD call did it indicate Sergeant Peck (1B50) responded to the scene. *(See Tab – L for Miscellaneous Documents)*

Due to Sergeant Peck never placing himself on the call for service, Sergeant Sawicki conducted an Automated Vehicle Locator (AVL) search utilizing the Forcewatch program. Sergeant Sawicki was able to determine at approximately 1637 hours, Sergeant Peck arrived on scene. Sergeant Peck was on scene for approximately 26 minutes as his AVL indicated his vehicle was in motion at approximately 1703 hours traveling northbound on South Atlantic Avenue (A1A), New Smyrna Beach, FL. *(See Tab – L for Miscellaneous Documents)*

Sergeant Sawicki reviewed Deputy William Weaver’s incident report (VCSO case number: 14-7681) documenting the encounter. The following is a summary of Deputy Weaver’s incident report:

On March 21, 2014, at approximately 1624 hours, Deputy Weaver was on patrol in the 4000 block of South Atlantic Avenue, New Smyrna Beach, FL. Deputy Weaver observed a white male riding a yellow bicycle, traveling northbound on the western side of the roadway. The male was not wearing a shirt; he was wearing white shorts, gray shoes, and a black utility belt, similar to a law enforcement style belt. On this belt, in plain view, was what appeared to be a semi-automatic handgun. Due to the male openly carrying a firearm, Deputy Weaver made contact with the subject, later identified as Mr. Todd Hardy. Mr. Hardy was advised of the reason for the stop, and agreed to cooperate with Deputy Weaver. Deputy Weaver secured Mr. Hardy in handcuffs, and conducted a pat down of Mr. Hardy’s person. Deputy Weaver located the following items on Mr. Hardy’s person: one (1) Glock 26- 9mm handgun; one (1) Ruger Model LCP - .380 caliber handgun; two (2) six inch blue and silver folding knives; one (1) pepper spray gun; one (1) pocket fisherman fishing pole. Mr. Hardy advised Deputy Weaver he was openly carrying the firearm, because he was traveling to the jetties to go fishing. It was also determined Mr. Hardy

possessed a valid Carry Concealed Weapon (CCW) license from the State of Florida.

Sergeant Peck arrived on scene, at which time, Deputy Weaver briefed him on the incident. The incident report states, Sergeant Peck contacted VCSO Legal Advisor Mr. John MacConnell via telephone. Mr. MacConnell advised Sergeant Peck to release Mr. Hardy and provide him with the items Deputy Weaver located on his person, as he was within the scope of FSS 790.25(3)(h). Deputy Weaver documented that he provided Mr. Hardy with all of his items in a bag, at which point, Mr. Hardy advised he was going to return to his residence and the encounter ended.

Sergeant Sawicki later reviewed the audio recording provided by Mr. Hardy. It should be noted Sergeant Sawicki has personal knowledge of Sergeant Peck's voice, thus he was able to distinguish when Sergeant Peck was speaking. The following is a summary of the relevant statements on the audio recording:

At 11:44 into the recording Sergeant Peck asked Mr. Hardy, "*Are you some lawyer or something like?*" Mr. Hardy responds to Sergeant Peck's question by stating, "*My mother is...*" Sergeant Peck then states, "*Ok. So good maybe she can help, because you're going to jail.*" At 11:57 into the recording, Mr. Hardy asks for someone to look in the statute book, because he was carrying his firearms to go fishing. Sergeant Peck responded by asking, "*Does the statute say you can carry a gun outside?*" Mr. Hardy responded in the affirmative. Sergeant Peck then said, "*No it doesn't and if you think it does you're a retard.*" Mr. Hardy merely responded with "*Sir?*" Sergeant Peck then reiterated his prior statement by saying, "*You're a retard.*" Sergeant Peck then obtains what is believed to be a Florida State Statute (FSS) book. Mr. Hardy asks again for someone to look up the statute in question. Sergeant Peck replies with "*I'm looking at the statute...This is stupid, we're out here in the middle of A1A, on spring break carrying a gun. Out here in front of God and everybody, saying hey look what I got baby!*" Mr. Hardy later states, "*without us arguing just for a moment. I was just explaining to these two younger officers or deputies here...*" Sergeant Peck interrupts and states, "*...you're apparently too stupid to have a gun.*" Sergeant Peck later asks Mr. Hardy, "*So all I gotta do is buy me one of these pocket fisherman, stick it in my pocket and then I can run around with my gun all day long sticking out?*" An unknown person responds with, "*a 44 magnum!*" Sergeant Peck replies with, "*Yeah a 44 magnum.*" Mr. Hardy advised, "*Well technically, yes sir.*" Sergeant Peck's rebuttal to Mr. Hardy's comment was, "*It's not correct. You're fixin' to find out how uncorrect it really is.*" Other deputies are heard speaking about Mr. Hardy's property, while in the background it is clear Mr. Hardy and Sergeant Peck are continuing to argue. The exact content of those quotes are unintelligible. At 14:03, Sergeant Peck is heard saying, "*All these spring break people that are running around and you're out here sporting a gun. You're not going to carry no gun out here. It's not going to work. Ok?*" Mr. Hardy and Sergeant Peck continue to argue in the background, however the quotes are unintelligible. The audio is then quiet for several minutes with only vehicle noises being heard in the background. At 17:39, Sergeant Peck is heard stating, "*Yeah uh that'd be a no.*" It is believed Sergeant Peck then left the scene as he was no longer heard for the remainder of the audio recording. The only other conversations is an unknown deputy on the telephone inquiring about FSS 790.25(3)(h) and Deputy Weaver releasing and speaking to Mr. Hardy. (See Tab – M for Digital Media)

Mr. Todd Hardy

On November 24, 2014, Sergeant Sawicki conducted a sworn recorded interview with Mr. Todd Hardy via telephone. It should be noted the interview was conducted over the telephone due to scheduling conflicts with Mr. Hardy. The following is a summary of that interview:

Mr. Hardy advised he currently resides at 4501 South Atlantic Avenue in New Smyrna Beach, FL. Mr. Hardy is currently unemployed, however he is a full-time student at the University of Central Florida (UCF). Mr. Hardy advised he is majoring in Religion and Cultural Studies.

Mr. Hardy advised on March 21, 2014, he was riding his bicycle on the sidewalk of South Atlantic Avenue in New Smyrna Beach, FL. According to Mr. Hardy, he was traveling from his residence to the Ponce Inlet jetties. Mr. Hardy stated his intentions were to go fishing once he reached the Ponce Inlet jetty. Mr. Hardy was carrying a Ronco pocket fisherman, fishing pole. When asked if he was carrying bait Mr. Hardy stated, *"I was carrying fake lures and those are stored inside the handle of the fishing pole."*

Mr. Hardy was asked if he was carrying any weapons on the date in question, to which he advised he was. When asked if he was openly carrying or concealing his weapons, Mr. Hardy stated, *"It would be both. The answer is both. Open carried as well as concealed carry. I have a Glock 26 on me holstered with an outside waistband holster on my hip. I had a Ruger LCP in my right front pocket. I had a couple of pocket knives and pepper spray but I don't know if you're concerned about that."* Mr. Hardy advised he possesses a valid CCW license; and it is normal for him to carry an arsenal of weaponry *"...regardless of where and when."*

Mr. Hardy stated as he was riding his bicycle northbound on South Atlantic Avenue, he observed a marked VCSO patrol vehicle drive past him heading south. Mr. Hardy stated he knew he caught the attention of the deputy [Deputy Weaver], because *"I could clearly see the deputy saw something because of the way he turned and cranked his neck was it, it, it was very pronounced it was no doubt..."* Mr. Hardy advised the same patrol vehicle then turned around and stopped near his location. At this time, Mr. Hardy engaged the audio recorder on his cellular telephone.

Mr. Hardy stated, Deputy Weaver exited his patrol vehicle and made verbal contact with him. Deputy Weaver advised Mr. Hardy the reason he stopped him is because he was openly carrying a firearm. Deputy Weaver and a NSBPD Officer [Officer McCarthy] secured Mr. Hardy in handcuffs and disarmed him. Mr. Hardy advised, Deputy Weaver obtained his Florida identification along with his Florida CCW license from his [Mr. Hardy's] wallet. Mr. Hardy stated several minutes later, two more VCSO patrol vehicles arrived on scene. Mr. Hardy advised one of the VCSO patrol vehicles had two deputies [Deputy Andrew Davis and Deputy Matthew Myers], and the other patrol vehicle was occupied by one deputy [Deputy Jerome Childers]. Mr. Hardy stated one of the deputies began searching the bait compartment of his pocket fisherman and that is when Sergeant Peck arrived on scene.

Mr. Hardy described Sergeant Peck as *"...real rude."* The following is a partial description of Mr. Hardy's accounts of his interaction with Sergeant Peck:

"He had, he came up to me he's like what are you a lawyer or something and

because I said I don't consent to any searches and you know I of course told him no. And then he starts telling me oh well you're going to jail, what you're doing is not legal and I had told I said you know would you please take a look at this statute. Basically the same statute that let's well the police open carry is the same one that would allow me to be able to in that circumstance and basically he's like if you think that let's you be able to conceal or however he worded it. He's like you're a retard I mean he said it twice. I clearly remember him twice calling me a retard."

Mr. Hardy stated, he continued to ask Sergeant Peck to research the applicable state statute. According to Mr. Hardy, at one point, Sergeant Peck obtained a statute book and very hastily opened the statute book and abruptly closed the book. Sergeant Peck told Mr. Hardy that he looked at the statute and he [Mr. Hardy] would be going to jail. According to Mr. Hardy, Sergeant Peck then told him, *"if you think that you can carry a gun like that then you're too stupid to have a gun."* At this point, Mr. Hardy began pleading with the deputies in an effort to get someone to research the statute book. Mr. Hardy stated one of the deputies began researching Florida State Statute utilizing his cellular telephone. Mr. Hardy stated when the deputies located the statute in question, he was told Sergeant Peck was making a telephone call to the county attorney [Mr. John MacConnell]. Mr. Hardy stated Deputy Weaver returned to him and stated, *"It's your lucky day,"* and at this time, he [Mr. Hardy] was unsecured from the handcuffs and deputies provided him with his weapons.

Mr. Hardy stated he felt Sergeant Peck was unprofessional and demeaning towards him. Mr. Hardy explained he felt this way because, Sergeant Peck stated he was *"retarded"* on two (2) occasions, and told Mr. Hardy he was *"too stupid to carry a gun."* Mr. Hardy felt the way Sergeant Peck refused to actually research state statute in a book was unprofessional, and he didn't appreciate how Sergeant Peck treated him in the view of the public.

Deputy William Weaver

On December 01, 2014, Sergeant Sawicki conducted a sworn recorded interview with Deputy William Weaver at the VCSO District Five Headquarters. The following is a summary of that interview:

Deputy Weaver has been employed with the VCSO since April of 2011. Deputy Weaver is currently assigned to patrol in District Five. Prior to being hired with the VCSO, Deputy Weaver was employed by the Daytona Beach Police Department for one (1) year, and prior to that he completed 25 years with the New York State Department of Corrections.

Deputy Weaver stated on March 21, 2014, he was working 54 zone, which is a swing shift (1500-0300 hours) located on the beachside of unincorporated New Smyrna Beach, FL. Deputy Weaver recalled conducting a subject stop on a white male [Mr. Hardy] riding a bicycle who was openly carrying a firearm. Deputy Weaver stated the male was only wearing shorts and because he had no shirt, Deputy Weaver was clearly able to observe what appeared to be a law enforcement style belt on the male's waist. Deputy Weaver advised, attached to the belt was what appeared to be a retention style holster and in the holster was a semi-automatic Glock style

handgun. Due to the subject [Mr. Hardy] appearing to be armed, Deputy Weaver conducted an investigatory stop. Deputy Weaver stated he notified Central of the location and a description of the male. Deputy Weaver could not recall if he requested more units to respond. Furthermore, Deputy Weaver advised he did not request the on duty patrol sergeant [Sergeant Peck] to respond to the scene.

Deputy Weaver recalled making contact with Mr. Hardy. Deputy Weaver asked Mr. Hardy to place his hands on the handlebars of his bicycle. Deputy Weaver advised Mr. Hardy of the reason for the stop. According to Deputy Weaver, Mr. Hardy complied with all of his orders during the encounter. Deputy Weaver stated he completed a pat-down of Mr. Hardy's person. While Deputy Weaver was completing the pat-down, he was advised by Mr. Hardy that he possessed a 9mm handgun in one of his pant pockets. Deputy Weaver advised Officer Jason McCarthy (NSBPD) was the first back-up unit to arrive on scene, as he [Deputy Weaver] was conducting the pat-down. Deputy Weaver stated, Officer McCarthy ordered Mr. Hardy to dismount his bicycle, at which time Deputy Weaver grabbed the bicycle's handlebars to ensure it would not fall to the ground. Mr. Hardy was then secured in handcuffs for officer safety purposes by Deputy Weaver. Deputy Weaver reiterated that Mr. Hardy was compliant throughout the encounter. Although Deputy Weaver could not remember the order in which units arrived on scene, he advised, Deputy Davis, Deputy Childers, and Sergeant Peck arrived several moments after Mr. Hardy was secured in handcuffs.

Deputy Weaver stated once secured in handcuffs and disarmed, Mr. Hardy was seated in the grass near the sidewalk. According to Deputy Weaver, Mr. Hardy's weapons were initially placed on the hood of his [Deputy Weaver's] patrol vehicle. The weapons were later placed in a bag and set in the trunk of Deputy Weaver's patrol vehicle.

When asked about Mr. Hardy's demeanor once he was handcuffed, Deputy Weaver stated, *"He was loud at a couple of instances in reaction to what he thought was going to happen to him. He thought he was going to jail."*

Deputy Weaver was asked if he heard any of the conversation(s) between Mr. Hardy and Sergeant Peck. Deputy Weaver stated, he was unable to recall what was specifically said, however he believes Sergeant Peck queried Mr. Hardy as to why he was openly carrying a firearm.

When asked if he [Deputy Weaver] heard Sergeant Peck ask Mr. Hardy if he was a lawyer, Deputy Weaver stated:

"He kept; um I don't remember, again I don't remember the exact terminology but Hardy had several times mentioned the law and specific, specifics of it and I remember at one point somebody, it may have been Sgt. Peck, may have asked him well are you a lawyer? And then he actually, and then he said no but my mom is. Which kind of gave credence to where his information was coming from anyway... "

Deputy Weaver was asked if he heard Sergeant Peck tell Mr. Hardy he was retarded. Deputy Weaver stated he did not hear Sergeant Peck tell Mr. Hardy he was retarded. Deputy Weaver did

advise he was not standing next to Sergeant Peck and Mr. Hardy the whole time, therefore he did not hear everything that may have been said during the conversation. Deputy Weaver advised he did hear Sergeant Peck initially tell Mr. Hardy he was going to jail. Deputy Weaver advised he did not hear Sergeant Peck tell Mr. Hardy he was too stupid to own a gun, nor did he hear anything else that may be deemed unprofessional from Sergeant Peck. Deputy Weaver did acknowledge that Sergeant Peck appeared to be frustrated with the situation.

When asked if he would tell Mr. Hardy he was retarded, or too stupid to own a gun, Deputy Weaver stated he would not, because *"I would say that's probably right up there with inappropriate."*

Deputy Weaver was asked what methods of research were utilized to determine if Mr. Hardy was in violation of Florida State Statute. Deputy Weaver advised he and other deputies on scene utilized a statute book and Legal Bulletin (LB12-02) which was found on the VCSO intranet webpage. Sergeant Sawicki showed Deputy Weaver a copy of both FSS 790.25(3)(h) and Legal Bulletin 12-02 which was issued by Legal Advisor Mr. John MacConnell on February 07, 2012. Deputy Weaver confirmed both documents were in fact the documents he and other deputies researched during the encounter.

According to Deputy Weaver, while deputies were researching for the aforementioned documents, Sergeant Peck made a telephone call to Legal Advisor John MacConnell. After the telephone call to Mr. MacConnell, Sergeant Peck advised deputies Mr. Hardy was not violating the law and he was instructed by Mr. MacConnell to release Mr. Hardy. Deputy Weaver recalled Sergeant Peck was frustrated with Mr. MacConnell's decision; however, he did not say anything derogatory regarding Mr. MacConnell.

Prior to the conclusion of the interview, Deputy Weaver was shown a photograph of a Ronco Pocket Fisherman. Deputy Weaver advised the photograph was similar in nature to the one carried by Mr. Hardy. Deputy Weaver recalled Mr. Hardy's pocket fisherman to be shorter than what was depicted in the photograph. *(See Tab F for Official Transcript)*

Deputy Andrew Davis

On December 02, 2014, Sergeant Sawicki conducted a sworn recorded interview with Deputy Andrew Davis in the 3300 block of South Atlantic Avenue in New Smyrna Beach, FL. The following is a summary of that interview:

Deputy Davis has been employed with the VCSO for approximately three (3) years. Deputy Davis is assigned to patrol in District Five on Bravo shift.

Deputy Davis recalled working in official capacity as a deputy sheriff on March 21, 2014. Deputy Davis advised he is not a Field Training Officer (FTO), however he did have a deputy in training [Deputy Matthew Myers] partnered with him on March 21, 2014.

Deputy Davis recalled Deputy William Weaver making a radio transmission advising he was stopping a subject who was apparently armed with a firearm. Deputy Davis was unable to recall

if Deputy Weaver requested back-up units or if he spontaneously responded due to the nature of the radio transmission. Deputy Davis advised it took him approximately five (5) minutes to respond to Deputy Weaver's location. Deputy Davis stated he did not believe Sergeant Peck was on scene when he arrived to assist Deputy Weaver. Deputy Davis was unable to recall how long after his arrival, Sergeant Peck arrived on scene.

Deputy Davis stated he had a very brief contact with Mr. Hardy. Deputy Davis described Mr. Hardy's demeanor as, "*He was calm. If I can recall he was calm. He was in custody when I seen him, when I arrived and they were, Deputy Weaver and the New Smyrna guy were kind of talking to him already before I arrived.*"

Deputy Davis stated he was briefed as to why Mr. Hardy was openly carrying, and he advised the deputies on scene, that he recalled a Legal Bulletin (LB12-02) regarding this topic. Deputy Davis then returned to his patrol vehicle in an effort to research the Legal Bulletin in question via his Mobile Data Computer (MDC). Deputy Davis advised he was unaware if Sergeant Peck conducted any independent research into the statute and/or Legal Bulletin. Deputy Davis could not recall if Sergeant Peck contacted Legal Advisor John MacConnell. Deputy Davis stated this telephone call may have happened after he departed the scene.

Deputy Davis was queried if he overheard any of the conversation(s) between Sergeant Peck and Mr. Hardy. Deputy Davis advised he did, but his recollection of specific quotes was vague:

"Um, I remember Mr. Hardy saying, again something and the only thing that I can honestly 100% remember is he said his parent were lawyers and he was aware that it was legal and Sgt. Peck saying something along the effect of you're going to need to talk to your parents about this or something to that effect..."

When asked if he heard Sergeant Peck tell Mr. Hardy he was retarded, Deputy Davis advised, "*I, I don't recall him being called retarded.*" Deputy Davis also stated he did not hear Sergeant Peck tell Mr. Hardy he was going to jail. When asked if he heard Sergeant Peck tell Mr. Hardy he was too stupid to own a gun, Deputy Davis stated, "*No.*" Deputy Davis advised he did not hear anything else that he would deem offensive nor unprofessional uttered by Sergeant Peck towards or about Mr. Hardy. Deputy Davis did however, state Sergeant Peck was getting frustrated with Mr. Hardy during their encounter.

Deputy Davis was asked if he would have told Mr. Hardy he was retarded and too stupid to own a gun. Deputy Davis responded by saying no, and when asked why he stated, "*Unprofessional. Just something you don't say to the public.*" (See Tab G for Official Transcript)

Deputy Matthew Myers

On December 03, 2014, Sergeant Sawicki conducted a sworn, recorded interview with Deputy Matthew Myers at the District Four Headquarters in Deltona, FL. The following is a summary of that interview:

Deputy Myers has been employed with the VCSO for approximately two (2) years and is

currently assigned to patrol in District Four on Alpha shift.

Deputy Myers recalled on March 21, 2014 he was assigned to the Field Training and Evaluation Program's (FTEP) road phase. Deputy Myers advised he was working in official capacity as a deputy sheriff and he was partnered with Deputy Andrew Davis on March 21, 2014.

Deputy Myers recalled, Deputy William Weaver making a radio transmission advising he was stopping a subject that was armed with a firearm. Deputy Myers stated he did not recall Deputy Weaver request back-up; he and Deputy Davis spontaneously responded to the scene due to the nature of the radio transmission. Deputy Myers advised it took he and Deputy Davis approximately five (5) minutes to arrive on scene with Deputy Weaver. Deputy Myers stated Sergeant Peck was not on scene when he and Deputy Davis arrived.

Deputy Myers advised he had very little contact with Mr. Hardy during the encounter. Deputy Myers described Mr. Hardy's demeanor as being "agitated" because Mr. Hardy felt the detention was unlawful.

Deputy Myers was asked if he overheard any of the conversation(s) between Sergeant Peck and Mr. Hardy. Deputy Myers advised he did, and when asked what he had heard, Deputy Myers stated:

"Um I heard that you can't do that. You can't openly carry a weapon out there um and Mr. Hardy was telling Sgt. Peck that he could due to the fact that he had, or was traveling from or to fishing or hunting um and Mr. Hardy had a small fishing pole. I didn't even know it was a fishing pole until he decided to tell us that it was."

Deputy Myers also heard Sergeant Peck tell Mr. Hardy he would be going to jail. Deputy Myers stated:

"It, it, it, it agitated him even more, Mr. Hardy, due to the fact that Mr. Hardy kept trying to tell um Sgt. Peck and other deputies that were there including myself working the call that he, he was going fishing and he had a right to openly carry and kept telling Sgt. Peck that he can, or he can't be arrested for that."

Deputy Myers stated he did not hear Sergeant Peck tell Mr. Hardy he was retarded nor too stupid to own a gun.

When asked if he would tell Mr. Hardy he was retarded and/or too stupid to own a gun, Deputy Myers advised he would not. When asked why he would not say such things, Deputy Myers stated, "Because we're all human beings and we should be treated equally, this job doesn't put us above anyone."

Deputy Myers stated he did not personally conduct any research into State Statute or the Legal Bulletin. Deputy Myers advised other deputies conducted the research utilizing a statute book and MDCs.

Deputy Myers recalled Sergeant Peck obtaining a statute book and briefly perusing "...kind of flipped, thumbed through and said no it's not in here." Deputy Myers stated he did not feel Sergeant Peck put forth an effort to truly look for the statute in question.

Deputy Myers stated he could not recall if Sergeant Peck or any other deputy on scene had made a telephone call to Legal Advisor John MacConnell. Deputy Myers stated he and Deputy Davis had left the scene, prior to a resolution. (See Tab H for Official Transcript)

Mr. John MacConnell

On December 04, 2014, Sergeant Sawicki conducted a sworn, recorded interview of Volusia County Sheriff's Office Legal Advisor John MacConnell in Sergeant Sawicki's office in DeLand, FL. The following is a summary of the interview:

Mr. MacConnell has been the Legal Advisor for the VCSO 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 14 years.

Mr. MacConnell advised he frequently receives telephone calls from VCSO sworn personnel seeking legal advice. Mr. MacConnell also advised, Sergeant Peck has contacted him on numerous occasions seeking legal advice.

Mr. MacConnell recalled Sergeant Peck calling him on the telephone on March 21, 2014. According to Mr. MacConnell, the basis for the telephone call was a male openly carrying a firearm. Mr. MacConnell stated Sergeant Peck briefed him on the encounter and reason for the subject stop. Mr. MacConnell advised Sergeant Peck, that he was against placing Mr. Hardy under arrest, albeit Mr. MacConnell felt, Mr. Hardy was attempting to provoke law enforcement.

When asked what Sergeant Peck's demeanor was during the telephone call, Mr. MacConnell stated: *"I think he was a little bit aggravated. A little irritated and justifiably so."* Mr. MacConnell stated he has had other conversations with law enforcement officers involving the same or similar scenario. Mr. MacConnell stated the other officers were just as irritated as Sergeant Peck because, *"It's one of those frustrating things where you know something's being done wrong, that they're exploiting a crease if you will in the law."*

Mr. MacConnell was asked what type of understanding he felt Sergeant Peck had regarding FSS 790.25(3)(h), prior to the telephone call. Mr. MacConnell stated:

"I think he felt you know it was a, it was a good arrest because it was obvious the guy wasn't going fishing, at least based on what he saw and of course he was on-scene. You know I said notwithstanding this, the guy meets the technical requirements of the statute, so I mean I think Keith had an understanding of the law and the statute he felt like this because of the way it was done probably, you know was outside the legal bulletin and outside the statute."

(See Tab I for Official Transcript)

Deputy Jerome Childers

On December 04, 2014, Sergeant Sawicki conducted a sworn, recorded interview with Deputy Jerome Childers at the Advanced Technology Center in Daytona Beach, FL. The following is a summary of that interview:

Deputy Childers has been employed with the VCSO for one (1) year and a half. Deputy Childers has two (2) prior years of law enforcement experience with the Manatee County Sheriff's Office (MCSO). Deputy Childers is currently assigned to patrol in District Five on Bravo shift.

Deputy Childers recalled working in official capacity as a deputy sheriff on March 21, 2014. Deputy Childers also recalled, Deputy William Weaver making a radio transmission advising Central he was stopping a male with a firearm. Deputy Childers stated due to the radio transmission, he voluntarily responded to the scene.

Deputy Childers advised it took him approximately ten (10) minutes to respond to Deputy Weaver's location. Deputy Childers stated, Sergeant Peck was on scene prior to his arrival. Deputy Childers advised when he made contact with Deputy Weaver, Mr. Hardy was sitting on the ground secured in handcuffs. Furthermore, Mr. Hardy was yelling because he was upset due to being stopped and placed in handcuffs.

Deputy Childers was asked if he heard any of the conversation(s) between Sergeant Peck and Mr. Hardy. Deputy Childers stated he did in fact hear some of the conversation. When asked if he overheard Sergeant Peck ask Mr. Hardy if he was a lawyer, Deputy Childers stated *"Yes. Sgt. Peck the subject was giving us case, case law and repeating at the time what he believed to be case law or statutes and telling us to look it up and that's when I believe Sgt. Peck asked him if he was an attorney or he knew some laws or something."* Deputy Childers was unable to recall if he heard Sergeant Peck tell Mr. Hardy he was retarded, going to jail, and too stupid to own a gun. Deputy Childers also advised he did not hear Sergeant Peck say anything else to Mr. Hardy that could be deemed unprofessional or offensive. Deputy Childers was just able to recall Sergeant Peck and Mr. Hardy *"yelling back and forth..."* Deputy Childers advised he would not tell someone they were retarded and/or too stupid to own a gun, because *"It's just not something I choose to say to people at work."*

Deputy Childers stated he had several encounters similar in nature to this when he was employed with MCSO, thus he had knowledge of FSS 790.25(3)(h). Deputy Childers advised he utilized a statute book to research the applicable statute for the encounter. Deputy Childers recalled Sergeant Peck contacting Legal Advisor John MacConnell. Deputy Childers stated when Sergeant Peck ended his telephone conversation with Mr. MacConnell, they were ordered to release Mr. Hardy from the scene and turn his weapons back over to him.

Deputy Childers was asked if he felt Sergeant Peck was frustrated and / or irritated with Mr. Hardy, Deputy Childers stated, *"Yes. Absolutely. I would say he was frustrated that you know someone would, I mean while it's in the statute book I don't think Mr. Hardy was doing it for*

that reason." (See Tab J for Official Transcript)

Sergeant Keith Peck

On December 19, 2014, Sergeant Sawicki 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 (20) years and is currently assigned as a patrol supervisor for District Five in New Smyrna Beach, FL. Sergeant Peck has approximately ten (10) years prior law enforcement experience in Oklahoma as a police officer.

Sergeant Peck recalled working in official capacity on March 21, 2014. Sergeant Peck also recalled Deputy William Weaver making a radio transmission to Central that he was stopping a male with a firearm. Sergeant Peck was unable to recall if Deputy Weaver requested back-up units. Sergeant Peck advised he responded on his own accord due to the nature of the radio transmission.

When Sergeant Peck arrived on scene, he stated Mr. Hardy was secured in handcuffs prior to his arrival. Sergeant Peck was then briefed on the encounter by Deputy Weaver. Sergeant Peck stated he did have prior knowledge of FSS 790.25(3)(h) and Legal Bulletin 12-02 before the encounter with Mr. Hardy. Sergeant Peck stated in his opinion he felt Mr. Hardy was in violation of FSS 790.25(3)(h). When asked why he felt that way Sergeant Peck stated:

"Um what he, my understanding of what the subject had told him was that he was going to the Ponce Inlet jetties to go fishing um and the Ponce Inlet jetty is the opposite way of which way he was going so he was going the wrong way. That he, what he showed the deputy as a fishing instrument there you know I'm not a fisherman but I know you probably aren't going to catch any fish in the ocean with a, with one of those flip open pocket fisherman as I recall there was no bait. As I recall there was no hook there was no way for him to, to physically do any fishing and he had no other instruments that would you know when you go fishing usually the guys have buckets and other things like that so and the totality of everything that, that he, that Deputy Weaver had explained to me and the lack of the things that the subject had lead me to believe that he was not going fishing and that was his you know a rouse to say I've got this little pocket fisherman and now I can you know I can carry a gun anywhere I want."

Sergeant Peck was shown a photograph of a Ronco Pocket Fisherman. Sergeant Peck advised the pocket fisherman depicted in the photograph was similar in nature to the one Mr. Hardy carried on March 21, 2014. Sergeant Peck also stated he was not present when other deputies manipulated the pocket fisherman, nor did he at any time manipulate the pocket fisherman.

Sergeant Peck stated he made contact with Mr. Hardy after Deputy Weaver had briefed him on the encounter. Sergeant Peck described Mr. Hardy's demeanor as "defiant," because Mr. Hardy

repeatedly said he had a legal right to openly carry his firearm.

Sergeant Peck stated he was unable to recall if he had asked Mr. Hardy if he was a lawyer. Sergeant Peck was only able to recall the topic of either Mr. Hardy or one of Mr. Hardy's relatives being a lawyer.

Sergeant Peck was asked why he referred to Mr. Hardy as retarded. Sergeant Peck stated, "*I don't recall saying that to him but I may have but I don't recall it.*" Sergeant Sawicki asked, "*If you did say it why would you have said that?*" to which Sergeant Peck responded, "*Because what he was doing was stupid.*" Sergeant Peck elaborated on why he felt Mr. Hardy's actions were "*stupid*" by stating:

Um you know he's out here you know if it hadn't been for us stopping him you know somebody else would have been calling in hey there's a guy riding down the road with a gun. We would have got the call to go down there and you know and deal with it anyway so you know my opinion is any time you openly carry like that you're just begging for a confrontation with somebody you know somebody's gonna get hurt you know so um it's silly and stupid to do something like that."

When asked about his lack of effort in researching the statute book for the applicable statute for this encounter, Sergeant Peck stated that he already had knowledge of the statute. Sergeant Peck stated when Mr. Hardy was pleading for deputies to research the statute, a deputy handed him [Sergeant Peck] a statute book. Due to already having knowledge of FSS 790.25(3)(h), Sergeant Peck said he immediately handed the book back to the deputy.

Sergeant Peck was asked why he told Mr. Hardy he was too stupid to own a gun. Sergeant Peck stated because the encounter was nine (9) months ago, he was unable to recall making that comment. Sergeant Peck also stated, "*So I don't recall that I did that but um what he was doing was stupid.*"

Sergeant Peck was asked if he felt asking Mr. Hardy if he was a lawyer, telling Mr. Hardy he was retarded, and too stupid to own a gun was professional. Sergeant Peck responded by saying "*Um I don't know that you'd say it's unprofessional but you know what he was doing was stupid. And you would expect that somebody that was either you know had a mental deficiency might do something like that thinking that it was ok.*" Sergeant Sawicki rephrased the question by asking, "*Ok but saying those comments to a citizen as a law enforcement officer; would you say that is professional?*" Sergeant Peck's response was "*Um I don't know.*"

According to Sergeant Peck, he contacted Legal Advisor John MacConnell via telephone. After briefing Mr. MacConnell on the encounter, it was in Mr. MacConnell's opinion to release Mr. Hardy and return his weapons. Sergeant Peck stated he did not agree with Mr. MacConnell's decision; however, he did oblige and ordered his deputies to release Mr. Hardy and return his weapons.

Sergeant Peck stated he believed Mr. Hardy was not intending to go fishing, rather he was utilizing it as a guise to openly carry a firearm. Sergeant Peck was asked if the situation

involving Mr. Hardy frustrated or irritated him and his response was:

"Well it's just the idea that you've got a guy here that's carrying a gun. He's got all these people that you know that could have been in harms way or whatever because he's carrying a gun and um and you know he has no qualms about doing it and then we're told to let him to continue to do it. So my concern was while I let him go down the road he puts his gun back on and then all these people start calling in saying the guys got a gun so what are we gonna tell him, sorry we've already checked him it's ok for him to do that."

Sergeant Peck advised he had never encountered Mr. Hardy prior to March 21, 2014, nor has he encountered him since.

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:

26.2.47 Courtesy	No
26.2.132 Failure to maintain required skills, knowledge and abilities within acceptable levels shall result in counseling, instruction or training.	No

(See Tab K for Official Transcript)

Conclusion:

On January 15, 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 Directives to be:

26.2.47 Courtesy	Sustained
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26.2.132 Failure to maintain required skills, knowledge and abilities within acceptable levels shall result in counseling, instruction or training.	Unfounded
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Sheriff Johnson tentatively determined the discipline for Sergeant Peck to be a twelve hour (12) hour suspension without pay. Sergeant Peck was served with his "Intent to Suspend" letter on January 21, 2015, at the VCSO Training Center in Daytona Beach, FL.

Sergeant Peck scheduled his pre-discipline hearing with Sheriff Johnson on January 28, 2015. Attending the hearing was Sheriff Johnson, Major Jones, and Lieutenant Paugh. Sergeant Peck took full responsibility for his actions and after earnest consideration; Sheriff Johnson's final decision was to issue Sergeant Peck a Letter of Reprimand in lieu of suspension.

EXHIBIT(S):

- A. Report of Investigation
- B. Official Correspondence
- C. Complaint
- D. Administration of Oath/Perjury Warning
- E. Official Transcript of Mr. Todd Hardy
- F. Official Transcript of Deputy William Weaver
- G. Official Transcript of Deputy Andrew Davis
- H. Official Transcript of Deputy Matthew Myers
- I. Official Transcript of Mr. John MacConnell
- J. Official Transcript of Deputy Jerome Childers
- K. Official Transcript of Sergeant Keith Peck
- L. Miscellaneous Documents
- M. Digital Media

WITNESSES:

Mr. Todd Hardy
4501 South Atlantic Avenue
New Smyrna Beach, FL
863-409-8633

Deputy William Weaver
123 West Indiana Avenue
DeLand, FL
386-423-3301

Deputy Andrew Davis
Volusia County Sheriff's Office
123 West Indiana Avenue
DeLand, FL
386-423-3301

Deputy Matthew Myers
Volusia County Sheriff's Office
123 West Indiana Avenue
DeLand, FL
386-736-5999

Mr. John MacConnell
123 West Indiana Avenue
DeLand, FL
386-736-5961

Deputy Jerome Childers
Volusia County Sheriff's Office
123 West Indiana Avenue
DeLand, FL
386-423-3301

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: 02-04-19

**Sergeant Justin Sawicki
Internal Affairs Investigator**

APPROVED BY: _____

DATE: 2/4/19

**Chief Deputy Mike Coffin
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA**