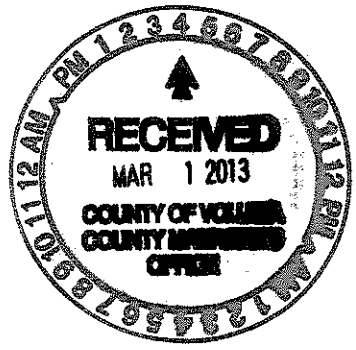

VOLUSIA COUNTY PERSONNEL BOARD
SUMMARY OF FINDINGS AND DETERMINATION
ADVERSE ACTION APPEAL #022213

APPELLANT:	Travis Deane
POSITION HELD:	Deputy II
DATE OF HIRE:	July 14, 2008
DATE OF APPEAL HEARING:	February 22, 2013
SUBJECT:	Termination
HEARING BODY:	Personnel Board
FINAL AUTHORITY:	County Manager
ATTENDEES:	
Personnel Board Members	Brenda Thompson, Vice Chair Joe Winter, Recused[1] Ezell Reaves Dwight Lewis
Ex-Officio Members	
Executive Secretary:	Tom Motes, Human Resources Director
Employer:	Volusia County Sheriff's Office
Employer's Representative:	Nancye Jones, Assistant County Attorney
Employer's Witnesses:	Sgt. Thomas E. Tatum Lindsey Haynes Kelli Capps Sheriff Ben Johnson
Appellant's Representative:	Joseph Blitch, Esquire
Appellant's Witnesses:	Sgt. Shawn McGuire Robert Williams Michael Allcock Travis Deane
Recording Secretary:	Ginger Hadley, Personnel Services

[1] Mr. Winter expressed concern to Appellant's counsel about his conduct towards witnesses and his abrasiveness to the Board. Appellant's counsel thereafter requested a replacement of the entire Board and, when denied, a continuance of the hearing. Mr. Winter recused himself and the remaining Board members asserted that their impartiality had not been compromised by the comments of Mr. Winter or the actions of Appellant's counsel.

I. INTRODUCTION

The Volusia County Personnel Board convened on Friday, February 22, 2013 at 9:30 a.m. to hear the appeal filed by Appellant Travis Deane following his termination from the Volusia County Sheriff's Office on June 22, 2012.

BACKGROUND

1. The hearing before the Personnel Board was conducted in accordance with Merit System Rules and Regulations Sec. 86-485(f).

2. The hearing was held at the request of Appellant.

II. EMPLOYER'S ACTIONS

On June 22, 2012, Ben Johnson, Sheriff, issued a Notice of Termination to Appellant for violations of the following:

Volusia County Sheriff's Office Standard Directives

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)*

26.2.145 – Texting/Use of Data Devices While Driving – While driving a VCSO vehicle (rental, lease, owned), employees are prohibited from texting or typing into the cell phone, Blackberry, MDC, PDA or any other data device. Because of the inherent dangers associated with such behavior, employees found to violate this rule shall be subject to disciplinary action up to and including dismissal. *(New 11/09)*

26.2.34 Failure to Follow Directive or Order – Employees shall adhere to all official Directives and/or orders, and shall faithfully execute all the duties and responsibilities of their assigned position. *(Violation subject up to a 5 day suspension)*

Volusia County Merit Rules and Regulations

Sec. 86-451. Reasons for disciplinary action

(3) Willful misuse, misappropriation, negligence or destruction of County property or conversion of county property to personal use or gain;

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

EMPLOYER'S REQUEST

The Employer requested that the Board uphold the action taken by the appointing authority.

APPELLANT'S POSITION AND REQUEST

Appellant opposed the County's position regarding his termination of employment.

Appellant requested that the Board recommend to the County Manager that his termination be rescinded and that he be reinstated.

III. SUMMARY OF EVIDENCE

On June 22, 2012, Appellant Travis Deane was terminated from employment with the Volusia County Sheriff's Office. Evidence presented to the Personnel Board was as follows:

Appellant, who was 29 years old at the time of the incidents in question, began his career with the Volusia County Sheriff's Office on July 14, 2008, as a Reserve Deputy and on January 24, 2009, became a Deputy II. During his employment, Appellant had evaluations of meets and exceeds standards.

In December 2011, the Internal Affairs Unit received information and photographs from an anonymous source which resulted in the initiation of an internal investigation into Appellant's conduct. The investigation established the following:

On August 20, 2011, Appellant ran a DAVID search of Kelli Capps, an 18 year old waitress who worked at the Pierson Family Restaurant. Appellant frequented the restaurant often as it was located in his assigned work zone. This search was a clear violation of the Volusia County Sheriff's Office policy and procedures as well as the written agreement with the State of Florida regarding the acceptable use of the DAVID system. During Appellant's sworn statement he admitted that he would often use DAVID to run the names of people with which he was going to personally associate to ensure that they did not have a criminal history or a warrant. Evidence presented established that personal use of the DAVID system was a misuse of County property for personal use or gain.

Appellant and Ms. Capps had become friends after meeting at the Pierson Family Restaurant, becoming friends on Facebook and exchanging text and telephone messages. They called each other "wifey" and "hubby," apparently based on comments made to others by Appellant that he was going to marry Ms. Capps one day. Both stated that there was no romantic relationship between them, although during the internal investigation, Ms. Capps said she felt that Appellant wanted a closer relationship with her.

Appellant invited Ms. Capps to a post Halloween costume party at his home via a Facebook invitation in which he indicated that he would have Yuengling and Strongbow on tap and possible Jell-O shots. He advised that anything else, including liquor, should be brought by guests who wanted same and that he had plenty of space to "crash in case you overdo it." Ms. Capp's accepted the invitation to the party.

On November 5, 2011, Ms. Capps, Wade Hunter (21 years old) and Lindsey Haynes (17 years old) went to the costume party at Appellant's house. They stayed at the party for about 45 minutes to an hour. Testimony from Ms. Capps and Ms. Haynes was that, while at the party, Appellant poured a beer from a keg in his garage into a cup and gave it to Ms. Capps to drink, asking her to "taste this". Ms. Haynes testified that she also drank some of the beer while she

was there and that both she and Ms. Capps had Jell-O shots while Appellant was in close proximity. Also, while there, Ms. Capps and Ms. Haynes observed plastic cups lined up on Appellant's Volusia County patrol car with several individuals playing beer pong. The women testified that Appellant was aware that beer pong was being played on his patrol car, although he was not playing. Ms. Capps said Appellant was asked and had given permission for others to play beer pong on his patrol car. Ms. Haynes posted a comment on her Facebook that night, "Watching a prego nun, the west virginia ninja, marg simpson and a terrorist play beer pong on a cop car...highlight of the night." Ms. Haynes also posted a picture of herself and Ms. Capps at the part with Ms. Capps holding a cup she said contained alcohol. Although Appellant did not know Lindsay Haynes until the night of the party and did not know her age, it was without dispute that he knew that Ms. Capps was 18 years old.

Appellant's defense to the charge of committing a misdemeanor injurious to the department by serving alcohol to minors and having an open house party where alcohol was consumed or possessed by minors was that he was too intoxicated at the party to remember what he had done. He did not recall serving alcohol to Kelly Capps or allowing the minors to drink alcohol in his home. He did not recall beer pong being played on his patrol car and said that when he later found out that this had happened, he was not happy about it.

On December 11, 2011, at approximately 3:00AM, Ms. Capps texted Appellant, asking him what he was doing. She was looking for a ride home from her boyfriend's house following an argument. The boyfriend, Stephen Dehut, had already left the residence. In one of the messages, Ms. Capps stated that her boyfriend had punched holes in the wall and had hit her. Appellant texted Ms. Capps told her he was driving to the jail with a prisoner in his car. During the internal affairs investigation, Appellant provided copies of the text messages which showed that Ms. Capps had stated that her boyfriend hit her. A subsequent review of Appellant's AVL records established that Appellant was driving in excess of 70 miles per hour with an inmate in his car while texting with Ms. Capps. Appellant admitted that he had violated Sheriff's Office Directive 26.2.145, Texting/Use of Data Devised while Driving.

On December 14, 2011, Appellant initiated the arrest of Mr. Dehut for domestic battery against Ms. Capps for the incident that occurred on December 11. Prior to completing the arrest affidavit, Appellant contacted his supervisor, Sgt. Shon McGuire, to ask if there was a conflict of interest for him to handle the case, in light of his friendship with Ms. Capps. To clarify the nature of the friendship, Sgt. McGuire asked Appellant if he had ever dated or slept with Ms. Capps. Appellant advised that he had not, but failed to tell Sgt. McGuire the extent of his friendship with her; that is, that they were Facebook and texting friends, and that she had been at a party at his house. Sgt. McGuire told Appellant it was not a conflict for him to handle the case [which would have been a violation of policy] but later said that if he had known of the true extent of their relationship, he would have told Appellant to have another deputy handle it. When Appellant completed the arrest affidavit, two deputies who worked in the zone where Dehut lived went to his house and arrested him. At the time, Dehut stated that he knew who was responsible, "Travis Deane, because he hates me."

Although there may have been probable cause for the domestic violence charge against Dehut, the fact that the incident had occurred more than three days prior and involved Ms. Capps with whom Appellant had an ongoing friendship, created an appearance of impropriety in the arrest. Sheriff Johnson testified that the Sheriff's Office received a notice of intent to sue from Mr. Dehut, claiming he was falsely arrested after the charges against him were dropped.

During Appellant's sworn statement in the internal affairs investigation, he admitted that he violated policy with regard to the domestic violence arrest when that he failed to document that Ms. Capps refused to write a statement. Appellant also admitted that he had failed to document the lack of a statement given by Mr. Dehut.

Sheriff Johnson testified that it was a combination of the five sustained violations of Sheriff's Office department policies and Merit System Rules and Regulations which he relied upon in his decision to terminate Appellant. He said that any one or more of the charges alone would probably not have resulted in Appellant's termination but the totality of his conduct with regard to Ms. Capps, over the course of time, left no choice but termination. Sheriff Johnson admitted that three other deputies in the past had been found guilty of misdemeanors injurious to the department who had not been fired but articulated that those cases were distinguishable from Appellant's by the facts of each and because those deputies did not have five sustained violations which established a pattern of poor judgment in their conduct. Sheriff Johnson candidly admitted that, in retrospect, he should not have given Deputy Sawicki a last chance agreement after giving him a notice of intent to terminate for his second domestic incident, the latter of which had resulted in his arrest for domestic battery.

Appellant provided the testimony of two friends who were at the post-Halloween party who said they did not see Appellant serve alcohol to Ms. Capps or Ms. Haynes, although they admitted they were not with him the entire night and it was possible that he had done so and they didn't see it. Both said that Appellant was not in the garage when beer pong was being played on Appellant's patrol car but admitted that it was possible that he had seen it and they weren't in the garage when he was.

Appellant testified and admitted his intoxication on the night of the party precluded him from recalling what he had done or whether he had given alcohol to Ms. Capps or Ms. Haynes. He admitted to texting while driving, use of the DAVID system for personal use, failure to follow directives or orders and that his conduct off duty had reflected poorly on the Sheriff's Office. Certified copies of the paperwork establishing that he was found guilty of having an open house party was submitted for the Board's consideration.

IV. BOARD'S FINDINGS OF FACTS AND CONCLUSIONS

Mr. Reeves made a motion to sustain all of the charges against Appellant. Mr. Lewis seconded the motion, noting that Appellant had admitted the charges against him, making that part of their job easy. Mr. Lewis noted also that the five charges against Appellant showed poor judgment. Mr. Lewis seconded the motion.

Motion to sustain all charges against Appellant carried 3-0.

Mr. Reeves made a motion to find that the penalty was too severe. He did not feel that termination was warranted, given the officer's background and his past performance evaluations. He also felt that Appellant received bad advice or direction from people above him; noting that he asked for advice, got advice and the advice was wrong.

Mr. Lewis seconded the motion but opined that the fact that Appellant was found guilty by Judge Marshall of a criminal charge was very severe and that Appellant should have had better judgment.

Motion to recommend that the county manager not uphold termination carried 2-1.

V. BOARD'S RECOMMENDATION

The Board sustained all charges against Appellant by a vote of 3-0 based on the evidence and facts as established in the attached CD. The Board voted 2-1 to recommend to County Manager Dinneen that termination not be upheld.

REVIEWED BY: _____ DATE: 3/1/13

COUNTY MANAGER _____ DATE: 3/5/13

_____ APPROVAL

__X__ REJECTION

_____ MODIFICATION

I accept the board's finding of fact but rejected the recommendation of termination of the appointing authority.