

Professional Compliance Bulletin

Issue #71

May and August 2018



The
Criminal

Justice Standards and Training Commission has as its mission “to ensure that the citizens of the State of Florida are served by the most qualified, well trained, competent and ethical criminal justice officers in the nation”. The Commission meets quarterly in an open forum to address issues relating to criminal justice. As a part of these quarterly hearings, cases regarding officer misconduct are reviewed and action is taken against the officer’s criminal justice certification. Disciplinary action is based on the facts of each case and is guided by both Florida Statute and Florida Administrative Code. The following is a sample of the cases the Commission heard at hearings held on May 3 and August 2, 2018.

May 3, 2018

Case # 41008- Fleeing or Attempting to Elude a Law Enforcement Officer

The respondent was terminated from the Florida Highway Patrol subsequent to an internal investigation which sustained his arrest for Fleeing and Eluding. On December 7, 2016, a deputy with the Gilchrist County Sheriff’s Office was standing outside a gas station when he observed a vehicle leave the gas station at a high rate of speed. The driver, later identified as the respondent, did not stop accelerating after leaving the parking lot. Due to the obvious careless driving and the vehicle’s threat to public safety, the deputy followed the respondent with the lights and sirens activated. The deputy observed the respondent turning into a parking lot. When the deputy arrived, the respondent was not in sight. The deputy found tire tracks in the grass and followed the tracks to where the respondent was sitting between two buildings with his lights off. As the deputy attempted to get closer, the respondent turned his lights back on and continued to flee. At this point, the deputy advised another deputy that the respondent was fleeing. The other deputy pursued the respondent with his lights and siren activated. The respondent travelled approximately a quarter of a mile before stopping. During the stop, the deputy made contact with the respondent’s passenger. The passenger informed the deputy that she did not know why the respondent was fleeing. Post Miranda, the respondent admitted that he was fleeing and that he was aware that the deputy activated his lights and sirens. He stated he did not know why he fled and that he made a bad decision. During the internal investigation, the passenger stated she met the respondent at a bar and he consumed two beers. They went to another bar and the respondent had one or two more beers. Upon seeing the deputies, the respondent said some profanities and stated that he was in trouble, but did not tell her why he fled. She did not believe the respondent was impaired. During the internal investigation, the respondent admitted to fleeing and hiding from the deputies. On January 18, 2017, the State

Attorney's Office filed a No Information citing that appropriate administrative action was deemed sufficient in lieu of prosecution.

Penalty Guideline: Suspension to Revocation

FDLE Prosecution requested a 1 year retroactive suspension; 90 day prospective suspension; provide staff with proof of successful completion of Commission-approved ethics training prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission accepted the settlement agreement.

Case # 41523-False Statement on Employment Application

The respondent was terminated from the Orange County Sheriff's Office (OCSO) subsequent to a management inquiry which sustained that he failed to list a prior employment history on his application. On April 5, 2017, OCSO management received information that the respondent failed to divulge that in 2004, he had been terminated from a department store in Miami for suspicion of theft. According to the Miami Police Department report, a risk management employee caught the respondent stealing money from the business. Although the respondent admitted to taking money from the business, he was not arrested due to the lack of any evidence other than the respondent's statement to the complainant. On April 6, 2017, the respondent was questioned by OCSO management. He stated that he omitted the employment and theft from his application because he forgot about them. He then stated that he omitted the information from his application because he was afraid it would jeopardize his chance at employment with the OCSO. He then admitted to lying on his OCSO application regarding his past job history and whether he had ever been fired. No criminal charges were filed.

Penalty Guideline: Suspension to Revocation

FDLE Prosecution requested a 60 day prospective suspension; 1 year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved ethics training prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission accepted the requested penalty.

Case # 39334-Misuse of Official Position

The respondent resigned from the Department of Corrections prior to the conclusion of an internal investigation which sustained the charges of conduct which violates statute and conduct unbecoming. On June 8, 2015, the respondent entered the secure perimeter of a correctional facility and placed three large drink cans in front of a sergeant to be searched. When the sergeant twisted the top of the can, she discovered that the tops were false and contained tobacco wrapped in duct tape. A criminal investigation was initiated. During a sworn, post-Miranda interview, the respondent admitted that he received over \$1000 from inmates as payment to introduce and deliver tobacco into the correctional facility. The respondent stated that the payments were received via money transfers or electronic bank transfers. He further stated that when he received the money, he would conceal the tobacco, introduce it into the correctional facility, and then deliver it to the inmates. A warrant was issued for the charges of unlawful compensation and introduction of contraband. No action was taken on the charge of

introduction of contraband as tobacco is not considered contraband for state correctional facilities. On August 1, 2017, the State Attorney's Office filed a nolle prosequi in the case due to lack of evidence to corroborate the respondent's confession.

Penalty Guideline: Suspension to Revocation
FDLE Prosecution requested revocation.

Disciplinary Action by the Commission: The Commission accepted the requested penalty.

August 2, 2018

Case # 40875-Malicious Battery False Official Statement

The respondent was terminated from the Department of Corrections subsequent to an internal investigation which sustained the charges of excessive force by a correctional officer and conduct unbecoming. On April 21, 2016, a nurse assigned to the medical center alleged that the respondent told an inmate to go into the nurse's office. The respondent followed the inmate into the office and closed the door. The nurse indicated that they were the only people present in the office. The nurse stated that out of the corner of her eye she saw the respondent raise her right hand in a striking motion. However, she turned her head and could not see what was happening, but heard approximately eight slaps or hits. She then heard the respondent say, "Do you understand?" The nurse said that she did not see the respondent hit the inmate but it was her opinion that the respondent struck the inmate. She then heard the respondent tell the inmate to leave the nurse's office and told the nurse that she was sorry. As she left, the respondent yelled at other inmates in the hall. In his interview, the victim said that the respondent was walking by and heard him and other inmates laughing and told him to go into the nurse's office and sit in the chair. The respondent entered the room, closed the door and hit him with an open palm in the area of his left eye. The inmate covered his face with his hands and the respondent continued to hit him several times in the head area with both of her hands. The respondent then told him to get up and go sit down in the hallway. He said the other inmates told him they could hear the respondent hitting him. The inmate confirmed the nurse was in the office while the respondent was hitting him. He stated that he did not have any injuries and his emergency room record noted that he did not have any injuries. The other inmates in the hallway were interviewed and they all stated that they heard the respondent tell the victim to go into the nurse's office. Some of the inmates heard striking sounds and several said that the victim was rubbing his eye when he came out of the room. They all said that the respondent came out of the office and yelled at them. A review of the fixed wing video of the hallway showed the respondent pointing at the inmate who was sitting on a bench in the hospital hallway. The respondent walked into the nurse's office followed by the victim. The victim came out of the room approximately 30 seconds later rubbing his left eye and then sat on the bench in the hallway. The respondent came out of the room and appeared to say something to the inmates sitting on the benches. During her interview, the respondent stated that she took the victim into the nurse's office to counsel him about his behavior in the hallway and that the nurse was present. The respondent said she had her back to the nurse and the inmate was sitting in a chair. The respondent asked the inmate about his behavior while he was in the hallway. The inmate indicated he did not understand what he had done wrong. The respondent then told the inmate to go back into the hallway and act appropriately. She indicated that she did not say anything else to the inmate and she did not touch him at any time. The respondent said she was in the room for approximately 30 seconds to one minute, and the nurse was not making any noise in the room at that time. On April 21, 2016, the respondent

submitted an incident report which indicated she counseled with an inmate about his attitude, away from the sight of other inmates, and no force was used. No criminal charges were filed.

Penalty Guideline: Suspension to Revocation; Prospective Suspension to Revocation
FDLE Prosecution requested 45-day prospective suspension; 1-year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved ethics training prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission accepted the requested penalty.

**Case # 40173-Misuse of Electronic Database-DAVID(5 Counts)
Misuse of Electronic Database-FCIC/NCIC**

The respondent was terminated from the Miami Gardens Police Department subsequent to an internal investigation which sustained the charges of General Conduct – Misuse of DAVID and General Conduct – Misuse of NCIC/FCIC. On May 1, 2015, a complaint was received by the Miami Gardens Police Department alleging that the respondent searched the complainant, his ex-wife, and another individual in DAVID, for personal reasons. On May 21, 2015, the agency received notice that the complainant had filed a lawsuit in reference to the complaint. A review of the respondent's DAVID history from May 5, 2011 to May 5, 2015, revealed numerous names the respondent searched with no legitimate law enforcement purpose. Of these names, the respondent searched her ex-fiancé, his ex-spouse, the father of her child, a friend's sibling, and a previous friend of her son. These searches could not be justified by the respondent as having any law enforcement purpose. The respondent also searched her ex-fiancé in the NCIC/FCIC database. On August 24, 2015, the complainant withdrew his complaint and refused to cooperate due to a settlement related to his lawsuit. On August 25, 2015, the State Attorney's Office declined to pursue the case.

Penalty Guideline: Probation to Suspension; Probation to Suspension
FDLE Prosecution requested a 6 month retroactive suspension; 1-year probation to begin at the conclusion of the suspension period; provide staff with proof of successful completion of Commission-approved ethics training prior to the end of the probationary period.

Disciplinary Action by the Commission: The Commission accepted the settlement agreement.

**Case # 40262-Overt/Conspicuous/Public Act of a Sexual or Simulated Sexual Nature
Likely To Be Seen by Others**

The respondent was terminated from the Walton County Sheriff's Office subsequent to his arrest for exposure of sexual organs. On April 20, 2016, a deputy with the Okaloosa County Sheriff's Office pulled into the parking lot of a public park and observed a SUV pull into the parking lot directly behind his unmarked truck. The driver of the SUV then pulled past the vehicle as the driver stared into the deputy's passenger side window. The SUV turned around and slowly passed the deputy's passenger side again as the driver peered into the window. The SUV then pulled forward into a parking space on the opposite side of the parking lot. The deputy observed the male driver watching other vehicles pull into the parking lot and watching people as they walked. The SUV then backed out of the parking space and pulled into a parking space

directly in front of the deputy's vehicle. The driver of the SUV exited the vehicle and walked up beside the driver's side window and peered into the driver's compartment where the deputy was seated, but was unable to see into the vehicle due to the dark tint on the windows. The deputy immediately recognized the driver as a former Okaloosa County deputy. The respondent then walked under a bridge where he stayed for four or five minutes before walking back to his vehicle and driving off. Fifteen minutes later, the respondent returned to the park and slowly passed the deputy's vehicle again, peering into the passenger window. The respondent pulled the SUV into a parking space on the opposite side of the parking lot. The deputy observed the respondent looking back at the deputy's vehicle. The deputy pulled his vehicle a couple spaces down from the SUV in attempt to obtain the license plate number. Once the deputy pulled into a parking spot, the deputy observed the respondent looking at him while moving his left hand up and down in his genital area. The deputy pulled his vehicle directly beside the respondent's SUV on the passenger side as the respondent looked over at him several times while continuing the motion. As the deputy looked over into the respondent's vehicle, he observed the respondent masturbating while looking at the deputy. The respondent would remove his penis from inside his pants and masturbate and then would place his penis back into his pants and continued to masturbate through his clothing. The deputy activated the video recorder on his cellphone and recorded over a minute of the respondent masturbating. The respondent continued this cycle for 30 to 45 minutes before a sergeant arrived in a marked patrol vehicle and made contact with the respondent. When the sergeant arrived at the scene, the respondent immediately stopped masturbating and picked up his cellphone, and pretended to have a conversation. The deputy exited his truck with his badge and gun displayed and approached the respondent. The deputy advised the respondent that he was the driver of the truck and observed him masturbating and recorded the incident. The respondent stated "I know...it was stupid. I made a bad decision." The deputy told the respondent that children were playing in the park. The respondent admitted that he observed children playing and thought about leaving. The respondent stated that he recently retired from the Walton County Sheriff's Office and was currently employed as a civilian. When questioned about the SUV, the respondent indicated that it belonged to the Walton County Sheriff's Office. He indicated that he took the SUV to Crestview for service and came to the park after the service was complete. The respondent indicated that it was the first time he had ever done anything like this and asked if the deputy could give him a warning. The deputy denied the respondent's request and indicated that the respondent could face criminal charges. The respondent was released from the scene and a warrant application was submitted to the State Attorney's Office. On April 21, 2016, the respondent was arrested for indecent exposure - exposure of sexual organs and transported to the local jail. On October 10, 2016, the respondent entered into a twelve month pretrial diversion program for the charge of indecent exposure. He was ordered to not trespass at the park where the incident occurred, complete a mental health evaluation and receive any recommended counseling deemed necessary and pay court costs and fines.

Penalty Guideline: Suspension to revocation

FDLE Prosecution requested that he Commission accept the respondent's voluntary relinquishment.

Disciplinary Action by the Commission: The Commission accepted the settlement agreement.

The following information is provided to facilitate an understanding of the Professional Compliance process.

Section 943.1395(7)(a)-(e), F.S., authorizes the Criminal Justice Standards and Training Commission to impose disciplinary action against an officer's certification ranging from the issuance of a reprimand to revocation of certification. The Commission has established general and specific penalty guidelines under Rule 11B-27.005(5), Florida Administrative Code, for felony offenses, specific enumerated misdemeanor offenses, non-criminal offenses, and violations involving the unlawful use of controlled substances. The Commission uses these penalty guidelines to determine appropriate disciplinary recommendations regarding the certification of sworn officers in the state of Florida. Additionally, Section 943.1395(8)(b)2 states:

On or before July 1 of each odd-numbered year, the Commission shall conduct a workshop to receive public comment and evaluate disciplinary guidelines and penalties. The commission chair shall appoint a 12-member advisory panel, composed of six officers and six representatives of criminal justice management positions, to make recommendations to the commission concerning disciplinary guidelines.

The Commission plans to conduct this workshop as a Penalty Guidelines Task Force meeting during the early part of 2019. If you have any issues that you would like to be considered by this group, please forward them to R. Stacy Lehman, Professional Compliance Section Manager in the Bureau of Standards, at the Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302 or via e-mail at: stacylehman@fdle.state.fl.us.