

Memo



To: James Davis, Sergeant
From: Henry A Osterkamp, Chief of Police
CC: Shelly Arzola, Human Resources Director
Date: January 10, 2014
Re: Notice of Final Disciplinary Action: IA 13-004

On Friday, January 10, 2014 a predetermination conference was held at the Ormond Beach Police Department at which time you were provided the opportunity to make any comments and submit any relevant information on your behalf regarding Internal Affairs Investigation 13-004 and the sustained departmental policy and procedure violations and Florida Statute to include in part: domestic violence battery, untruthfulness, untruthfulness during an official investigation and conduct unbecoming an officer of this agency.

Present during the predetermination conference were: Sergeant James Davis, Mr. Ned Golden of the Fraternal Order of Police, Detective Tom Larsen, Fraternal Order of Police agency representative, Human Resources Director Shelly Arzola, and Police Chief Henry Osterkamp.

During your predetermination conference you provided the following information for my consideration:

- You apologized for having allowed your personal conduct and affairs to involve the Department, admitted that you could/should have handled your marital affairs in a more appropriate manner, apologized for being a "smart butt" to the officers that dealt with you at the Kangaroo Express and acknowledged that you did not properly inform the Department of your change of address but did so only because you did not want your wife to know where you were living, and apologized for the negative publicity that this investigation has caused the Department and City.
- Mr. Ned Golden noted that the FOP is taking the position that the 180 day time limit to conduct and complete an investigation into the incidents occurring in 2010, 2011 and/or 2012 had run and as such no disciplinary action could be taken against Sergeant Davis at this time for any incidents that had been brought to the Department's attention in the past.

Per Florida Statute 112.532 (6) Limitations Period for Disciplinary Actions, Section (a) limits disciplinary action against an officer for an allegation of misconduct if...."*the investigation is not completed within 180 days after the date the agency receives notice of the allegation....*"

Additionally, Section (6)(b) states "An investigation against a law enforcement officer or correctional officer may be reopened, notwithstanding the limitations period for commencing disciplinary action, demotion, or dismissal, if:

1. *Significant new evidence has been discovered that is likely to affect the outcome of the investigation.*
2. *The evidence could not have reasonably been discovered in the normal course of the investigation or the evidence resulted from the predisciplinary response of the officer."*

Each of the allegations addressed in these investigative findings were based on new evidence and/or information that was not previously disclosed or otherwise made available to current or prior members of staff or was provided by Sgt. Davis during his sworn testimony regarding details of events that he had previously not been forthcoming about when initially discussed with him by members of staff.

Information previously brought to staff's attention by Mrs. Davis was that Sergeant. Davis had a drinking problem and she wanted the police department to address same. There are also reports where Sergeant Davis and Mrs. Davis had been involved in verbal domestic arguments where the Flagler Sheriff's Office responded to their residence to investigate where both Sergeant Davis and Mrs. Davis reported that their domestic arguments was strictly verbal/non physical in nature. Subsequently, no action was taken by the Flagler County Sheriff's Office other than to document the incident as a civil dispute.

When confronted about Mrs. Davis' allegations regarding his drinking problem by then Lieutenant Hayes and/or Sergeant Gogarty, Sergeant Davis categorically denied having any type of a drinking/substance abuse problem but was provided with EAP information on how to obtain assistance if he wished to do so. Sergeant Davis did not disclose any other information about the incidents at the time. Additionally, there have never been any indications or observations of alcohol abuse displayed by Sergeant Davis while on duty/in the workplace.

Regarding the incident occurring in 2012 at the Kangaroo Express convenience store, Sergeant Davis simply reported to Lieutenant Godfrey that he had been "stopped" by the Flagler County Sheriff's Office. The information Sergeant Davis provided to Lieutenant Godfrey led him [Godfrey] to believe that the incident amounted to nothing more than a routine traffic stop where, when specifically asked, Sergeant Davis advised he was not issued "any paper" (referring to a uniform traffic citation). Sergeant Davis failed to report any other circumstances surrounding this "stop" and the Flagler County Sheriff's Office did not notify this agency of their investigation into the incident, a reported verbal argument between Sergeant Davis and his wife that prompted their contact with Sergeant Davis.

Based on the information available to staff at the time, no investigation of any type was warranted or conducted, findings made or disciplinary action taken pursuant to the incidents noted above prior to this investigation being conducted based on new /additional allegations and information being brought forward. As such, the findings made during this investigation relative

to these specific incidents were based on significant new evidence provided by Sergeant Davis' family members, eye witnesses and by Sergeant Davis' own sworn testimony.

Detective Larsen provided two (2) maps pertaining to AVL data from a separate incident involving other officer's vehicles to show it is not always accurate technology. It is noted that the documentation was not in any way related to this incident nor, when specifically asked, was any information provided that would show that the GPS tracking device in your MDT (mobile data terminal) was not working properly during the incident at hand.

Detective Larsen also provided a roster of personnel that worked with you on your shift and commented on your level of work performance and your mentoring of subordinate personnel. These documents were provided on your behalf for my review and consideration when making my final determination regarding discipline in this matter. No other documentation or evidence of any kind was provided.

Based on the totality of the information you have provided for my consideration and the information and evidence made available to me as documented in investigative report IA13-004, the following findings are made:

- **As to recommendation #1:** The evidence indicates that you did discuss with Sergeant Gogarty in 2010 the fact that you had been involved in an off-duty incident with your wife where Flagler County Deputy Sheriff's were called to your residence to investigate, albeit two (2) days after the fact and only after Sergeant Gogarty confronted you about the incident after being advised about same by the Flagler County Sheriff's Office. While the evidence shows that you did not follow policy by immediately reporting the incident to your supervisor, any policy violation in this regard that may have occurred should have been addressed at that time (2010) and not three (3) years after the fact. As such, this allegation is being classified as being **UNFOUNDED**. The findings do, however, establish that domestic disputes between you and your wife were occurring as early as 2010.
- **As to recommendation #2:** The evidence obtained during the investigation shows you were not involved in a fistfight with a family member, a possible domestic violence situation, but rather engaged in simple "horseplay" and/or wrestling with a family member(s) during a social gathering at your residence. As such, this allegation is classified as being **UNFOUNDED**.
- **As to recommendation #3:** I concur that there is insufficient information and/or evidence to either prove or disprove the allegation that you "jabbed" your wife Kim Davis in the chest and pushed your minor son during a domestic argument at your residence sometime in 2010 and that the allegation be classified as being **NOT SUSTAINED**.
- **As to recommendation #4:** I concur that there is sufficient information and/or evidence to show that you acted rude and unprofessional when confronted by law enforcement officers at the Kangaroo Express and improperly displayed your police identification card while/after consuming alcoholic beverages and that these allegations are classified as being **SUSTAINED**.

It is noted that you reported to your immediate supervisor, Lieutenant Godfrey, that you had been involved in an off duty related incident, however, you were less than forthcoming in

disclosing the full details of the incident and led Lieutenant Godfrey to believe that the incident amounted to nothing more than a routine traffic stop/encounter and that you had not been issued a uniform traffic citation by answering "no" when asked by Lieutenant Godfrey if you had been "given any paper."

As the Flagler County Sheriff's Office did not contact/notify this agency of the incident and/or the investigation they conducted coupled with the fact that you failed to fully disclose the extent and nature and/or purpose of the "stop" by officers from two (2) separate law enforcement agencies, there was no reason for Lieutenant Godfrey or this administration to suspect that anything other than a routine traffic stop had occurred and subsequently no investigation was initiated or further action taken.

Significant new evidence obtained during this investigation as provided by witnesses and by your own testimony shows that during the encounter with law enforcement officers you produced your Ormond Beach Police Department identification card to identify yourself as a law enforcement officer. You testified during your interview that you had been drinking that day and had stopped at the convenience store for the purpose of purchasing additional beer and had beer (unopened) in your possession at the time you were "stopped." You also testified during your interview that you wanted them [the officers] to know who you were and what you did [employed as a police officer] so there would be "no question."

It is noted that the officer you presented your police identification card to, Officer Chewning, asked you if you were "Corporal Davis" (your rank at the time) upon initial contact but did not ask you for any type of identification. You should have simply acknowledged that you were a police officer with this agency when asked by Officer Chewning unless he or one of the other officers specifically asked to view your law enforcement credentials.

Two (2) of the officers on scene (Officer Chewning and a Flagler County Sheriff's deputy) knew who you were and of your employment status with this agency and had no reason to ask you to produce your police identification. Had you wanted to identify yourself you should have produced your Florida driver license as proof of identification as there was no legitimate reason to identify yourself as a law enforcement officer in this situation.

Additionally, all officers on scene described your behavior towards them after having identified yourself as a law enforcement officer as being rude. You also acknowledged during your interview and during your pre-determination conference that you were in fact rude or a "smart butt" to the officers and apologized, to Lieutenant Godfrey, for your conduct.

The purpose of the policy prohibiting the display of your badge and/or police identification card when in a situation of this type, specifically when consuming alcoholic beverages, is to prevent any appearance and/or implication that you were attempting to gain favor or obtain a professional courtesy/treatment from the law enforcement officers on scene based on your position as a law enforcement officer with this agency.

As such I find that you have violated Departmental Standards Directives:

1. **C-2-11 Sec. 2.B, 34 Misuse of Identification While Consuming Alcoholic Beverages:** *Members, while off duty and partaking of alcoholic beverages and/or frequenting premises established primarily for consumption or sale of alcoholic beverages, will do so only as private individuals and will not display Police Department identification unless necessary to perform official duties.*
2. **C-2-11 Sec. 3.1 Courtesy:** *Members will be polite and courteous in contacts with the public and other City personnel.*

The information and/or evidence also shows that you failed to "immediately" report and/or fully disclose all details of this incident to Lieutenant Godfrey as required by policy. Instead you waited two (2) days after the incident occurred to notify and inform him of same but left out pertinent facts and details for the reason you were "stopped" by law enforcement officers as previously noted. The fact that you called Lieutenant Godfrey to report you had been involved in an off duty incident, albeit not within the timeframe as specified by policy, coupled with the fact that no action was taken at that time for your having failed to do so in a timely manner, this allegation of policy violation is classified as being **NOT SUSTAINED**.

- **As to recommendation #5:** Pursuant to the allegation that you and your wife "shoved each other" during an argument sometime in 2012, this allegation is classified as being **SUSTAINED**. When describing this specific domestic altercation that occurred between you and your wife you acknowledged that the two of you had pushed each other around/got into shoving matches, during arguments, usually when you would try and leave the residence.

Pushing or shoving each other around during a domestic argument meets the definition of domestic violence battery and is a first degree misdemeanor violation of Florida Statute 784. The fact that this is a separate incident from the one occurring on April 26, 2013 (addressed in #6 below), and the fact that you testified that these shoving incidents occurred multiple times, it clearly establishes a pattern of physical domestic violence confrontations between you and your wife and that the incident as reported occurring on April 26, 2013 was not an isolated or unusual occurrence.

Additional reference to this incident will be noted while addressing the findings of #6 below.

- **As to recommendation #6:** I concur that there is sufficient information and/or evidence to prove that you and your wife, Kim Davis, were involved in a domestic violence altercation as defined by Florida Statute 741 and battery as defined by Florida Statute 784 at your place of residence on or about April 26, 2013, in the presence of your minor child/son.

Both you and your wife have alleged that the other initiated and acted as the primary aggressor in this physical altercation and have each subsequently alleged that the physical injuries that you each suffered were obtained as a result of having acted in self defense.

Both you and you wife have provided photographs of injuries that you each claim resulted from this physical altercation and as being inflicted/caused by each other as evidence of being the victim in this incident and not the primary aggressor. As both you and/or your wife failed to report the incident to the appropriate law enforcement agency, that being the Flagler County Sheriff's

Office, no investigation into this incident was conducted or a primary aggressor/victim identified. The photographs submitted prove that each of you sustained injuries from the physical altercation but do not, in and of themselves, identify or prove who the primary aggressor was.

As you are well aware, when two persons in a domestic violence situation claim each other to be the aggressor and both have suffered physical injuries consistent with having been involved in a physical altercation, minus any independent eye witness testimony or other evidence to support either side, both individuals may be considered mutual aggressors and both individuals are subject to arrest for domestic violence battery.

Based on your own statements you admitted to having been involved in a physical altercation with your wife Kim Davis on this date, stating you "thrust kicked" her in her stomach. You also made the statement, under oath...."I can definitely tell you there was a physical confrontation between both of us.....her and I" when describing what took place between the two of you during this incident. During your sworn interview you also acknowledged that as a law enforcement officer, if faced with the same set of facts/circumstances as described in this scenario in the performance of your official duties, you would, at a minimum, file cross complaint affidavits with the State Attorney's Office on both individuals involved charging them with the first degree misdemeanor violation of domestic violence battery.

The evidence/information discovered pursuant to this allegation clearly establishes that both you and your wife were involved in a physical altercation that meets the definition of domestic violence battery on one another, a violation of Florida Statutes 784; a first degree misdemeanor offense, not only during the incident that occurred in April of 2013, but also during several other arguments dating back as far as 2012 (see #5 above).

You stated that you did not report any of these incidents to the Flagler County Sheriff's Office as you claim you did not trust that agency to conduct a fair and impartial investigation as your wife was/is employed with that agency as a law enforcement officer and that responding deputies would likely take her side. While this may have been your concern, as a trained law enforcement officer you knew, or should have known, that there were other means of reporting and obtaining assistance to address the ongoing domestic violence confrontations between you and your wife. Instead you chose to not report the incidents to law enforcement or other assistance programs and allowed the pattern of violence existing between you and your wife to continue unabated.

It is also noted that your wife called the Flagler County Sheriff's Office to report several civil arguments/disturbances occurring between the two of you at your residence and also reported and discussed the physical confrontations between the two of you with her peers and supervisors within the Flagler County Sheriff's Office, albeit always after the fact. Each time that your wife called law enforcement to your residence during or following a civil disturbance the deputies that responded to your home, on each occasion, conducted an impartial, professional investigation and treated both you and your wife as they would have any other citizens based on the information and evidence available to them at the time. There was no evidence discovered during this investigation that would indicate otherwise.

It is also noted that you had an opportunity to report a domestic violence battery situation to a law enforcement entity of another state where you described during your sworn interview having been physically attacked by your wife as you were traveling/driving on I-95 while on vacation. You would have had no cause or reason to suspect that the law enforcement entity with jurisdiction would have conducted anything other than an impartial investigation of that incident had you, as the alleged victim, reported same. Instead you again chose not to report the incident to appropriate law enforcement professionals.

Based on the above I find that you have violated the following Departmental Standards Directives and State Statute:

1. **C-2-11 Code of Conduct Section D.2 – Unlawful Conduct Offenses:** *Disciplinary measures resulting from unlawful conduct may be imposed independently of, or concurrent with, civil and criminal prosecutions. The administration of internal disciplinary circumstances and will be determined by the Chief of Police.*

 2. **Commission of Misdemeanor:** *Members will adhere to all federal, state, and local laws and will not commit any act or crime defined in Florida law as a misdemeanor.*

 2. **E-3-11 Code of Ethics, Principle 1.4 -** *Police officers, whether on or off duty, shall not knowingly commit any criminal offense under any laws of the United States or any state of local jurisdiction in which the officer is present, except where permitted in the performance of duty under proper authority.*

 3. **Violation of Florida Statute 741.28 - Domestic Violence; and Florida Statute 784.03(1)(a) Sec. (1)(2) Misdemeanor Battery.**

 4. **C-2-12 Sec 3.60 Conduct Unbecoming a Member of the Police Department:** *Conduct unbecoming a member of the Police Department is defined as any conduct or act, which has an adverse impact upon the operation of the Department, and destroys public respect and confidence in the Police Department and its employees. Such conduct may include, but is not limited to, participation in any immoral, indecent or disorderly conduct, or conduct that causes substantial doubts concerning a person's honesty, fairness, or respect for the rights of others, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime. Per the labor contract, any charge of "conduct unbecoming an officer" or any other similar shall include specifications supporting the charge. To-wit: committing several acts of domestic violence battery upon your wife, misdemeanor violations of Florida Statute.*
- **As to recommendation #7:** I concur that there is insufficient information and/or evidence to either prove or disprove the allegation that you were involved in a domestic dispute with Jake Davis, your stepson, via text messaging and that the allegation be classified as being NOT SUSTAINED.
- **As to recommendation #8:** I concur that there is sufficient information and /or evidence to prove that you were untruthful in your comments made to me during our meeting in May of 2013

when I asked you about your relationship with a waitress of the local Denny's Restaurant, Ms. Sommerville.

During our conversation to discuss Mr. Carter's concerns/belief that you had instructed your squad to target him for arrest because he had a suspended Florida driver license at the time, you advised that Mr. Carter's allegations were based the fact that he [Carter] had romantic feelings towards Ms. Sommerville, feelings that you claimed she did not share, and that he was extremely jealous of your friendship with her. Mr. Carter made no specific complaint against you regarding Ms. Sommerville but did note that it was his impression (but acknowledged that he had no evidence to support same) that she would leave Denny's while she was working to meet with you and sometimes take you lunch while you were on duty.

Based on your statement regarding having a friendship with Ms. Sommerville, I specifically asked you if you were involved romantically/having an affair with her, either on-duty or off-duty. You emphatically denied that you were, stating that you simply had a "close" friendship with Ms. Sommerville. When asked if she ever met with you or brought you lunch outside of Denny's while you were working, you denied that she ever had and asserted that you did not associate with Ms. Sommerville at any time or in any manner away from/outside of the Denny's restaurant.

Based on witness testimony provided by members of your squad, employees of the Denny's restaurant and your city cell phone records, you did in fact have a relationship with Ms. Sommerville that existed well before our meeting in May of 2013 and took place both at and outside of the Denny's restaurant.

Ms. Loguidice, a Denny's employee, testified your relationship with Ms. Sommerville became more than just friends as early as late 2011 or early 2012 and that she had been told by Ms. Sommerville the two of you had met members of each other's families and that you had gone out to dinner together with her family and kids. Ms. Longuidice also testified that in early 2013 she witnessed you and Ms. Sommerville kiss like "boyfriend and girlfriend" while you were on duty and in uniform at the Denny's restaurant. Ms. Loguidice was asked when Ms. Sommerville talked about her sexual activity ("sex stuff") if she was talking about "stuff that she does with Sergeant Davis or just anybody or anything", Ms. Loguidice answered, "a little of both on that."

Mr. Carter testified during this investigation that he observed you and Ms. Sommerville hug and kiss and, on one occasion, grab one another's buttocks while you were on duty and in uniform at the Denny's restaurant.

Ms. Thomas, a supervisor at Denny's Restaurant, testified that Ms. Sommerville had told her that the two of you had secretly started dating sometime towards the end of 2012 and that Ms. Sommerville wanted the relationship kept quiet because you were still married and living with your wife.

Lieutenant Crimins, who was a witness to our conversation in May regarding Mr. Carter's concerns of being targeted for arrest by you and your squad, testified that when asked you denied having an affair with Ms. Sommerville and that you stated "she [Ms. Sommerville] was an

employee [of Denny's] and a friend. That's it." Lt. Crimins further testified, "He [Sgt. Davis] just knew her from Denny's."

Corporal Elkins testified that when he was first promoted to his present rank and assigned to patrol duties in May of 2012, that one of the first things he heard from members of your squad were rumors regarding your relationship with Ms. Sommerville.

Ms. Sommerville testified that the two of you exchanged phone numbers sometime during the summer of 2012 and that the two of you called and talked with each other "numerous times", both on the days you were working and on your days off. She further testified that her feelings for you changed from that of just being friends to "something more" on her end towards the end of 2012 or the beginning of 2013 and that the two of you had discussed your feelings for each other but did not act on them at that time because of your marital status. She also testified that she had met you at Denny's when she was not working to sit and eat with you. Ms. Sommerville also testified that she would kiss you on the lips every time that she saw you and acknowledged that the kisses she gave you were not the friendly "peck on the cheek" type of kiss that she routinely gave to other customers.

During your sworn interview you testified that Ms. Sommerville had spent at least one night at your mother's residence following an argument you had had earlier that same day with your wife sometime in April of 2013.

Your city cell phone records also substantiate that you made phone calls to Ms. Sommerville utilizing same, both while on duty and while off duty, and that she also made calls to you as early as June of 2012. According to your city cell phone records you called Ms. Sommerville no less than fourteen (14) times and Ms. Sommerville called you no fewer than twelve (12) times, for a total of twenty-six (26) telephone conversations, during the six (6) month period between June, 2012 and December, 2012 while your personal cell phone was out of service.

Your subordinate officers and employees of Denny's also testified that they witnessed numerous acts of inappropriate behavior between you and Ms. Sommerville, to include public displays of affection that involved flirting, hugging and kissing while you were on duty and in uniform, that all took place well before our meeting in May of 2013.

While the evidence/information obtained does not substantiate that you were having an intimate relationship/affair with Ms. Sommerville at any time, specifically while on duty, the information and your actions as described above all clearly show that your relationship with Ms. Sommerville was extremely inappropriate for the workplace, set a poor example for your subordinates, especially due to your rank and position as a first-line supervisor, and was much more than simply a "close" friendship confined to the Denny's restaurant and began/took place months prior our meeting in May of 2013 as you had asserted to me.

Based on the above information you were unquestionably less than forthcoming and untruthful in your comments to me when explaining/describing the extent and nature of your personal relationship with Ms. Sommerville and were untruthful when advising me when your "close" relationship began.

Based on the above I find that you have violated Departmental Standards Directives:

1. **C-2-12 Sec. 3.51 Untruthfulness:** *Members will not knowingly make untrue statements, except as authorized in the performance of duties and as necessary to maintain covert operations during investigation of criminal activities.*
2. **C-2-12 Sec 3.60 Conduct Unbecoming a Member of the Police Department:** *Conduct unbecoming a member of the Police Department is defined as any conduct or act, which has an adverse impact upon the operation of the Department, and destroys public respect and confidence in the Police Department and its employees. Such conduct may include, but is not limited to, participation in any immoral, indecent or disorderly conduct, or conduct that causes substantial doubts concerning a person's honesty, fairness, or respect for the rights of others, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime. Per the labor contract, any charge of "conduct unbecoming an officer" or any other similar shall include specifications supporting the charge. To-wit: engaging in an inappropriate relationship with a person other than your wife that included flirting, hugging, kissing, etc. while on-duty and in the presence of your subordinates, Denny's employees and the general public.*

- **As to recommendation #9:** I concur that there is sufficient evidence to show that you did in fact fail to report your change in home address to the Department when you separated from your wife and moved out of the house that the two of you shared together as required by current policy. You testified that you were aware of the policy requiring you to notify the chief's secretary of your change of address but that you failed to do so because you did not want your wife to know where you were living.

Your home address/place of residency is not a public record and would not have been provided to your estranged wife without your permission (had you notified staff that you had separated and were going through a divorce and did not want her to have this information) or a court order. This allegation is therefore classified as being **SUSTAINED**.

Based on the above I find that you have violated Departmental Standards Directive **C-2-12, Sec. 2.6 Notification of Correct Address and Telephone Number:** *Members will keep the Chief's secretary informed of their current residential address in accordance with established procedures.*

- **As to recommendation #10:** I concur that there is sufficient evidence to prove that you left your assigned work area without having a legitimate, work related purpose for doing so and without informing the communications center as required by policy and as such this allegation is classified as being **SUSTAINED**. The information/evidence obtained during the investigation clearly shows that you left the corporate city limits of Ormond Beach numerous times while you were on duty for no law enforcement or work related purpose.

By your own admission and Automatic Vehicle Location (AVL) records, you left the city limits while you were on duty and parked in an area located within an unincorporated area of Volusia County and the jurisdiction of Volusia County Sheriff's Office. You went to an area that was prominently/conspicuously posted at its entrance by road closed signs and no trespass warning

signs designating the area to be a construction site and that trespassing upon same constituted a felony offense. It is also noted that there are two (2) conspicuously posted "No Trespassing" signs at the intersection of Broadway Ave and Indiana Ave. where you frequently parked.

In your sworn interview you stated that you went there generally to smoke outside the view of the general public and that you would also at times review reports and/or work on other administrative assignments while you were there. According to available AVL data you would drive to the intersection of Broadway Ave and Indiana Ave. where you remained stationary for periods of time ranging from eighteen (18) minutes to fifty-four (54) minutes in duration. Between May and September of 2012 you spent a total of four (4) hours and forty-eight (48) minutes at this location/in this area. Information obtained from Computer Aided Dispatch (CAD) data, and by your own admission, indicates that you never called out at this location or otherwise advised the communications center that you were leaving the city limits at any time or for any reason as required by policy.

There are innumerable locations within the city limits that you could have parked to smoke outside of the view of the general public, to include areas near/adjacent to the area located within the county you instead chose to frequent. There was no justifiable law enforcement or work related purpose associated with your leaving the city limits and entering onto a posted construction site in order to review reports/complete paperwork or to take a smoke break.

The area you chose to park was clearly posted as a construction site per Florida Statute 810.09 and anyone entering onto same without being authorized, licensed or invited to do so and willfully remains on the property commits the act of trespassing which, because of the size of the property/construction site in this situation (greater than one acre) commits a third degree felony. A person does not have to be on the property with the intent to commit any other crime for the offense of trespassing to occur. Your position as a law enforcement officer does not give you the authority or any special privilege while on duty to disregard any law or ordinance that would subject members of the general public to arrest.

It is noteworthy to point out that Deputy Schindelheim testified that the Sheriff's Office has a standing trespass order/agreement for this construction site and commented, "I always just patrol it to make sure no one's back there where they shouldn't be..." during his interview.

While I recognize and readily acknowledge that you did not enter onto this property with any unlawful intentions, as a supervisor you should have been aware that doing so showed extremely poor judgment on your part and could give the impression to anyone that may have observed you taking your smoke break that law enforcement officers are not subject to the same laws and standards that govern the general public's conduct. At no time, whether on duty or off, is it permissible for a law enforcement officer to conduct themselves in a manner that would constitute a criminal act, regardless of the circumstances, the officer's intent or severity of the offense. Any citizen found at the exact same location you frequented by a deputy sheriff, for the same purpose you were there (taking a smoke break) would be subject to arrest for felony trespassing on a posted construction site.

Based on the above information I find that in addition to exercising extremely poor judgment you have violated the following Departmental Standards Directives:

1. **C-2-11 Sec. 2.17 Leaving Assigned Work Area:** *Members will remain at or within their assigned work areas during working hours unless the Communication Center is notified, or when authorized by a supervisor.*
2. **C-2-11 Sec. 2.26 Willful Disregard of Duties:** *Members will be attentive to job duties and will avoid any appearance of loafing, loitering, or otherwise neglecting work.*

- **As to recommendation #11:** I concur that there is sufficient evidence/information to show that you were untruthful during your sworn interview pursuant to this investigation and that this allegation is classified as being **SUSTAINED**.

During your interview when questioned about the incident involving Ms. Sommerville and Volusia County deputies on the morning of September 19, 2012 you testified that you were at the Race Trac (a convenience store/gas station located on US-1 on the northeast corner of the intersection of US-1 and Broadway Ave.) when you observed Deputy Schindelheim turn onto Broadway Ave. and decided to follow him. You did not articulate a legitimate law enforcement reason or purpose for doing so, instead you simply testified that you wondered what he was doing/where he was going and decided to follow him.

Deputy Schindelheim testified that he turned off of US-1 and noticed another vehicle turn onto Broadway Ave. close behind him, prior to his calling out with Ms. Sommerville's vehicle and, initially unaware that it was a law enforcement officer, instructed his trainee/partner to keep an eye on the vehicle. You again left the city limits without notifying the communications center nor did you advise them that you were going to go out with Deputy Schindelheim as you pulled up on the scene of his stop with Ms. Sommerville. Not only was this a policy violation but presented a brief officer safety issue for Deputy Schindelheim and his partner until they were able to identify you as being a law enforcement officer.

It is noted that immediately preceding this encounter with Ms. Sommerville by you and the two sheriff's deputies you had been at the Ormond Beach police station. According to AVL and phone records, you left the police station at 4:32 AM, got into your patrol vehicle and utilized your city issued cell phone to call Ms. Sommerville at 4:33 AM. Following a brief phone conversation with her you then traveled north on US-1, heading in the direction of Broadway Ave. Approximately nine (9) minutes after you left the police station, or approximately 4:42 AM, Deputy Schindelheim called out with Ms. Sommerville's vehicle at Broadway Ave. and Indiana Ave. and you pulled up behind him.

It is also noteworthy to point out that Ms. Sommerville was parked at the exact location, the intersection of Broadway Ave. and Indiana Ave., within the county area that you testified and AVL data records show as the location you frequented to take smoke breaks and/or complete administrative paperwork. You were also scheduled to get off duty that morning at 5:30 AM and would have been around the general time that Ms. Sommerville claimed to frequent that area

(after getting off work and before going home) to relax, read, write in her journal, star gaze, etc. AVL data also shows that you drove directly from the police station, north on US-1 and then turned directly onto Broadway Ave. without stopping at or having been to the Race Trac as you testified you were located when you first observed Deputy Schindelheim.

When asked if you were aware that Ms. Sommerville was at that location (Broadway Ave. and Indiana Ave.) that morning, you testified...."I was really furious that she'd come up there and...and..pull a st..uh...uh...an incident like that. You know...she knew I smoked somewhere up there...I guess she probably figured out that it was right down there ...and I...she just parked her...happy self down there and ...got caught." You further testified, "I saw the van [Ms. Sommerville's vehicle]...I'm like...what the...the heck is this. What is wrong with her? And then...I'm telling you...the next day I woke up in the morning and just...I tore her up. I was absolutely unhappy about that.

Your testimony in this regard clearly implies that you claim to have been unaware of Ms. Sommerville being at this location that morning or that she frequented that area at any other time. During your interview you simply acknowledged that Ms. Sommerville was aware that you went "somewhere up there" to smoke.

Conversely, Ms. Sommerville testified that she frequented this area after getting off of work to simply relax, write in her journal, read, star gaze, etc. and, "I had asked Jim [Sergeant Davis] at some point because it was like a closed road...dead end...whatever and said...you know...am I going to get any shit for being back there? And he was like no...I mean...it's not really the safest places for you to be. And I was like....my doors are locked. My windows are up....there's nothing ever back there. It's just a quiet off the beaten path place to sit. And he was...you know...well just be careful. You know there's vagrants...there's you know....turn your headlights on every once in a while, look around you get your bearings.....make sure nobody is sneaking upon you."

Ms. Sommerville's testimony in this regard directly conflicts with your testimony and clearly shows that she had discussed frequenting this area with you prior to this incident and that you were fully aware of same and had failed to discourage her from doing so.

The evidence/facts as noted above clearly shows that both you and Ms. Sommerville frequented this area, at the exact same location (the intersection of Broadway Ave. and Indiana Ave.) and at the same unusual time of day (between 4:00 AM and 5:30 AM) following the initiation of your "close" relationship and that each of you were aware that you were both doing so. During this particular incident you left the police station and headed north on US-1 in the direction of this area, exchanged a brief cell phone conversation utilizing your city cell phone with Ms. Sommerville, and immediately following this phone conversation drove directly to her location without stopping at the Race Trac (according to AVL data), arriving at the same time as Deputy Schindelheim. The area/intersection as described is off of any main roadway, is not visible to the general public and is restricted from public access.

It is incomprehensible, based on the above information, that you and Ms. Sommerville frequented the exact location within this large expanse of area and never met or crossed paths,

either intentionally or unintentionally, at any time after the two of you initiated your relationship. It is also incomprehensible that you would imply otherwise or expect anyone reading this report to believe that this particular incident was an unplanned or happenstance encounter and that you and Ms. Sommerville had not planned to meet at this location the morning of this incident. The available evidence tends to show that the only anomaly that occurred the morning of this incident was the appearance of sheriff's deputies turning onto Broadway Ave. and discovering Ms. Sommerville at the same time that you were arriving to meet her.

It is also noted that had you acknowledged that you had planned to meet Ms. Sommerville at this location on this particular date or had met her at this location at any other time during your sworn interview it would have directly conflicted with your statements made to me during our meeting in May of 2013 that you and Ms. Sommerville never met, at any time or for any reason, outside of the Denny's restaurant prior to our conversation. The preponderance of the evidence available to me unquestionably shows that you were untruthful during your sworn interview when describing the facts and details of this incident.

Based on the above I find that you have violated the following Departmental Directives Standards:

1. **C-2-12 Sec. 3.52 Untruthfulness in An Official Inquiry:** *Members will not knowingly make false statements to a supervisor, a professional standards investigator, or to any official of a government agency during an official or administrative inquiry.*
2. **P-4-12 Sec, 1.11 Officers performing patrol duties are required to contact the Communications Center via radio transmission or by accessing the MDC system in the following circumstances:**
 - *When making an investigative or traffic stop.*
 - *When making an investigative stop involving a suspicious person(s), officers will inform the dispatcher of the stop, the location, and a brief description of the subject(s) and/or vehicle being stopped.*

The investigative report findings also indicate that you have violated the following Departmental Directives Standards and Human Resources Policy:

1. **C-2-12 Code of Conduct Section 2.20 Failure to Follow General Orders, Directives:** *Members will adhere to general orders, policies, and directives, and will faithfully execute all duties and responsibilities of their assigned position.*
2. **Human Resources Policy 14.02 - Examples of Employee Misconduct Which May Lead To Disciplinary Action, Up to and Including Termination of Employment:**
 - a. *Leaving assigned work area without permission.*
 - k. *Neglecting job duties.*
 - o. *Engaging in any type of criminal offense, whether on-duty or off-duty.*

Your conduct as detailed throughout this investigative report and findings are unquestionably not in keeping with the ethical and professional standards required not only of a member of this Department but the law enforcement profession. The evidence available to me clearly shows that you have committed several misdemeanor acts of domestic violence battery against your wife spanning over the past few years, that you engaged in an inappropriate relationship with a person not your wife while you were on duty and in uniform in the presence of your subordinates and the general public, set a poor, unprofessional example for your subordinates to emulate, exercised extremely poor judgment throughout these incidents, were untruthful to me during our meeting in May of 2013 and were untruthful during your sworn interview conducted pursuant to this investigation regarding facts and details pertaining to both your on-duty and off-duty conduct and your relationship with Ms. Sommerville.

These sustained violations of misconduct are all egregious breaches of the code of conduct required of all employees of this agency and are notably objectionable due to your tenure and position as a first-line supervisor/sergeant. The incidents of domestic violence, each one a misdemeanor violation of Florida Statute, that you have admitted to and evidence supports; your inappropriate conduct while on duty in front of your subordinates, Denny's employee's and the general public as it relates to your interactions with Ms. Sommerville; your untruthfulness to me during our meeting in May of 2013 regarding the nature and length of your relationship with Ms. Sommerville; and your untruthfulness during your sworn interview conducted pursuant to this investigation, independently, would be sufficient grounds for the termination of your employment. Collectively, and when coupled with the other sustained Departmental Standards and Directive violations, are insurmountable.

Based on the totality of the information as documented in the investigative report findings, you have compromised your personal and professional integrity as well as your oath of office to well and faithfully perform the duties of the office of Police Officer for the City of Ormond Beach, have brought discredit upon yourself and committed a disservice to all other members of the Department and to our community. Command staff no longer has faith or confidence in your ability to carry out the assigned duties and responsibilities required of your current rank and position and as such **your employment with the City of Ormond Beach and the Ormond Beach Police Department is being terminated effective 5:00 PM on Monday, January 13, 2014.**

You have the right to grieve my decision for discipline pursuant to Article 17 of the City of Ormond Beach Police Officers' Bargaining Agreement and/or Section 13.0 of the City of Ormond Beach Human Resources Policy.