

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS)
AND TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 06-2091PL
)
SHAWN C. JONES,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Notice was provided and on August 17, 2006, at 1:00 p.m., a formal hearing was held in this case.^{1/} The hearing location was the Volusia County Courthouse, 101 North Alabama Avenue, Deland, Florida. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2006). The hearing was conducted by Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Linton B. Eason, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Should the Criminal Justice Standards and Training Commission (the Commission) impose discipline on Respondent in association with his law enforcement certificate?

PRELIMINARY STATEMENT

By an Administrative Complaint in Case No 22871, signed on March 14, 2006, the Commission accused Respondent of the following:

(a) On or about June 7, 2005, the Respondent, Shawn C. Jones, did unlawfully commit a battery upon Christine Dobmeier, by actually touching or striking her intentionally causing bodily harm to Christine Dobmeier against her will.

(b) On or between July 2004 and June 2005, the Respondent Shawn C. Jones, did unlawfully and willfully, maliciously harass another person, to wit: Christine Dobmeier and Tamra Marris, by continuously exposing his genitals to them, which caused substantial emotional distress in said person [sic] and served no legitimate purpose.

(c) On or between July 2004 and June 2005, the Respondent, Shawn C. Jones, did unlawfully expose or exhibit his sexual organs in a public place or in the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose his person in such place or go to be naked in such place.

By this conduct Respondent has been accused of violating Sections 784.03, 784.048, and 800.03, Florida Statutes, and any lesser-included offenses, and Section 943.1395(6) and (7), Florida Statutes, and Florida Administrative Code Rule 11B-27.0011(4)(b), by failing to maintain qualifications established in Section 943.13(7), Florida Statutes, related to the necessity for a law enforcement officer in Florida to have good moral character.

The Commission provided Respondent a written opportunity to elect his rights in addressing the Administrative Complaint through a form it provided to him. Respondent chose the option to dispute the allegations of fact contained in the Administrative Complaint and that by executing the form his request be considered a petition for a formal hearing in accordance with Section 120.57(1), Florida Statutes, to be held before an Administrative Law Judge appointed by the Division of Administrative Hearings (DOAH).

On June 14, 2006, DOAH received Petitioner's request for assignment of an administrative law judge to conduct the hearing. A case file was opened and the case was assigned as DOAH Case No. 06-2091PL to be heard by the undersigned. A Notice of Hearing was provided to the parties using the addresses provided by Petitioner's counsel and Respondent respectively. The address provided by the Respondent was as

reflected in his election of rights form and the certified mail dispatch postal service form bearing his signature. The hearing notice sent to Respondent was not returned as undelivered. Although Respondent did not attend the hearing, he did provide a written statement to the effect that he would not be attending. That statement was filed with DOAH on August 16, 2006, at 11:10 a.m. Upon the return from the hearing, the undersigned was made aware of the contents of the written statement by Respondent. It was addressed in a Notice of Ex-Parte Communication as an attachment, in accordance with Section 120.66(1)(b), Florida Statutes (2006). Under the circumstances, as reflected in the order pertaining to the Notice of Ex-Parte Communication, the contents within the correspondence received from the Respondent have not been considered in preparing this Recommended Order. To the extent that the correspondence attempts to explain Respondent's position in this case concerning disputes of material fact, it does not comport with the process identified in Section 120.57(1)(a) and (b), Florida Statutes (2006), concerning the hearing itself and Respondent's opportunity to participate. It is acknowledged that through the correspondence Respondent indicated that " . . . I would like to keep my certification . . .," taken to refer to his law enforcement certification. That being so, the evidence that was presented by Petitioner at the formal hearing addresses the continuing

opposition by the Respondent to discipline and the value of proceeding with the case in his absence.

At hearing Petitioner presented Captain Tamra Marris and Christine Dobmeier as its witnesses. Petitioner's Exhibits numbered one through three were admitted.

On September 11, 2006, a hearing Transcript was filed. On September 20, 2006, Petitioner's Proposed Recommended Order was filed. The Proposed Recommended Order has been considered in preparing the Recommended Order.

FINDINGS OF FACT

1. The Commission has the power to certify and revoke the certification of law enforcement officers. § 943.12(3), Fla. Stat. (2006).

2. Respondent is a certified law enforcement officer. At times relevant to the inquiry he served in that capacity in New Smyrna Beach, Florida. Based upon the record, it is inferred that his employment was in association with what has been identified as the Volusia County Beach Patrol (Beach Patrol). That organization was constituted of law enforcement officers and other employees, to include an ocean rescue life guard and EMT. The latter employment position was referred to in the organization as a Beach Safety Specialist.

3. The accusations against Respondent in this case involve conduct seen by and directed to two females, Captain Tamara Marris, a law enforcement officer and Beach Patrol Specialist Christine Dobmeier. Both worked for the Beach Patrol at times relevant to the inquiry.

4. The incidents that form the basis for this complaint took place in a building (the station) utilized by the Beach Patrol.

5. The basic design of the building is set out in Petitioner's Exhibit numbered one, admitted. The drawing or diagram is not to scale. It does reflect the location of a locker room, the door to that locker room, a bathroom and an office in the building. It also shows the location of Respondent's locker within the locker room. The door into the locker room is kept shut. It has a combination lock on it that must be unlocked to gain access to the locker room.

6. In the summer 2004, Respondent and Captain Marris finished their duty shift at the beach and returned to the station. They were the only employees in the station at the time. Respondent was in the locker room, which was not intended to be a dressing room. The bathroom is the place where people change their clothes from the duty clothing into other attire. Respondent was facing his locker wearing only a towel when

Captain Marris entered the locker room. While in the locker room Respondent's genitals were exposed to her view.

7. On this first occasion Captain Marris thought that the exposure was just an accident.

8. On a second occasion when the two officers, Captain Marris and Respondent were closing the shift, Captain Marris walked into the locker room and Respondent dropped the towel he was wearing exposing himself, that is exposing his genitals. The second incident took place in approximately August 2004.

9. There was a third incident at the station between Respondent and Captain Marris. This time before Captain Marris entered the locker room, she said some words to the effect, "Hey, are you decent," to which Respondent replied, "Yeah, come on in." When she entered the room, Respondent dropped his towel to pull up his shorts and she saw his genitals again. In her mind, with the third incident having transpired, she concluded that Respondent's actions were deliberate. As a consequence beyond that point, when Captain Marris needed to put her work gear away in the locker room, she would wait until Respondent left the station.

10. On the third occasion which occurred sometime around September 2004, Respondent and Captain Marris were alone as they had been on the prior two occasions.

11. When Captain Marris determined in her mind that the Respondent was acting intentionally in exposing his genitals, she considered this to be vulgar or indecent. She did not believe that anything in the conduct was legitimate. Certainly by the third occasion, if not before, Respondent's conduct could be seen as intentional and without legitimate purpose.

12. Christine Dobmeier was subject to Respondent's inappropriate conduct. She was a full-time ocean life guard and EMT in the position Beach Safety Specialist. She had similar experiences with Respondent to those between Respondent and Captain Marris. As Ms. Dobmeier recalls, ordinarily the male personnel would wear "life guard baggies" at work. At times the male employees would wrap a towel around the life guard baggies. This reference is understood to mean some form of pants or shorts worn by the male personnel which they would cover with a towel. In July or August 2004 around closing time, Ms. Dobmeier entered the locker room where Respondent was located. He was wearing a towel when she entered the room. At that moment his towel fell exposing his genitals. She stated, "I am so sorry" and walked out. On that occasion the door to the locker room had been open when she entered.

13. A couple of weeks later Ms. Dobmeier entered the locker room. This time the locker room door had been closed. She did not bother to knock because most people in her

experience would change their clothes in the bathroom. She pushed the lock mechanism which made a loud noise. She entered the room and saw Respondent, who was wearing only a T-shirt. Respondent was facing his locker. When Ms. Dobmeier entered the room he turned toward her, exposing his genitals. Ms. Dobmeier apologized for seeing Respondent in his undressed state and immediately left the room.

14. There was a third incident involving Respondent and Ms. Dobmeier, a few weeks after the second incident. This time Ms. Dobmeier knocked on the locker room door and Respondent told her to enter the room. When she did he was standing naked and she walked right back out. Later, Ms. Dobmeier asked Respondent about the third incident and said, "Why did you tell me to come in," and Respondent in reply, as Ms. Dobmeier explains, "Just kind of laughed." After the third incident Ms. Dobmeier felt that the Respondent intended the conduct in exposing himself.

15. There was a fourth incident in the locker room. This time Ms. Dobmeier knocked on the locker room door and did not hear anything in response. She activated the locking mechanism and Respondent was found in the room with his penis erect facing her. He asked Ms. Dobmeier whether he, as Ms. Dobmeier states, indicating Respondent, "Was as large as my boyfriend." This is understood to mean a comparison between Respondent and Ms. Dobmeier's boyfriend as to their genitals. No other persons

were in the station when this encounter took place.

Ms. Dobmeier considered the Respondent's exposure of his genitals as vulgar.

16. As a result of the last encounter Ms. Dobmeier decided not to enter the locker room while Respondent was at the station.

17. At the beginning of 2005 there was another incident. This time Respondent grabbed Ms. Dobmeier's breast after a swim drill. The incident took place in the locker room with the door open and 10 to 12 lifeguards in the main area outside of the room. Only Respondent and Ms. Dobmeier were in the locker room when he performed this act. His action was not invited or acquiesced to. Ms. Dobmeier responded by telling Respondent, "Don't ever touch me again" and walked away.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2006).

19. By this action, the Commission seeks to discipline Respondent concerning his law enforcement certificate. Petitioner bears the burden of proving the allegations in the Administrative Complaint before discipline can be imposed against Respondent's certificate. The nature of that proof must

be by clear and convincing evidence. Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

20. The meaning of clear and convincing evidence is explained in the case In Re: Davey 645 So. 2d 398 (Fla. 1994), quoting with approval from Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

21. Again, the factual allegations in the case state the following:

(a) On or about June 7, 2005, the Respondent, Shawn C. Jones, did unlawfully commit a battery upon Christine Dobmeier, by actually touching or striking her intentionally causing bodily harm to Christine Dobmeier against her will.

(b) On or between July 2004 and June 2005, the Respondent Shawn C. Jones, did unlawfully and willfully, maliciously harass another person, to wit: Christine Dobmeier and Tamra Marris, by continuously exposing his genitals to them, which caused substantial emotional distress in said person and served no legitimate purpose.

(c) On or between July 2004 and June 2005, the Respondent, Shawn C. Jones, did unlawfully expose or exhibit his sexual organs in a public place or in the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or so to expose his person in such place or go to be naked in such place.

22. Among the grounds for discipline referred to in the Administrative Complaint is a reference to Section 943.1395(6), Florida Statutes (2004), which states in pertinent part:

(6) The commission shall revoke the certification of any officer who is not in compliance with the provisions of s. 943.13(4) or who intentionally executes a false affidavit established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).

23. Section 943.13(4), Florida Statutes (2004), addresses a certificate holder who has been convicted of a felony or misdemeanor involving perjury or false statement or who has received a dishonorable discharge from one of the armed forces of the United States, as well as the intentional execution of false affidavits described at Section 943.13(5) and (6), Florida Statutes (2004). The facts in this case do not concern themselves with perjury or providing a false oath or statement. Therefore Respondent did not violate Section 943.1395(6), Florida Statutes (2004).

24. In the alternative, Respondent is being prosecuted pursuant to Section 943.1395(7), Florida Statutes (2004), which states:

(7) Upon a finding by the commission that a certified officer has not maintained good moral character, the definition of which has been adopted by rule and is established as a statewide standard, as required by s. 943.13(7), the commission may enter an order imposing one or more of the following penalties:

- (a) Revocation of certification.
- (b) Suspension of certification for a period not to exceed 2 years.
- (c) Placement on a probationary status for a period not to exceed 2 years, subject to terms and conditions imposed by the commission. Upon the violation of such terms and conditions, the commission may revoke certification or impose additional penalties as enumerated in this subsection.
- (d) Successful completion by the officer of any basic recruit, advanced, or career development training or such retraining deemed appropriate by the commission.
- (e) Issuance of a reprimand.

25. Section 943.13(7), Florida Statutes (2004), which forms the basis for establishing a statewide standard by rule adoption for the maintenance of good moral character, states in referring to the Respondent's obligation as a certificate holder that he should "have a good moral character as determined by a background investigation under procedures established by the Commission."

26. The rule to implement the basis for discipline for a certified officer, such as Respondent, who has not maintained good moral character is found at Florida Administrative Code Rule 11B-27.0011(4)(b), which states:

For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties

specified in Section 943.1395(6) or (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as . . .

(b) The perpetration by an officer of an act that would constitute any of the following misdemeanor or criminal offenses whether criminally prosecuted or not:

1. Sections . . . 784.03, . . . 784.048 . . . and 800.03 . . .

The statutes incorporated in the rule that have been referenced are those found in the legal allegations set forth in the Administrative Complaint.

27. Section 784.03, Florida Statutes (2004), states in pertinent part:

784.03: Battery . . .

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches . . . another person against the will of the other;

* * *

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

28. Section 784.048, Florida Statutes (2004), in pertinent part states:

784.048: Stalking; definitions; penalties.

(1) As used in this section, the term:

(a) "Harass" means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose.

(b) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of "course of conduct." Such constitutionally protected activity includes picketing or other organized protests.

* * *

(2) Any person who willfully, maliciously, and repeatedly . . . harasses . . . another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

* * *

29. Section 800.03, Florida Statutes (2004), states:

Exposure of sexual organs. - It is unlawful to expose or exhibit one's sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose. Violation of this section is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. . . .

30. The Administrative Complaint did not allege and no proof was offered to show that Respondent had been criminally prosecuted for the misdemeanors set out in this discussion. Clear and convincing evidence was presented to show that

Respondent violated those provisions as to elements of proof related to the statutory language. Respondent committed battery against Ms. Dobmeier when he grabbed her breast as defined in Section 784.03, Florida Statutes (2004). Respondent exposed his genitals to Captain Marris and Ms. Dobmeier; he was naked in their presence, and he acted in a vulgar and indecent manner in their presence when exposing himself. All these acts were done in public in a setting that was not designed or set apart for the purpose of being naked. The exposure of his sexual organs met the definition found within 800.03, Florida Statutes (2004). The continuing confrontation by Respondent in exposing his sexual organs to Captain Marris and Ms. Dobmeier meets the definition of stalking set out in Section 784.048, Florida Statutes (2004), when describing a misdemeanor, as opposed to a felony. Consistent with Florida Administrative Code Rule 11B-270011(4)(b), clear and convincing evidence has been shown that Respondent perpetrated acts that would constitute misdemeanors in relation to Sections 784.03, 784.048, and 800.03, Florida Statutes (2004), thereby failing to maintain good moral character.

31. Florida Administrative Code Rule 11B-27.005(5)(b), when equating conduct which would constitute a misdemeanor offense pertaining to Section 784.03, Florida Statutes (2004), establishes the recommended penalty range as suspension.

When considering Section 800.03, Florida Statutes (2004), the penalty range is suspension, and probation with counseling, to revocation. The rule makes no mention of Section 784.048, Florida Statutes (2004). Under Florida Administrative Code Rule 11B-27.005(6), additional criteria address aggravating circumstances and mitigating circumstances in imposing punishment. The aggravating circumstances are that there were numerous violations, the exposure of genitals by the repetitious nature of the conduct made it severe, and the battery on another person was a severe act. None of the mitigating circumstances addressed in the rule were presented.

RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a final order be entered finding violations of the statutes and rule referred to and revoking Respondent's law enforcement certificate.

DONE AND ENTERED this 17th day of October, 2006, in
Tallahassee, Leon County, Florida.



CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of October, 2006.

ENDNOTE

^{1/} Originally the case was scheduled to be heard at 10:00 a.m.
on August 17, 2006. The hearing commenced at a later time for
reasons explained in the hearing transcript.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.