

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SHERIFF'S)
OFFICE,)
)
Petitioner,)
)
vs.) Case No. 07-3719
)
JOHN BRADSHAW,)
)
Respondent.)
_____)

RECOMMENDED ORDER

The final hearing in this case was held on January 31, 2008, in Largo, Florida, before Administrative Law Judge Bram D. E. Canter of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Benjamin R. Welling, Esquire
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For Respondent: Kenneth J. Afienko, Esquire
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STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondent, Deputy John Bradshaw, engaged in conduct prohibited by the rules promulgated by Petitioner, Pinellas County Sheriff's Office, and, if so, whether the disciplinary action

taken against Deputy Bradshaw was consistent with action taken against other members of the Sheriff's Office.

PRELIMINARY STATEMENT

On August 10, 2007, Deputy Bradshaw was charged with violating two regulations applicable to members of the Sheriff's Office when he was involved in a crash that occurred on September 22, 2006, involving his Sheriff's Officer cruiser and a "civilian" vehicle during the pursuit of a fleeing suspect. On the same date, the Sheriff's Office imposed disciplinary action against Deputy Bradshaw of four days suspension without pay, and informed him of his right to request an appeal to the Civil Service Board. Deputy Bradshaw timely requested an appeal, and the matter was referred to DOAH on August 17, 2007, to assign an Administrative Law Judge, conduct an evidentiary hearing, and make a recommendation to the Civil Service Board.

At the final hearing, the Sheriff's Office presented the testimony of Lt. Timothy Pelella, Sgt. Glen Luben, and Cpt. Wayne Morris. Petitioner's Exhibits 1 through 5 were admitted into evidence. Deputy Bradshaw testified on his own behalf and also presented the testimony of Sheriff James Coats, Cpt. Teresa Dioquino, Lt. John Tillia, Cpt. Dean Lachance, Deputy Linda Willett, Cpt. Nicholas Lazaris, Deputy Traci Longano, Sgt. Robert D'Andrea, Jr., Deputy Roscoe Dobson, Deputy Jeff Martin, and Sgt. Lawrence Palombo. Respondent's Exhibits 1 through 10

were admitted into evidence. Official recognition was taken of Chapters 89-404 and 90-395, Laws of Florida; and the Order Granting Respondent's Motion to Dismiss with Prejudice and transcript of the motion hearing in Pinellas Lodge No. 43, Fraternal Order of Police and John Bradshaw v. Pinellas County Sheriff's Office, Case No. 07-010513 CI-13, Sixth Jud. Cir. Ct. (January 16, 2008).

The one-volume Transcript of the final hearing was filed with DOAH. The parties filed proposed recommended orders that were carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times relevant to this case, John Bradshaw was a deputy employed by the Pinellas County Sheriff's Office.

The Pursuit

2. On September 22, 2006, one or more deputies were "staking out" an area along Ulmerton Road in Largo where burglaries of vehicles had been reported. At about 1:30 a.m., a suspicious vehicle was observed in the area by Sgt. Lawrence Palombo. When the driver of the vehicle began to drive recklessly (traveling southbound in a northbound lane), Sgt. Palombo decided to make a traffic stop of the vehicle. He called other deputies for assistance before doing so. When Sgt. Palombo turned on his flashing lights to make the traffic stop,

the suspicious vehicle slowed, pulled to the right as if to stop, but then sped away. A pursuit of the vehicle was immediately initiated.

3. The testimony of the deputies involved in the pursuit differed as to where the pursuit began, but the exact location is not material in this case. The pursuit started on 49th Street somewhere between 110th Avenue and 126th Avenue and traveled south on 49th Street.

4. Sheriff's Office regulations limit the number of Sheriff's Office cruisers that may participate in a pursuit to three. The three cruisers involved in this pursuit were driven by Sgt. Palombo, Deputy Bradshaw and Deputy Jeff Martin.

5. The pursuit reached speeds of 85 or 90 mph. It passed through a number of intersections along 49th Street that had traffic lights. At some of these intersections, the traffic light was red for southbound traffic, but the deputies proceeded through the intersections on the red lights.

6. As the pursuit approached the intersection of 49th Street and 38th Avenue, the order in which the pursuing deputies were aligned behind the suspect vehicle was Sgt. Palombo in the lead, then Deputy Bradshaw, and Deputy Martin last. Deputy Bradshaw's cruiser was a 2005 Crown Victoria 4-door sedan.

7. All the cruisers had their lights flashing. The record shows that Sgt. Palombo had his siren on. The record does not

show whether the other two deputies in the pursuit were using their sirens, but it was not a disputed factual issue and it would be reasonable to infer that all three deputies were using their sirens.

8. The intersection at 38th Avenue has four southbound lanes, including a left turn only lane, two through only lanes, and a far right lane which can be used for through traffic or to turn right. Sgt. Palombo testified that, as the pursuit neared the intersection, he saw "vehicles . . . stopped at the intersection," and "we came up on cars that were at that intersection going in the same direction." These "civilian" vehicles must have been stopped in the two right lanes because it was undisputed that Sgt. Palombo was in the left turn lane and Deputy Bradshaw was in the lane next to Sgt. Palombo, the leftmost through lane.

9. The suspect vehicle proceeded through the intersection at 38th Avenue. Sgt. Palombo slowed to a stop in the left turn lane. He thinks he stopped his cruiser at the "stop bar" or "maybe in the crosswalk."

The Crash

10. Grace Umali, driving a 2002 Toyota 4-Runner was traveling westbound (coming from the deputies' left) through the intersection on a green light. Her three-year-old son was also in the vehicle.

11. Sgt. Palombo, stopped in the left turn lane, saw the Umali vehicle come from his left, pass in front of him and then collide with Deputy Bradshaw's cruiser. A subsequent crash scene investigation found no pre-crash skid marks, which indicates that neither driver braked hard before impact.

12. There was no dispute that the collision occurred in the leftmost, southbound through lane, only about one car length beyond the "stop bar" where vehicles must stop for a red light.

13. Following the initial impact, Deputy Bradshaw's vehicle continued south across the intersection and hit a traffic light pole at the southwest corner of the intersection. The cruiser caught fire as a result of the crash. The Umali vehicle also traveled south across the intersection after impact, rolled over, and came to rest upside down along the western curb of 49th Street, beyond Deputy Bradshaw's cruiser. Both vehicles were "totaled."

14. The crash resulted in Deputy Bradshaw suffering a broken leg and minor cuts and bruises. Ms. Umali and her son also suffered injuries, but the record does not identify their injuries.

15. Evidence was presented on the disputed factual issue of which vehicle struck the other. Deputy Bradshaw contends that the Umali vehicle struck him, somewhere near his left front wheel. Deputy Martin, who was 50 to 70 yards behind Deputy

Bradshaw when the crash occurred, said it appeared to him that the Umali vehicle struck Deputy Bradshaw. However, Deputy Linda Willett, who was a member of the Major Accident Investigation Team (MAIT) that responded to the Bradshaw crash, said the crash scene investigation, primarily the physical evidence of damage on each vehicle, made her conclude that Deputy Bradshaw struck the Umali vehicle. She could not recall seeing any damage to the front of the Umali vehicle. Captain Nicholas Lazaris, the leader of the MAIT Team, and Lt. Timothy Pellela, another MAIT Team member, also concluded that Deputy Bradshaw had struck the Umali vehicle.

16. The parties placed more importance on this factual dispute than it warranted because the difference between the two scenarios is a fraction of a second.¹ However, the more persuasive evidence is from the crash scene investigation -- indicating that Deputy Bradshaw struck the Umali vehicle -- because the vehicle damage evidence is more objective and reliable than human memory of split-second events during stressful circumstances.

The Speed of the Vehicles

17. The most important factual dispute in this case was how fast Deputy Bradshaw was going when the crash occurred. Deputy Bradshaw claims he slowed to about 35 mph. Sgt. Palombo estimated Deputy Bradshaw's speed was 40 mph. However, at the

hearing, Sgt. Palombo stated in response to a question about how far Deputy Bradshaw was behind him, "To be honest with you, you really don't want me to know the answer to that question." His clear meaning was that his attention needed to be elsewhere. This and other testimony by Sgt. Palombo shows his attention was directed forward, as would be expected. Therefore, Sgt. Palombo's estimate of Deputy Bradshaw's speed at the moment of the crash is not reliable.

18. Lt. Pelella was an alternate on the MAIT Team that was called to respond to the crash. Lt. Pelella was assigned both on-scene investigation and crash reconstruction duties. In crash reconstruction, a conservation of linear momentum formula is used, which takes into account factors such as the point of impact, the distance the vehicles traveled after impact, their weight, and drag, to arrive at an estimate of the speed of the vehicles at the moment of impact. Applying this methodology, Lt. Pelella estimated that Deputy Bradshaw was traveling at about 57 mph and Ms. Umali was traveling at about 42 mph when the collision occurred.

19. Deputy Bradshaw attempted to cast doubt on the credibility of Lt. Pelella's estimate of vehicle speeds by showing that the traffic crash report prepared by Deputy Willett the day after the crash included the same speeds for the vehicles, 57 mph and 42 mph, that Lt. Pelella came up with two

months later using the conservation of linear momentum formula. Deputy Willett testified that she did not come up with the vehicle speed information for her report; that it had to have been provided by another member of the MAIT Team. In response to a leading question from Petitioner's counsel, the MAIT team leader, Captain Nicholas Lazaris, agreed that the speeds indicated in Deputy Willet's report "were filled in to comport with Lieutenant Pelella's accident reconstruction." The implication is that Deputy Willett's report did not include the vehicle speeds when it was prepared and signed by her, but the vehicle speeds were put into the report later without changing the date of the report.

20. The record is left unclear about how the vehicle speeds came to be in Deputy Willett's report, but this curious situation did not rise to the level of proof of some conspiracy to falsify the report. It also did not cause Lt. Pelella's conclusions about the vehicles speeds to be unreliable.

21. Sgt. Glen Luben was another member of the MAIT Team that responded to the Bradshaw crash. He obtained the Power Train Control Module from Deputy Bradshaw's vehicle to extract some of the data that is automatically recorded when there is a loss of power. Sgt. Luben testified that the recorded information indicated that Deputy Bradshaw's vehicle was going 70.13 mph when his cruiser's engine stopped. He said this

figure was consistent with the crash reconstruction done by Lt. Pelella which estimated Deputy Bradshaw's speed to be 57 mph, because the conservation of linear momentum formula produces a "minimum speed." Sgt. Luben believes 70.13 mph to be the more likely actual speed that Deputy Bradshaw was traveling at the moment of impact.

22. Sgt. Palombo thought Ms. Umali was exceeding the speed limit, which is 35 mph. Lt. Pelella's estimate that Ms. Umali was going 42 mph is consistent with Sgt. Palombo's testimony. Deputy Martin testified that Ms. Umali was going "[p]robably 55 or 60, just from what little I saw of it." This testimony by Deputy Martin, as well as his testimony that the Umali vehicle struck the cruiser and that Deputy Bradshaw used due care, was not persuasive. It appeared to be based on Deputy Martin's desire to support Deputy Bradshaw rather than an impartial account of his actual observations.

23. The crash scene photos and other data do not support Deputy Bradshaw's claim that he was going only 35 mph at the time of the crash. The more persuasive evidence puts his speed in the range established by Lt. Pelella's crash reconstruction and Sgt. Luben's analysis of the Power Train Module from Deputy Bradshaw's cruiser, between 57 and 70 mph.

24. Although Deputy Bradshaw denied that he was going 57 mph, he agreed that if he had been going that fast, he would not have been exercising due care.

Whether Deputy Bradshaw was Wearing His Seatbelt

25. At the final hearing Respondent presented some evidence to show that Deputy Bradshaw was not wearing his seatbelt at the time of the crash. Deputy Bradshaw claims he was wearing his seat belt, but he objected to Petitioner's introduction of seat belt evidence because Deputy Bradshaw was not informed in the charging document that his failure to wear his set belt was an element of the charges against him. The August 10, 2006, inter-office memorandum that officially informed Deputy Bradshaw of the charges against him stated:

Synopsis: While engaged in a high speed pursuit, you ran a red light at a minimum speed of 57 miles per hour and collided with a civilian vehicle which had already entered the intersection. Serious injuries were sustained by both drivers and a passenger in the civilian vehicle.

Similarly, the parties' Joint Pre-Hearing Stipulation stated Petitioner's position as "Respondent was traveling at a speed which was faster than that at which he could safely clear the intersection." Therefore, the Administrative Law Judge sustained Deputy Bradshaw's objection and ruled that seat belt evidence was inadmissible.

Ms. Umali's Impairment

26. In the course of the post-crash assistance provided to Ms. Umali and her passenger, it was determined that she was driving under the influence of alcohol. She was charged and convicted for misdemeanor DUI.

27. The location of the initial collision means that Ms. Umali had crossed about 60 percent of the intersection before the collision, but Deputy Bradshaw had just entered the intersection. Clearly, Ms. Umali entered the intersection well before Deputy Bradshaw. The record evidence establishes that when Ms. Umali got to the intersection, Sgt. Palombo's cruiser was stopped at the intersection with its siren on and lights flashing. Ms. Umali would have seen Sgt. Palombo's cruiser.

28. Respondent's Exhibit 7 contains a deputy's written notes from his interview with Ms. Umali just after the accident. Neither Ms. Umali nor the deputy who interviewed her were called as witnesses. The exhibit was admitted into evidence over a hearsay objection to show what was considered by the Administrative Review Board in determining the discipline to recommend. The exhibit was not admitted for the truth or accuracy of the statements contained in the exhibit.² However, the hearsay notation that Ms. Umali told the interviewing deputy that she saw the "cops" and their flashing lights supplements

the non-hearsay evidence that she saw (at least) Sgt. Palombo's cruiser.

29. Whether caused by her impairment or another reason, Ms. Umali did not yield the right-of-way to an emergency vehicle as the law requires.

30. It is Deputy Bradshaw's position that Ms. Umali's impairment and failure to yield are important facts in determining whether he used due care under the circumstances. An unstated implication of his argument is that it was reasonable for him to expect civilian vehicles approaching or entering the intersection to yield and, consequently, reasonable for him to disregard the possibility of a non-yielding vehicle.

31. This argument is inconsistent with Deputy Bradshaw's testimony that he did not notice whether the light at 38th Avenue was red or green, but the color of the light did not matter to him because he always slows at an intersection to make sure it is safe to pass through. In other words, he drives defensively even when he has the right of way.

32. Curiously, no one asked Sgt. Palombo why he stopped in the left turn lane at 38th Avenue. He said he intended to continue his pursuit of the suspect vehicle and that, as soon as the Umali vehicle passed by him, he proceeded through the intersection and continued the pursuit. It is reasonable to infer from the record evidence that Sgt. Palombo came to a stop

or near-stop because he saw the Umali vehicle approaching. If he did not see the Umali vehicle approaching, he would have merely slowed down, as he did at the other intersections through which the pursuit had passed. Deputy Bradshaw should have been alerted by Sgt. Palombo's action in stopping at the intersection that there might be oncoming traffic.

33. Petitioner showed by a preponderance of the evidence that Deputy Bradshaw failed to drive with due regard for the safety of all persons under the circumstances that existed at the time of the crash.

The Disciplinary Process

34. Deputy Bradshaw claims that his case was handled differently than all other disciplinary cases arising from a crash during a pursuit. The usual procedure followed when there has been a pursuit that resulted in a crash is that the matter is reviewed by the Pursuit Review Board and also the Crash Review Board. Neither of these boards reviewed the Bradshaw crash. Instead, the crash was investigated by the Administrative Investigations Division within the Sheriff's Office and then presented to the Administrative Review Board to determine whether discipline against Deputy Bradshaw was warranted and to make a recommendation for disciplinary action to Sheriff James Coats.

35. Deputy Bradshaw believes his case was handled differently because of the concern of Petitioner's general counsel about civil liability arising from the collision. This proposed explanation seems illogical, because an employer concerned with liability would be expected to assert that its employee did nothing wrong, not the opposite. A plaintiff would be encouraged, not discouraged, by Petitioner's action against Deputy Bradshaw in this case.

36. Petitioner acknowledges that the procedure it followed in the Bradshaw matter was atypical, but that it was justified by the atypical facts involved. Captain Wayne Morris was chairman of the Pursuit Review Board which meets monthly to review pursuits from the previous month. He said the Pursuit Review Board has an option of referring a matter for an internal investigation when there is an appearance of possible misconduct by a deputy. He said the Bradshaw crash was one of several pursuit cases that was scheduled to come before the board, but he asked or suggested that it should be investigated by the Administrative Investigations Division based on "the seriousness of the crash." He said that he could not remember a crash that involved vehicles that were "totaled" or injuries to a "third party."

37. Captain Morris said that even though General Order 15-2 of the Sheriff's Office states that all pursuits will be

reviewed by the Pursuit Review Board, that is just a guideline and does not always have to be followed.

38. Captain Dean Lachance, chairman of the Crash Review Board, said that his board was not the appropriate body to investigate the Bradshaw matter "because of the level of discipline that we can levy," and that if this matter had come to the board, it would likely have been referred to the Administrative Investigations Division.

39. Sheriff Coats provided similar testimony that this was an unusual case in the time that he has been Sheriff and it warranted a different review.

40. An Administrative Review Board considered the information compiled by the Administrative Investigations Division and recommended that Deputy Bradshaw be suspended for four days. Sheriff Coats accepted the recommendation and notified Deputy Bradshaw of the disciplinary action on August 10, 2007. The suspension was served by Deputy Bradshaw on August 23 through 26, 2007.

41. Deputy Bradshaw made much of the deviation from usual procedures that occurred in this case, suggesting that it shows some kind of conspiracy to determine wrongdoing and to impose harsh discipline. However, the evidence shows that there was a reasonable perception, shared by several high-ranking officials in the Sheriff's Office, that the matter warranted special

attention because (1) it involved unusually extensive property damage and personal injuries to a deputy and to civilians and (2) because Deputy Bradshaw might have been at fault.

42. It is natural for a crash under these circumstances to create heightened concern or interest in the Sheriff's Office. Deputy Bradshaw's claim that the pending lawsuit by Umali against the Sheriff's Office caused his discipline to be more severe than was justified is not supported by the evidence.

Whether the Disciplinary Action was Consistent

43. Deputy Bradshaw showed that the Crash Review Board has never recommended more than a reprimand, even in cases where a deputy was involved in two preventable crashes. Deputy Bradshaw argues that this proves his own discipline was too severe. However, the evidence presented by Deputy Bradshaw included no factual details from the other disciplinary cases that could establish that they involved similar circumstances or otherwise would warrant similar punishment. The record evidence shows that there were no previous incidents that could be described as "similar."

44. Under the circumstances, Deputy Bradshaw should have decelerated to a very slow speed or even to a stop to make certain no vehicle was approaching from the east. The discipline Deputy Bradshaw received was commensurate with the degree of his deviation from his duty to drive with due regard

for the safety of all persons. It was neither inconsistent with prior disciplinary action taken by the Sheriff's Office against other members nor unreasonably harsh for the offense that was proven.

Facts Related to Section 112.532(6), Florida Statutes

45. As discussed more fully in the Conclusions of Law, Section 112.532(6), Florida Statutes (2006), states that disciplinary action cannot be taken against any law enforcement officer in the state for any allegation of misconduct if the investigation of the allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation. Deputy Bradshaw contends that the investigation of the charges against him arising from the crash on September 22, 2006, was not completed within 180 days and, therefore, no disciplinary action can be taken against him.

46. Captain Teresa Dioquino was in charge of the Administrative Investigations Division of the Sheriff's Office when the subject crash occurred. She testified that Deputy Bradshaw was informed that her division was investigating the crash on May 21, 2007, through a "Notice of Complaint." She said that was also the date that her division "formally" began its investigation. If May 21, 2007, was the operative beginning date, the Sheriff's Office met the 180-day requirement.

47. However, the operative beginning date to calculate the 180-day requirement, as stated in the statute, is "the date the agency received notice of the alleged misconduct." It is not the date that an investigation is formally initiated. Deputy Bradshaw's speed going through the intersection was the fundamental factual basis for his alleged misconduct in this case. Therefore, the date when the Sheriff's office received notice of Deputy Bradshaw's speed would be the operative beginning date to calculate compliance with the 180-day requirement.

48. Petitioner argues that it did not start its investigation of Deputy Bradshaw before May 21, 2007, because it was waiting for the results of Sgt. Luben's analysis of the Power Train Control Module from Deputy Bradshaw's cruiser, which was completed in May 2007. Petitioner essentially argues that the completion of Sgt. Luben's analysis was a necessary prerequisite for the Sheriff's Office to be on notice of the "allegation of misconduct" regarding Deputy Bradshaw.

49. However, Sgt. Luben testified that he did not discover until January 2007, that the Power Train Control Module even existed in the 2005 Crown Victoria. In other words, when the Sheriff's Office was informed on December 13, 2006, that Deputy Bradshaw was traveling at 57 mph, based on Lt. Pelella's crash reconstruction report, it had no reason to think Sgt. Luben was

going to come up with another estimate of Deputy Bradshaw's speed from his analysis of the Power Train Control Module. Once Lt. Pelella's 57 mph estimate was reported, Sgt. Luben's subsequent analysis became just a part of the investigation of the alleged misconduct that had to be completed within 180 days. Furthermore, the fact that the Bradshaw crash never went to the Pursuit Review Board or the Crash Review Board during the period from December 2006 to May 2007 indicates a continuing assumption that the Bradshaw crash warranted an investigation of possible misconduct.

50. Using December 13, 2006, as the date the Sheriff's Office received notice of the alleged misconduct of Deputy Bradshaw, the investigation was not completed within 180 days as required by Section 112.532(6), Florida Statutes (2006). Nevertheless, as discussed in the Conclusions of Law that follow, the exclusive remedy for a violation of the 180-day requirement is an injunction action in circuit court. The failure of the Sheriff's office to comply with the 180-day requirement cannot be raised as a defense in this administrative action.³

CONCLUSIONS OF LAW

51. DOAH has jurisdiction of this case pursuant to Section 120.57(1), Florida Statutes (2007), and Section 8(1)(d), of Chapter 90-393, Laws of Florida. The latter provision

authorizes the Civil Service Board of Pinellas County to contract with DOAH to have hearings conducted pursuant to Chapter 120, Florida Statutes.

52. Petitioner has the burden of proof in this case and the standard of proof is preponderance of the evidence. Dalem v. Department of Corrections, 720 So. 2d 575 (Fla 4th DCA 1998).

Whether Disciplinary Action is Barred by Section 112.532(6), Florida Statutes

53. Part VI of Chapter 112, Florida Statutes, grants rights to any law enforcement officer in the state related to the investigation of the officer's possible misconduct. Section 112.532(6), Florida Statutes (2006), states in relevant part:

(a) Except as provided in this subsection, no disciplinary action, demotion, or dismissal shall be undertaken by an agency against a law enforcement officer or correctional officer for any act, omission, or other allegation of misconduct if the investigation of such allegation is not completed within 180 days after the date the agency receives notice of the allegation by a person authorized by the agency to initiate an investigation of the misconduct. In the event that the agency determines that disciplinary action is appropriate, it shall complete its investigation and give notice in writing to the law enforcement officer or correctional officer of its intent to proceed with disciplinary action, along with a proposal of the action sought. Such notice to the officer shall be provided within 180 days after the date the agency received notice of the alleged misconduct.

54. Section 112.534, Florida Statutes (2006), provides that a law enforcement officer "may apply directly to the circuit court . . . for an injunction to restrain or enjoin such violation of the provisions of this part and to compel the performance of the duties imposed by this part." Sometime after Deputy Bradshaw served his suspension, he filed an injunction action in the circuit court for Pinellas County pursuant to this statute, arguing that the failure of the Sheriff's Office to complete its investigation within 180 days barred any disciplinary action against him.

55. The circuit court dismissed Deputy Bradshaw's injunction action, stating that it lacked authority to grant the relief requested by Deputy Bradshaw, "to rescind punishment that he has already served."

56. Deputy Bradshaw argues that the order of the circuit court does not affect his ability to raise the 180-day issue in this administrative proceeding and that it bars any disciplinary action against him. However, the exclusive remedy for noncompliance with Section 112.532, Florida Statutes, is an action in the circuit court for injunctive relief. City of Miami v. Cosgrove, 516 So. 2d 1125 (Fla. 3d DCA 1987). In Migliore v. City of Lauderhill, 415 So. 2d 62, 65 (Fla. 4th DCA 1982), the court stated:

This section operates only to immediately restrain violation of the rights of police officers by compelling performance of the duties imposed by Sections 112.531 to 112.533. Thus, where an officer under investigation is being interrogated without benefit of counsel, the agency may be restrained from violating his right to counsel; if an officer is dismissed without notice, the agency can be compelled to provide the proper notice; and, if an officer is refused review by the complaint review board, under appropriate circumstances, the agency can be compelled to grant such review. [emphasis supplied]

The court could have added: if an officer is not notified of the charges against him within 180 days from the agency's receipt of notice of the allegation of misconduct, the agency can be barred from attempting to punish the officer. However, noncompliance with the duties imposed by Section 112.532, Florida Statutes (2006), is exclusively enforced by injunction ordered by a circuit court.

Review Pursuant to the Chapter 90-393, Laws of Florida

57. Pursuant to Section 8(3), of Chapter 90-393, Laws of Florida, the Civil Service Board is to hear appeals arising from personnel actions, and to:

(a) Determine whether the aggrieved member engaged in conduct prohibited by . . . a departmental rule promulgated by the Sheriff; and

(b) Determine whether the action taken against the aggrieved member is consistent with action taken against other members; and

(c) Make findings of fact and state a conclusion as specified in subsection (6).

Subsection 6, referred to above, states:

Within 10 days of the conclusion of the appeals hearing, the Civil Service Board, by a majority vote shall dispose of the appeal and shall make findings of fact and state a conclusion; such findings of fact and conclusion shall be separately stated and shall be in writing. Such conclusion shall either sustain, modify, or not sustain the action being appealed. Upon a finding that cause did not exist for a suspension, demotion, reduction in pay, or dismissal, the Civil Service Board shall reinstate the appellant and direct the Sheriff to pay the appellant for the period of any suspension, demotion, loss of pay, or dismissal. The Civil Service Board shall not have the authority to impose any penalty more severe than that which formed the basis of the appeal. Should the Civil Service Board be unable to reach a majority decision on any appeal, the personnel action taken shall be sustained.

58. Petitioner's General Order 3-1 contains the standards of conduct which must be followed by all employees of the Pinellas County Sheriff's Office.⁴ It creates five levels of violations, Level Five being the most egregious. Deputy Bradshaw was formally charged with two Level Three violations, designated 3.3 and 3.4(d). These provisions state:

3.3. Knowledge of, and Obedience to, Laws and Rules and Regulations - Every deputy is required to establish and maintain a working knowledge of all laws and ordinances in the county. All members shall observe and obey all General Orders, Standard Operating

Procedures and Rules and Regulations issued by the Sheriff's Office. In the event of improper action or breach of discipline, it will be assumed the member was familiar with the applicable law, policy, or procedure.

3.4. Performance of Duty - All personnel shall take appropriate action to preserve the peace and perform their duties as required or directed by law, agency rules, policies and procedures, or other lawful orders of a supervisor.

* * *

d. All members will be efficient and effective in their assigned duties, performing them in a competent, proficient, and capable manner.

59. General Order 15-2 establishes guidelines regarding the operation of Sheriff's Office during a pursuit, including the following guidelines in Section 15-2.1(D):

In accordance with Florida State Statute 316.072(5), deputies operating in the emergency operation/response mode may:

* * *

2. Proceed past a red stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

3. Exceed the maximum speed limits so long as the driver does not endanger life or property;

* * *

5. The foregoing provisions shall not relieve the driver from the duty to **DRIVE WITH DUE REGARD FOR THE SAFETY OF ALL PERSONS**, nor shall such provisions protect the driver from the consequences of his or

her reckless disregard for the safety of others. [emphasis in original]

60. By a preponderance of the evidence, Petitioner proved that Deputy Bradshaw violated Section 3.3 (Knowledge of, and Obedience to, Laws and Rules and Regulations) because Deputy Bradshaw admitted knowledge of the regulations applicable to pursuits, including the requirement to drive with due regard for the safety of all persons, but failed to "obey" this requirement on September 22, 2006.

61. By a preponderance of the evidence, Petitioner proved that that Deputy Bradshaw violated Section 3.4 (Performance of Duty) for failing to perform his duty to exercise due regard for the safety of all persons.

62. Failing to obey and failing to perform, in the context of the requirement to drive with due regard for the safety of all persons, are two ways of stating the same offense. There is essentially one act of wrongdoing by Deputy Bradshaw.

63. By a preponderance of the evidence, Petitioner proved that the disciplinary action taken against Deputy Bradshaw was reasonable and consistent with the disciplinary action taken against other members of the Sheriff's Office.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law set forth above, it is

RECOMMENDED that the Civil Service Board issue an Order that makes findings of fact that are consistent with those set forth in this Recommended Order, and contains a conclusion that (1) Deputy Bradshaw engaged in the prohibited conduct for which he was charged, and (2) the disciplinary action taken against him was consistent with action taken against other members of the Sheriff's Office.

DONE AND ENTERED this 18th day of April, 2008, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of April, 2008.

ENDNOTES

^{1/} Using simple arithmetic, it can be deduced that, if the Umali vehicle were traveling 42 mph (as found by the more persuasive evidence), it would have traveled about 15 feet in a quarter of a second.

^{2/} Respondent's Exhibits 1 and Petitioner's Exhibit 5 also contain hearsay statements which cannot be used to support a finding of fact. Although hearsay can be used to supplement otherwise admissible evidence, "supplement" in this context does not mean that hearsay can be used to establish material facts for which there is no other evidence.

^{3/} Deputy Bradshaw asserts that the Sheriff's Office told the circuit court that the 180-day requirement could be raised as an issue in the administrative proceeding, but the Sheriff's Office merely stated that the administrative proceeding was the "proper place" for the "relief" sought by Deputy Bradshaw. That is not the same thing as asserting that the administrative proceeding is the proper place to raise the 180-day issue. Furthermore, the Sheriff's Office cannot, through its statements, create subject matter jurisdiction.

^{4/} The version of General Order 3-1 admitted into evidence indicates an effective date of October 13, 2007, after the incident involved in this case, but Petitioner did not object to its admission on that basis.

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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.