



**BRAD KING, STATE ATTORNEY**  
*Fifth Judicial Circuit of Florida*  
*Serving Marion, Lake, Citrus, Sumter, Hernando Counties*

February 19, 2016

Chris Blair  
Sheriff of Marion County  
PO Box 1987  
Ocala, FL 34478

**RE: DEPUTY EDUARDO BUSTAMANTE**

Dear Sheriff Blair:

My office has completed an extensive review into cases wherein Deputy Eduardo Bustamante was the arresting officer or the investigating officer. A memorandum of that review is enclosed.

I have carefully reviewed the memorandum, and discussed the matter at length with the members of my staff who did the review. After doing so, I am convinced that the conclusions of the memorandum are justified. I also agree that the recommended actions are appropriate.

Accordingly, my office will not accept any case for prosecution if the testimony of Deputy Bustamante is required. Further, any pending cases where his testimony is required and not supported by independent evidence will be dropped.

In over thirty years as a prosecutor, I have been forced to take this action only once before. However, given the facts set forth in this memo, this action is necessary to protect the integrity of the criminal justice system.

Sincerely,

A handwritten signature in black ink that reads "Brad King".

Brad King  
State Attorney

TO: Brad King, State Attorney  
FROM: Richard Ridgway, Assistant State Attorney  
RE: Case Integrity Review  
DATE: February 19, 2016

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Shortly after it was learned Marion County deputies had written false police reports and used excessive force in the arrest of a drug defendant, you created the Case Integrity Review Team. We were directed to review cases old and new to determine if there were other falsified reports or unnecessary uses of force.

After you told the staff about the review and requested them to bring us any cases where they had concerns about the actions of the law enforcement officer involved, several prosecutors brought us cases involving Deputy Eduardo Bustamante. In addition to our own attorneys, some judges and members of the defense bar have expressed concern about cases involving Deputy Bustamante.

When concerns were identified in those cases, we ran a report of all of Deputy Bustamante's recent cases and reviewed those. Because of the accumulated concerns of both reviews, on November 30, 2015 we issued a subpoena to the Marion County Sherriff's Office (MCSO) for copies of Deputy Bustamante's personnel file, internal review files, complaints made about him as well as copies of all his in-car camera and body camera videos. We received over 400 dash-cam videos, all of which have been reviewed. There were no body-cam videos.

Deputy Bustamante was hired by MCSO in August of 2011. He was assigned to the tactical unit in 2013 and moved back to patrol on April 22, 2014.

The first phase of our review were allegations of excessive force used by Deputy Bustamante. We identified two cases where there was both an allegation of excessive force and supporting evidence of the allegation.

Beyond the use of force issues, we found a pattern of behavior in many of the other videos. That pattern involved some, or all, of the following:

- Traffic stops based on trivial, or non-existent, traffic violation;
- Searches based on either a questionable claim that Deputy Bustamante smelled marijuana or "consent" that was illegally obtained;
- Admissions that were obtained after illegal coercion or inducements;
- Police reports that, were either false as to a material fact; or failed to include the pertinent details about the search or admission which would show they were unlawfully obtained.

The most frequent outcome of these cases was an arrest for misdemeanor marijuana charges.

It would be impossible to report on each episode of this conduct, and what follows are only a representative sample of them. Additionally, we should point out the videos we reviewed were only cases where a citation was issued or an arrest was made and the video was downloaded and placed into evidence. There is no way to determine how many citizens were stopped, detained and subject to searches or questioning under similar circumstances, but were released without a charge being filed and therefore no video was placed into evidence.

## **SECTION ONE**

### **(Use of Force complaints)**

We identified two cases where a person arrested by Deputy Bustamante claimed to have been beaten, and where there was evidence or testimony that supported the allegation. Although both episodes were reported to the sheriff's office, there was no formal internal affairs report prepared in either case.

#### State v. Johnny Ostone

On July 8, 2013 Deputy Bustamante was working an off-duty detail at the Waffle House on West Highway 40. Deputy Bustamante's report states that Mr. Ostone drove up and exited his vehicle with another male. Deputy Bustamante wrote that he engaged in casual conversation with Mr. Ostone and eventually asked him if he had a driver's license. The report does not indicate why Deputy Bustamante choose to talk to Mr. Ostone, nor why he felt it appropriate to ask for his driver's license.

The report states that Mr. Ostone told Deputy Bustamante that he did not have a valid license and at this point Deputy Bustamante attempted to detain Mr. Ostone to further investigate. Deputy Bustamante wrote that Mr. Ostone continued to walk away whereupon he grabbed Mr. Ostone by the arm as he was trying to go into a crowd. Mr. Ostone turned and struck him with a fist in the face. Deputy Bustamante stated that this caused him to lose his grip and Mr. Ostone ran away from him. Deputy Bustamante states he chased Mr. Ostone to a wooded area.

Mr. Ostone's account of the incident is basically the same as Deputy Bustamante's report up to this point although he denies striking Deputy Bustamante intentionally, but does agree he may have inadvertently struck him during his attempt to escape. However, at this point the accounts differ widely. Deputy Bustamante's report states that after chasing Mr. Ostone into a wooded area, Mr. Ostone turned around and took a fighting stance and began swinging his arms at Deputy Bustamante. Deputy Bustamante writes that at this time he "deployed his agency issued baton" and struck Mr. Ostone:

"On his upper right arm and his upper thigh; however, the Defendant continued to fight. Writer again struck the Defendant on his right upper arm, at this time, the Defendant fell to the ground. The Defendant then placed his arms on his chest and refused to be handcuffed. Writer again gave the Defendant loud and clear verbal commands for him to surrender, however, the Defendant continued

to fight writer. Writer began punching the Defendant in order to take him into custody. Finally the Defendant stated he wanted to surrender, at this time he was handcuffed without further violence.”

Deputy Bustamante was later deposed in this case and when questioned by defense counsel he stated “I struck him on the right upper arm.” Deputy Bustamante stated that after Mr. Ostane fell “he kept trying to get up.” Deputy Bustamante then stated at this time “I put my baton away and I punched him.” Follow up questions were asked by the Assistant State Attorney and the questions and answers are as follows:

Q: Now you stated that you hit him with the baton, and um, in the arm, and thigh, and in the arm right?

A: Yes

Q: And then he fell

A: Yes

The Sheriff’s department completed a “green team” review of the incident as is supposed to be standard whenever force is used. (A green team report is not as comprehensive as an internal affairs investigation.) We reviewed the “green team” report created by Sergeant April Nichols on the night of the incident. Sgt. Nichols documented that Deputy Bustamante advised her,

“He deployed his department issued baton and struck the defendant on his upper right arm and upper right thigh; however the defendant continued to fight and was struck again on his right upper arm, and at this time, the defendant fell to the ground; but refused to be handcuffed by placing his arms on his chest. Deputy Bustamante stated the defendant continued to fight him, even though he was giving loud and clear verbal commands for the defendant to surrender. Deputy Bustamante advised he began punching the defendant in his upper torso in order to take him into custody and at this time, the defendant stated he wanted to surrender and was handcuffed without further violence.”

Deputy Bustamante was very clear about where, and how many times, he struck Mr. Ostane in his probable cause affidavit, incident report, his statements to Sgt. Nichols, and his deposition.

We interviewed Mr. Ostane. He said once he ran into to the woods he tripped and fell. After he fell Deputy Bustamante began striking him with what Mr. Ostane called a “stick”. Mr. Ostane stated that he was lying on the ground as Deputy Bustamante struck him repeatedly with the baton and yelled for him to stop resisting. Mr. Ostane explained that he begged Deputy Bustamante to stop hitting him but the beating continued and eventually he was handcuffed and taken out of the woods and to jail. When asked about being punched Mr. Ostane explained that he was never punched by Deputy Bustamante and was only hit repeatedly with the baton. Mr.

Ostane stated that he sought medical care after being released from jail and that photographs were taken at the hospital.

Mr. Ostane arranged for us to obtain copies of the photographs that had been taken at the hospital. The photographs clearly show that Deputy Bustamante was not truthful in his report or deposition about the number of times Mr. Ostane was struck with the baton, nor was he truthful about where he struck Mr. Ostane. Mr. Ostane was clearly struck in his arms, back, and head with the baton. The photographs show that Mr. Ostane was struck by a hard object several times, including at least two blows to the right side of his head, three on his back and multiple blows to his right arm. Some of the marks show they were made by a cylindrical object, consistent with a baton.

Based upon where he wears his sidearm, Deputy Bustamante is right hand dominate. The blows to Mr. Ostane back show he was stuck from behind. The blows to his head and arm are consistent with a right hand dominate person striking him from behind. Deputy Bustamante's statement that he struck Mr. Ostane after he turned and confronted him, are inconsistent with the location of the obvious injuries to Mr. Ostane.

Mr. Ostane also filed a written complaint with the Marion County Sheriff's Office regarding excessive use of force. This complaint was documented as received but it was determined that it could not be investigated until the conclusion of Mr. Ostane's criminal case. None of the documents produced pursuant to our subpoena show the investigation was completed. Mr. Ostane upon the advice of counsel, pled guilty to Battery on a Law Enforcement Officer, Resisting an Officer with Violence and Driving While License Suspended or Revoked. Mr. Ostane contends that he wanted to have a jury trial but his attorney advised him of the possibility of a much lengthier prison sentence if he was found guilty at trial.

Because of the allegation by Mr. Ostane, which is supported by the photographs, we forwarded the material to the United States Attorney for their consideration. In mid-January the FBI notified the sheriff's office that a criminal investigation was being opened into the matter.

#### State v. Courtney Carpenter

On September 10, 2013 Deputy Bustamante was assigned to the tactical investigations unit and was in a car with his partner Deputy Benjamin Adams. At about 3:00 PM they saw a vehicle which they felt had windows with tint that was darker than allowed. They also saw the vehicle fail to come to a complete stop at a stop sign. They then attempted to stop the vehicle. After activating their emergency equipment the vehicle did not come to an immediate stop.

The vehicle traveled less than 6 blocks before pulling into the driveway of a house. During the time the speed of the vehicles reached 35 MPH. Once the deputies and the driver of the vehicle, later identified as Courtney Carpenter, got out of their respective vehicles, the deputies ordered Mr. Carpenter to get on the ground. According to the report prepared by Deputy Adams, and both Deputy Adams and Deputy Bustamante's testimony at trial, the Defendant refused to listen to their commands and was "escorted" to the ground.

After being placed on the ground, the deputies stated that Mr. Carpenter refused to place his hands behind his back to be handcuffed. The Defendant was ultimately charged with Fleeing and Eluding and with Resisting Arrest Without Violence.

We interviewed Mr. Carpenter who told us that he was driving his car and admits that he did not stop immediately when directed to do so. Mr. Carpenter said because it was an unmarked car with just some lights he was hesitant to stop. Mr. Carpenter advised that he stuck his hand out the window and waved, acknowledging that he saw the deputies but wanting to stop somewhere safe. Mr. Carpenter ultimately pulled into the driveway of his grandmother's home.

Mr. Carpenter told us that after he stopped he got out of his car and the two deputies were yelling at him to get on the ground. Mr. Carpenter stated he tried to ask the deputies what he had done, but they just yelled for him to get on the ground eventually throwing him to the ground. Mr. Carpenter stated that once on the ground he was laying there and gave Deputy Adams one of his hands. Mr. Carpenter said that because he is a large man and he had two deputies on top of him he could not get his other hand around to Deputy Adams. Mr. Carpenter stated that Deputy Bustamante then struck him several times in the face with his fist. Mr. Carpenter said that once he was at the jail, he was asked by Deputy Bustamante to sign paperwork that would forfeit his car to the sheriff's office, which he refused to do. He also stated that he asked Deputy Bustamante why he hit him and the response was that "You're lucky you didn't get the stick."

Among the material we received as a result of our subpoena was a copy of a letter from Mr. Carpenter to the sheriff in which he complained about the incident. The letter states that "While handcuffed and laying on the ground Detective Bustamante punched me in my face three times and told me to shut the f\*\*\* up." Deputy Bustamante's personnel file contains a memo which states that upon the advice of counsel, Mr. Carpenter would not give an interview about the matter until after completion of the criminal case. The matter was closed as unfounded "at this time."

Although there was no formal investigation of the allegation of use of excessive force, there was a "green team" report generated for this incident. It addresses the pursuit and mentions Mr. Carpenter being escorted to the ground. Specifically it states in part,

"The driver of the vehicle B/M Courtney Carpenter exited the vehicle and began shouting at the detectives who were giving instructions to get on the ground. The driver refused to comply with the detectives repeated commands. Mr. Carpenter was then physically directed to the ground where he continued to resist by refusing to put his hands behind his back. After a short struggle he was physically restrained and secured. The entire pursuit lasted less than 2 minutes and speeds reached 35 mph."

It makes no mention of blows being struck to Mr. Carpenter's head.

Mr. Carpenter took the case to trial. Deputy Bustamante and Deputy Adams testified about the incident. Mr. Carpenter did not testify, but did produce two witnesses. Both of these

witnesses stated that they saw Deputy Bustamante striking a compliant Courtney Carpenter while he laid on the ground. Although not reflected in any report, during trial Deputy Bustamante acknowledged that he hit Mr. Carpenter in the face with his fist in order to force him to comply. The jury returned a verdict of not guilty in April 2014.

We spoke with one of the witnesses who testified on Mr. Carpenter's behalf at the trial. This witness was visiting a relative in the area where the arrest occurred and saw the arrest. She knows of Mr. Carpenter, but does not associate with him. She reaffirmed her trial testimony that she observed Mr. Carpenter lying on the ground with Deputy Bustamante and Deputy Adams on his back. She stated that Mr. Carpenter was complying with the deputy's orders and she observed Deputy Bustamante strike Mr. Carpenter in the head with his fist several times.

We attempted to speak with the other witness, but he failed to appear for scheduled appointments. However, in his deposition, and in his trial testimony, this witness testified that he observed the deputies stopping Mr. Carpenter and that he observed "the big one" punching Mr. Carpenter while he was laying on the ground. (Deputy Bustamante is physically larger than Deputy Adams.) This witness also stated that he did not observe Mr. Carpenter resisting the officers.

After the jury trial was complete and the jury discharged, the members of the jury asked to speak to the trial judge. The jurors told the judge they were concerned about what the deputies did after Mr. Carpenter got out of the car.

The judge was concerned enough by this that he informed our office of the matter. Our supervisor arranged for the judge to speak directly with administration officials from the sheriff's office shortly after the trial was complete. At this meeting the judge told them about the jury's concerns. The sheriff's office stated they were going to remove Deputy Bustamante from the tactical unit.

The file which we received shows that Deputy Bustamante was, in fact, shortly thereafter removed from the tactical unit and returned to regular patrol duties. However, his personnel file has nothing about the meeting with the judge, or the concerns of the jury, nor any indication Mr. Carpenter's complaint was followed up on after the trial and the meeting with the judge. It indicates he was transferred for failing to appear at two depositions.

## **SECTION TWO**

### **(Material misrepresentations)**

Because of the number of videos we reviewed, we did not attempt to examine every report prepared by Deputy Bustamante in connection with each video. However, there were two cases brought to our attention where there was a material difference between his police report, and what was shown on the video. In the first case a person was wrongfully arrested for a crime. In the second, although the person was in fact guilty of the crime for which they were charged, there was no legal basis for the stop, but the report was written as if there was.

## MCSO Case 15012018

Deputy Bustamante made a traffic stop based on suspicion that the window tint was too dark. The driver did not have a valid driver's license. After telling the occupants that he smelled a "faint odor" of marijuana he searched the three adult occupants of the car. In addition to the adults there was an infant in a car seat in the back seat, directly behind the driver. No drugs were found, however, a loaded handgun was found in a diaper bag which was located in the floorboard behind the driver's seat. Deputy Bustamante's report states that the bag was "open and unzipped."

The video of the incident shows Deputy Bustamante finding the bag 35 minutes after the traffic stop. It shows him pulling the bag out with his left hand, holding his flashlight in his right as he bends over to look under the seat. He then places the bag on the child seat and the video, both visually and audibly, depicts the bag being unzipped. The driver of the car was arrested for Carrying a Concealed Firearm.

Florida Statute 790.25(5) governs the possession of a firearm in a private conveyance. Concealed firearms may be lawfully carried as long as they are either securely encased, or are not readily accessible for immediate use. Readily accessible for immediate use is defined as "within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person." Sec 790.001(16) Fla. Stat. (2015) While it may be arguable that a gun carried in an "open and unzipped" bag behind the driver's seat is readily accessible, one in a bag that is zipped shut and sitting on the floorboard behind the driver's seat certainly is not. See Trock v. State, 990 So.2d 1195 (Fla. 5<sup>th</sup> DCA 2008)

Neither the prosecutor nor the defense attorney reviewed the video, but relied on the accuracy of the police report. The defendant entered a negotiated plea to the charge, however the defense has been made aware of the inconsistency between the video and the report and a motion to vacate the plea will be filed. When granted, the charge will be dropped because it is obvious from the video that the firearm was not readily accessible to the driver and the driver is not guilty of this charge.

## MCSO Case 15012863

Deputy Bustamante was parked along the north side of CR 318 facing west. According to his report he saw a car coming east-bound toward him. He wrote in his report "At the time, writer spotted the vehicle utilizing the patrol vehicle's spot light and observed that the vehicle was gray in color. Upon noticing law enforcement the vehicle slowed down and made an illegal u-turn, crossing the fog line on the south side of hwy 318. Writer immediately activated writer's red and blue light in order to conduct a traffic stop.... The vehicle then turned southbound on north hwy 335..." The car was eventually stopped, a search was conducted and the driver was arrested for misdemeanor possession of marijuana.

The video clearly shows the car approaching Deputy Bustamante's car. When it comes to the intersection of CR 335 it makes a slight turn to the (driver's) left, then makes a right hand turn onto CR 335 headed south, completing the turn before the patrol car emergency lights come on. The headlights of the car are clearly visible the entire time, meaning it is impossible that a u-



turn ever occurred. Further the video does not show the spotlight from the patrol car shining on the vehicle until it is almost stopped further down CR 335. Nothing in the video supports a traffic stop of the vehicle. It should be noted that this occurred at approximately 4:30 AM on a Sunday morning and there was no other traffic in the area.

The defendant entered a negotiated plea to the charges. The defendant's attorney was aware of the discrepancy between the video and the police report, however chose to use it as a way of getting a much more favorable disposition than would otherwise have been made, instead of using it to challenge the stop and subsequent search.

### **SECTION THREE**

#### **(Misleading police reports after illegal stops, searches and questioning)**

There were a number of cases where Deputy Bustamante made a traffic stop, searched a vehicle or questioned occupants in manner that was not legal. In some of those cases the report written by Deputy Bustamante fails to accurately reflect what he did. While these reports did not contain a false, material statement, they left out material facts thereby making his actions appear legal. What follows are two representative cases.

#### MCSO Case # 14013081

Deputy Bustamante made a traffic stop for failure to have a child properly restrained. After having the driver, and the driver's mother (the only passenger other than the child) get out of the car, and before issuing a citation he asked for permission to search the car. The driver gave permission to search the car, but removed her purse from the car first. Deputy Bustamante then asked for permission to search purse. The driver clearly denied the request to search the purse at least five times. However, Deputy Bustamante persisted and ultimately the driver relented, opened the purse and pointed out several innocuous items, at which time Deputy Bustamante claimed that he smelled marijuana, searched the purse and located a misdemeanor amount of marijuana. The defendant was arrested and taken to jail.

In his sworn affidavit about the incident Deputy Bustamante wrote:

Writer then asked the defendant if she had any weapons inside her purse, the defendant advised "no". Writer asked the defendant if she was sure about not having anything illegal inside her purse, at this time, the defendant opened her purse and stated "look, there is nothing inside my purse" as she picked up miscellaneous items from it.

As written the report suggests the consent was given upon the first request which would make it a valid search. The report fails to note the crucial fact the defendant refused numerous times before opening the purse which made the search illegal. Florida courts have consistently held that repeated requests for consent will make any subsequent search, based upon consent ultimately obtained as a result of those repeated requests, invalid. *See eg. Martin v. State*, 411 So. 2d 169, 172 (Fla. 1982) *and Denehy v. State*, 400 So. 2d 1216, 1217 (Fla. 1980)

Neither the prosecutor nor the defense attorney reviewed the video, but relied on the accuracy of the police report. The defendant entered a negotiated plea to the charge. However, after reviewing the video of the stop, and it being apparent the search was illegally conducted, the defendant was informed of the discrepancy between the video and the report and has filed a motion to vacate the plea. This office cannot in good faith oppose this motion, and if granted we will drop the charge, as we would have if the report had been truthful.

MCSO Case # 14020017

Deputy Bustamante made a traffic stop because the car allegedly drove over the double yellow line while making a turn. The video of the stop does show the left tires of the vehicle on, or slightly over the double yellow while in the process of making a turn. However, because the vehicle is not in view of the camera at all times it cannot be determined if the car did, in fact, violate a traffic law. After making the stop Deputy Bustamante had the driver get out and come to the side of the patrol car, out of view of the camera. Deputy Bustamante told the driver that he smelled marijuana and was going to search him and the vehicle. (Deputy Bustamante's report stated he smelled a "strong odor of fresh marijuana emitting from inside the vehicle.") After searching the driver he removed each of the two passengers and searched them. After searching the passengers, he then searched the car, beginning in the passenger compartment, then going through the trunk, removing several gym bags, a backpack and a shoe box, the contents of which are all searched. Ultimately a small bag containing a misdemeanor amount of marijuana was found in the trunk.

Deputy Bustamante then questioned the occupants of the vehicle, all of whom denied knowledge of the marijuana. Deputy Bustamante's microphone goes off for about two minutes. When it comes back on, what sounds like a female voice says "just tell them." Deputy Bustamante then says to the occupants "If ya'll don't tell me, all three of you are going to jail" and again the female voice says "just tell them."

At this point Deputy Bustamante reads Miranda warnings, and because it's off camera it's not clear who he is talking to, but presumably all three occupants. After doing so he says "be honest and you don't have to go to jail" and "honesty will get you out of here, if you lie everybody goes to jail." Ultimately, one of the occupants (not the driver) admits the marijuana belongs to him. Deputy Bustamante issues a Notice to Appear to the individual.

The police report prepared by Deputy Bustamante states that he searched the car after smelling "a strong odor of fresh marijuana emitting from inside the vehicle." It then states the defendant admitted "that the marijuana was his for personal use."

First, it is unlikely a search would be upheld when it is based upon a claim of a "strong odor of fresh marijuana emitting from inside the vehicle" (even if true) when a small amount of marijuana is found in a plastic bag, inside a gym bag in the trunk of the car.

Secondly, the admission by the defendant of possession of the marijuana would undoubtedly be suppressed. For a statement to be admissible, not only must Miranda warnings be provided, it must be given freely and voluntarily.

...it must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight... that at the time of the making the confession the mind of the defendant be free to act uninfluenced by either hope or fear. The confession should be excluded if the attending circumstances, or the declarations of those present at the making of the confession, are calculated to delude the prisoner as to his true position, or to exert improper and undue influence.... Brewer v. State, 386 So. 2d 232, 235 (Fla. 1980)

Clearly the admission by the driver would have been excluded from evidence because of the threat of jail that was made.

The report, as written, does not suggest that there were any issues with the search or the confession. However, a review of the video shows there were serious problems with both issues.

#### **SECTION FOUR**

##### **(Coercive tactics)**

In addition to the cases noted above, we found cases where Deputy Bustamante used threats or coercion in an attempt to obtain statements, or a consent to search. In the two cases below, the attempt failed. Again, this is not an exhaustive list, but only a representative sample.

##### **MCSO Case # 12028127**

Deputy Bustamante made a traffic stop based on the fact the tag light on the car was not working. After making the traffic stop he told the occupants to get out of the car because he smelled marijuana. A search of the car resulted in the seizure of a misdemeanor amount of marijuana from a rolled up T-shirt inside the passenger compartment of the car.

A woman was seated in the rear of the vehicle, and after the discovery of the marijuana she was questioned by Deputy Bustamante about her knowledge of who had been smoking the marijuana. She adamantly denied knowing. Twelve times during the interview he threatens her with arrest if she does not tell him what he wants to know. The woman asked to call her Grandmother who was babysitting her two children. Deputy Bustamante tells her no, but then twice says that DCF is now going to be involved and, after again telling her she will be going to jail if she does not cooperate, he asks if she is willing to “sacrifice” her kids for this and “are your kids worth this.” Clearly, any statement that this witness would have made, even if incriminating herself, would be inadmissible.

The other three occupants of the car were ultimately arrested for misdemeanor marijuana charges, all of which were ultimately dropped by our office.

##### **MCSO Case # 1413073**

Deputy Bustamante made a traffic stop for a reason that is not apparent in the video. However, it was determined that the driver had no driver’s license and was properly issued a traffic citation for that charge. After the citation was issued, and after the legal basis for the stop ended, Deputy Bustamante spent over 10 minutes attempting to get permission to search the driver, and the car. Over a dozen times Deputy Bustamante asked to search the driver or her car,

each time the driver clearly said no, and repeatedly asked if she was free to go. Ultimately, the driver was released without being searched. The courts have held:

Once a vehicle is lawfully stopped, a law enforcement officer may conduct an investigation reasonably related in scope to the circumstances that justified the traffic stop. This investigation may include asking the driver for an operator's license, insurance and registration.... Also, the officer may run a computer check to determine whether the vehicle involved in the stop has been stolen and whether the driver has any outstanding warrants.... However, absent an articulable suspicion of criminal activity, the time an officer takes to issue a citation should last no longer than is necessary to make any required license or registration checks and to write the citation. (emphasis added) *Whitfield v. State*, 33 So.2d 787 (Fla. 5<sup>th</sup> DCA 2010)

Since there was no evidence of criminal activity that would have justified detaining the driver after the issuance of the citation, if at any point the driver relented and allowed a search to be conducted, it would have clearly been an unlawful search.

## **SECTION FIVE**

### **(Invalid traffic stops)**

All of the videos we reviewed were made as a result of a traffic stop by Deputy Bustamante. In many of the videos the purported basis of the traffic stop was a traffic violation that cannot be substantiated by the video. Either the alleged violation occurred outside the view of the camera, or because it was based on something not captured by video, such as unlawful speed. However, we did find some recorded stops where a legal basis of the traffic stop was non-existent. Examples of those stops follow.

Standing in isolation these episodes seem minor. However, these stops were made illegally, and any criminal case that came from them would not have been prosecutable.

#### **MCSO Case # 14027200**

Deputy Bustamante was following the vehicle on a two lane road with a double yellow line in the center. He stopped the car and told the driver he was being stopped for impeding the flow of traffic because he was going 40 MPH in a 55 MPH zone. Once the traffic stop occurred, it was over 5 minutes before any car going in the same direction came by. The only "traffic" being "impeded" was Deputy Bustamante. Shortly before making the traffic stop, the car he was following had to slow and come to an almost complete stop to avoid hitting a car that pulled out from a side street. That person was not stopped. The driver of the vehicle stopped was issued a citation for having an expired driver's license.

Section 316.183(5) prohibits driving "at such a slow speed as to impede or block the normal and reasonable movement of traffic." Driving 40 MPH in a 55 MPH would not meet the standard of impeding or blocking traffic. The video gives no insight into why Deputy Bustamante failed to stop the vehicle which clearly failed to yield right of way, and instead stopped the first vehicle.

#### MCSO Case # 14018569

Deputy Bustamante was following a car on a two lane road. The driver put on his left turn signal and made a left turn. After a short time the driver put on his right turn signal. The vehicle traveled for 23 seconds before making a right hand turn. In this period of time it passed one side street. After stopping the vehicle Deputy Bustamante told the driver he stopped him because “you had your blinker on that you were going to make a left turn, right turn, what not. You passed several streets without making a turn. I didn’t know how far you were traveling with your light on and other traffic behind me trying to figure out where this guy is going.”

Sec. 316.155 Fla. Stat. (2015) requires turn signals be “given continuously during not less than the last 100 feet traveled by the vehicle before turning....”. There is nothing which makes use of the turn signal for greater than 100 feet unlawful. There was no lawful basis for stopping the vehicle.

#### MCSO Case # 14021702

Deputy Bustamante was sitting at a red light while westbound on CR 326 at the southbound exit ramp of I-75. A blue pickup truck came down the exit ramp in the right turn lane and stopped at the intersection. There was a yield sign for traffic coming off the Interstate and turning right. According to the video the blue pickup truck stopped and was still sitting there less than 15 seconds later when Deputy Bustamante moves through the intersection. At the time the blue pickup truck goes out of the camera’s view and there is no other traffic seen on the exit ramp.

Deputy Bustamante immediately moves into a left turn lane, makes a U-turn, goes back to the traffic light and makes another U-turn so he is once again westbound on CR 326. As Deputy Bustamante’s car completes the U-turn, the blue pickup truck has left the exit ramp and is now in a right turn lane which enters a truck stop. A white pickup truck, pulling a trailer is just entering the turn lane from the exit ramp several car lengths behind the blue pickup.

Deputy Bustamante stopped the blue pickup truck and told the driver that he was stopping him because he had “come to a stop at the yield sign.” Based on the video, the blue pickup was stopped for 20 to 30 seconds before moving.

Section 316.123 Fla. Stat. (2014) requires that a driver coming to an intersection with a yield sign to slow, or stop, as required. There is no prohibition against stopping at a yield sign. Neither would this have been a violation of Sec. 316.2045 (Obstructing a Highway) in that there is no evidence of intent. *See Underwood v. State*, 801 So.2d 200 (Fla. 4<sup>th</sup> DCA 2001). There was no lawful basis for stopping the vehicle.

### CONCLUSION

The vast majority of the cases we reviewed contained some combination of problems that would be fatal to a successful prosecution if challenged. Even in those cases where the search was based on Deputy Bustamante’s claim of smelling marijuana, when we have reason to

question his veracity it becomes impossible for us to proceed. As the United States Supreme Court has pointed out:

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend...

A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the [prosecutor] has the responsibility and duty to correct what he knows to be false and elicit the truth."

Napue v. Illinois, 360 U.S. 264, 269 (1959).

This office simply cannot call as a witness someone whom we are not confident is telling the truth. Given the cases found where Deputy Bustamante's reports, and sometimes testimony, is clearly not truthful, we cannot, in good faith, proceed with any case wherein he is a witness.

### **OUR OFFICE'S ROLE**

In addition to reviewing Deputy Bustamante's cases, we also attempted to determine why his actions had not been detected earlier by our office. We found three factors which operated in concert to allow this to happen.

First is the fact that the cases were spread among many prosecutors, none of whom were aware of the other cases. With over 25 docket prosecutors to whom the cases were randomly assigned, and the turnover in those positions over the years, no one prosecutor saw more than a very few of the cases and it would not have been obvious that there was a problem with Deputy Bustamante's veracity in general.

The second is that the problems with Deputy Bustamante's cases were not obvious in the written reports, but required a review of the videos, some of which lasted well over an hour. Since most of the cases were misdemeanors, they were assigned to the prosecutors with the most cases and the shortest time in which to process them. There was simply not enough time to watch every minute of every video in every case. Our prosecutors, like most defense attorneys, relied on the written reports to make decisions concerning the disposition of cases.

Finally, our prosecutors gave a presumption of correctness to the reports they reviewed, much like a judge does at first appearance. Having reason to question the accuracy of the reports prepared by law enforcement is a fairly recent development.

### **RECOMMENDATIONS**

While the vast majority of law enforcement officers are honest, trustworthy individuals who do hard, and often dangerous work, we cannot ignore the fact that there have now been over a dozen Marion County deputy sheriffs who have been convicted, indicted, fired, demoted, suspended, or are currently under investigation for actions that involve, in part or in whole, false reports or testimony.

Accordingly, we make the following recommendations:

- Provide a copy of this report the Sheriff of Marion County and the FBI.
- Inform the Sheriff that we will not accept for prosecution any case wherein the testimony of Deputy Bustamante is required.
- Require all cases pending in the office wherein Deputy Bustamante is a witness be reviewed. Any case where Deputy Bustamante's testimony is not substantiated by independent evidence should be dropped.
- Provide a copy of this report to the Public Defender's Office and the President of the Marion County Criminal Defense Bar in order to comply with our ethical responsibility.