

CHITTENDEN COUNTY SHERIFF'S OFFICE



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STATE OF VERMONT
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MOTOR VEHICLE STOP NOVEMBER 22, 2019

1. Background

A formal complaint was filed with the Chittenden County Sheriff's Department by Amanda Cole on December 4, 2019. In that complaint, Ms. Cole contends that the Chittenden County Sheriff's Department and Deputy Sheriff Jeffrey Turner were involved in the "improper and discriminatory arrest of farmworker Luis Ulloa." The Complainant accuses the Department and Deputy Sheriff Turner of "rampant racism" and that Deputy Sheriff Turner acted out of "bias and violated the Fair and Impartial Policing policy" of the Department. The complaint suggests that there is "systematic discrimination being carried out by your officers".

While Ms. Cole's complaint does not identify the date of the alleged improper behavior, I am assuming that her complaint relates to the events of November 22, 2019 when Deputy Sheriff Turner was on an assigned DUI patrol and effectuated a motor vehicle stop on Interstate 89. In addition to the Complaint received by Ms. Cole, that event has triggered considerable public attention along with a demonstration that took place at the Sheriff's Department headquarters in South Burlington.

On Saturday, November 23, 2019, a Public Records Request was received by the Sheriff's Department from Will Lambek of Migrant Justice. That communication was the first indication that I received that any out-of-the-ordinary events had occurred the previous day. Consistent with the past practice of the Department, I advised Deputy Sheriff Turner to contact Norman Blais, the Department's attorney, in order to assist him in responding to the Public Records Request. That directive to Deputy Sheriff Turner was consistent with the past practice of the Department to secure Attorney Blais' assistance in responding to any substantive Public Records request.

On November 25, 2019, I responded to Mr. Lambek's Public Records request by providing him with a number of documents. In my communication with Mr. Lambek, I asked him to advise me if he felt there were any deficiencies in that response. I have not

heard from Mr. Lambek that he has a quarrel with the compliance with the Public Records request.

After complying with the Public Records request, I directed a senior member of my staff to speak with Deputy Sheriff Turner about the events of November 22nd. Because of the intervention of the Thanksgiving holiday, that meeting did not take place until December 2, 2019. After that interview, and being briefed about the interview, I determined, as a preliminary matter, that no disciplinary action against Deputy Sheriff Turner was warranted. However, I did indicate in a public announcement that I intended to conduct a full investigation into the matter. That commitment on my part was made before I received the formal complaint from Ms. Cole.

As part of my investigation, I directed Deputy Sheriff Turner to prepare a written report describing the events of November 22nd. That report was filed by Deputy Sheriff Turner on December 4, 2019. I had been made aware that there were two women involved in the events of November 22nd, and I directed another staff member to conduct interviews of these two witnesses. This staff member reports that one such witness failed to respond to his request to speak with him. The second witness, while initially open to an interview, no longer wishes to be involved in responding to an inquiry.

I also directed Attorney Blais to contact Mr. Lambek at Migrant Justice to secure his assistance in arranging interviews of the two men who were involved in the events of November 22nd. I am advised that Attorney Blais was informed by Mr. Lambek to direct any such inquiries to Attorney Robert Appel. I am further advised that Attorney Appel has indicated to Attorney Blais that he did not believe that the witnesses wish at this time to be interviewed regarding the events of November 22nd.

Therefore, despite my efforts to secure information from all persons involved in the events that occurred on Interstate 89 on November 22, 2019, the only first-hand information that has been made available to me is the written report from Deputy Sheriff Turner.

2. Fair and Impartial Policing Practices

On March 1, 2018, the Chittenden Sheriff's Department adopted a "Fair and Impartial Policing Policy" which was modeled on a policy prepared by the Vermont Criminal Justice Training Council. Those policies were implemented in response to 20 V.S.A. §2366. The stated purpose of the Department's policy is to require that all members of the Department "conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics or immigration status when making law enforcement decisions, and to reinforce processes and procedures that enable the Department and its employees to provide services and enforce laws in an equitable and impartial way."

In particular as relates to the events of November 22nd, the policy stresses that "[e]nforcement of civil immigration law is a federal responsibility and this Department and its employees should not engage in such enforcement except as otherwise outlined in this policy." Also, the policy is explicit with regard to the following – "Employees, agents and members of the Chittenden County Sheriff's Department have authority to enforce federal criminal law. Unauthorized border crossings by persons who are not U.S. citizens or nationals can be a federal crime." (Section IX)

3. Results of Investigation

The formal complaint filed in this matter accuses the Department and Deputy Sheriff Turner of egregious offenses – “racism”, “bias” and “systematic discrimination”. The Chittenden County Sheriff’s Department is a relatively-small law enforcement agency. Any such conduct by any of the deputies in the Department would eventually come to my attention. Deputy Sheriff Turner has been a commissioned deputy in the Department, and a certified police officer, for nine years. Never before has there been any complaint made against him from any source that would even suggest that he engages in the types of behavior of which he is accused in the complaint. The complainant, and members of the community, can rest assured that if any employee of this Department were found to have engaged in racist, biased or discriminatory behavior, that person would be summarily dismissed from his or her employment.

The question that remains, and which I will examine in this report, is whether the conduct of Deputy Sheriff Turner on November 22, 2019 was in violation of the Fair and Impartial Policing policy (hereinafter “FIP”). In that regard, the only information available to me is the written report of the deputy. That report discloses the following salient points:

A. The initial motor vehicle stop

Deputy Sheriff Turner was assigned to a DUI patrol on November 22, 2019. At approximately 7:45 p.m. on that evening, he was driving onto Interstate 89 in a marked sheriff’s cruiser. His intention was to travel southbound to Williston where he was to report for duty. Soon after he was on the Interstate, he was passed by a car traveling, according to a radar indication, at 88 miles per hour. The location where the car passed him is in the so-called “safety zone” where the speed limit is 55 miles per hour. Deputy Sheriff Turner followed the vehicle and noticed that it would periodically slow down and then speed up again, reaching speeds in excess of 85 miles per hour when it accelerated. He decided to engage the vehicle in a motor vehicle stop for speeding.

Section II of the FIP specifically provides that “all enforcement actions such as investigations, detentions, traffic stops, searches and seizures, etc. by law enforcement officers must be based on reasonable suspicion, probable cause, or other or relevant exigent circumstances supported by articulable facts, circumstances and conclusions that justify the given action.”

It is my determination that Deputy Sheriff Turner, based on his observations (confirmed by radar readings) that the vehicle was traveling faster than 80 miles per hour, had sufficient and reasonable grounds to effectuate a motor vehicles stop of the car. The speed at which the vehicle was traveling would have been sufficient to charge the driver with “excessive speed”, a criminal offense (see 23 V.S.A. §1097).

B. The detention awaiting federal intervention

After pulling over the speeding vehicle, Deputy Sheriff Turner approached the car and saw that it was occupied by four adults – a male in the driver’s seat and a female in

the front passenger's seat, with a male and female in the back seat. Officer Turner, who was wearing his assigned uniform, introduced himself and advised the occupants that he was a member of the Chittenden County Sheriff's Department. He asked the driver if he was aware of the reason for the deputy pulling over the car. The driver said "yes", prompting the officer to confirm that the driver had been speeding. The driver acknowledged that he was aware that he "was going a little too fast". Deputy Sheriff Turner then asked the driver for his license, as well as insurance and registration documentation. The driver responded by indicating that he did not have anything further to say to the officer.

While engaged in this discussion with the driver, Deputy Sheriff Turner noted that the two individuals in the back seat were averting their gazes from him, instead looking to their right outside the car window.

The officer explained to the driver that, since he was speeding at a rate in excess of thirty miles over the speed limit, he could cite the driver with a criminal charge. Deputy Sheriff Turner again asked for the requested documentation from the driver. He refused to respond.

Instead, the female passenger in the front seat began acting as a "spokesperson" for the driver. This person informed the officer that the driver did not have a driver's license, and that the car they were in did not belong to any of the occupants. The woman then indicated that she was uncertain as to where any documentation would be located.

One document which was handed over to Deputy Sheriff Turner by this woman passenger was a photocopy of a Mexican passport. When the officer asked about the photocopy, the woman explained that the driver was "here illegally" and was "out on bond."

Deputy Sheriff Turner then asked all occupants of the vehicle if any one of them had a valid driver's license that would enable that person to legally drive the car away from the scene. Again, the individuals in the back seat were silent and unresponsive to the officer's question. The female in the front seat then responded that none of the occupants had a valid driver's license.

Officer Turner at that point determined that he needed to secure information from all occupants regarding their identities. He was provided with names and dates of birth from the two female occupants. He already had the photocopy of a Mexican passport regarding the driver; a Mexican passport relating to the male in the back seat was given to him.

The officer ran a registration check which confirmed that the car was not registered to any of the occupants of the car.

Deputy Sheriff Turner at this point felt that he should contact the US Customs and Border Protection office in Swanton. He indicated that the reason for doing so was his concern that the situation presented a circumstance where an illegal border crossing or smuggling was in progress. The officer then indicated to the occupants that there would be a delay while awaiting the arrival of the federal officials. That delay was coincidental with the delay prompted by the need for a licensed driver to drive the car was from the scene. Eventually, a friend of one of the occupants arrived at the scene and thereafter drove the car away.

Upon the arrival of the federal officials, Deputy Sheriff Turner advised them of the circumstances presented by the stop of the vehicle. The federal officials questioned both

males, and eventually took the male in the back seat into custody. Deputy Sheriff Turner was advised by the Border Patrol agents that the person taken into custody was a “re-entry felon”, that he had previously been deported and had re-entered the United States illegally.

After the federal officials left the scene with the person whom they had taken into custody, and upon arrival of a person who had a valid license to drive, the remaining individuals left the scene of the stop.

Deputy Sheriff Turner decided that, instead of giving the driver a court citation for the criminal offense of “excessive speed” or a civil traffic ticket for speeding, he would instead give him an oral warning. The only action taken against the driver by the officer was the issuance of a civil traffic citation for “no license.”

The question for consideration is whether, consistent with the FIP, Deputy Sheriff Turner was justified in contacting the federal authorities and detaining the occupants until the Border Patrol agents arrived at the scene.

A number of provisions of the FIP need to be considered in responding to this question. Section III of the FIP, as relates to detentions, requires that a detention be “no longer than necessary to take appropriate action for the known or suspected offense”. Section VII provides that a deputy sheriff “may engage in efforts to identify any person who is detained, arrested, or who otherwise comes into the custody of the Department . . . [i]f the individual has already been stopped for a lawful purpose, the person may be subject to objectively reasonable additional detention in order to establish identity”. Section VIII provides that deputies may not “inquire of a person regarding that person’s immigration status unless such inquiry is necessary to an ongoing investigation of a criminal offense.” Section IX confirms that deputies “have authority to enforce federal criminal law. Unauthorized border crossings by persons who are not U.S. citizens or nationals can be a federal crime.” Finally, Section XI makes reference to the application of certain federal law to such situations – “Two federal statutes, 8 U.S.C. §§1373 and 1644, provide that local and state agencies and officials may not prevent or restrict their employees from communicating with other government officials (for example, ICE or CBP) regarding an individual’s ‘citizenship or immigration status’.”

It is my considered judgment that Deputy Sheriff Turner had sufficient justification to notify the US Border Patrol of the situation, to ask that the federal officials investigate the circumstances, and to detain the individuals until such time as the federal officials arrived at the scene of the stop. In making this judgment, I consider the totality of the circumstances presented to Deputy Sheriff Turner. He was dealing with stopping a vehicle traveling at a high rate of speed in the nighttime at a location within 40 miles of the US/Canadian border. The car was traveling southbound away from the border. Upon stopping the car, he was confronted with a driver who, while initially responsive to the legitimate questions posed of him by the officer, inexplicably became silent in response to further appropriate questioning. The behavior of the two individuals in the back seat of not looking at the officer, but instead looking away from him and not joining in any of the discussions, was also very suspicious. His initial questioning of the occupants about their identities was not designed to ask about immigration status, but instead to reasonably inquire as to whether there were any occupants who had a valid driver’s

license. Upon making such inquiry, he was informed that the driver was “here illegally” and a copy of a passport was given to the officer.

These circumstances provided Deputy Sheriff Turner with legally-accepted grounds to suspect that he was presented with a “human smuggling” or “human trafficking” situation, both of which involve federal criminal violations, not “civil immigration” law. Under the provisions of the FIP, Deputy Sheriff Turner is authorized to enforce such criminal laws. With that justifiable suspicion, he was further within the provisions of the FIP and state and federal law to seek assistance from federal authorities and to detain the occupants until the arrival of those federal authorities.

Subsequently, it was confirmed that Mr. Luis Ulloa-Hernandez , the male in the back seat of the vehicle, was amenable to a federal criminal charge (re-entry of removed alien, 8 U.S.C. §1326). The decision whether to prosecute him lies solely with the United States Attorney for the District of Vermont.

There is no evidence that supports the contention that Deputy Sheriff Turner’s purpose in dealing with the individuals in the vehicle (that he had lawfully stopped) was to enforce federal civil immigration law. Instead, the evidence supports the conclusion that his actions were solely intended to enforce Vermont traffic laws by making the initial stop for speeding, and thereafter to enforce the federal criminal laws relating to human smuggling/trafficking.

4. Conclusion

From the information made available to me, I have concluded that Deputy Sheriff Turner, during the course of his interactions with the occupants of the car that he stopped on Interstate 89 on November 22, 2019, acted in a manner consistent with the Department’s Fair and Impartial Policing Policy, as well as Vermont and federal law. Indeed, his conduct was a model of sound law enforcement practice and procedure.

DATED at South Burlington, this 17 day of January, 2020.


Kevin McLaughlin, Sheriff