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Myers, David

From: Barnett, Mike
Sent: Wednesday, August 10, 2016 3:32 PM
To: Myers, David
Subject: Gun Inquiry

Dave-

When the results of the inquiry you ordered are in, have Captain Adams-Hydar brief you and me on it simultaneously. Just the three of us.

Just schedule a meeting for as long as you think it will take for the three of us in my office. Hopefully it will be soon.

Thanks,

Mike Barnett
(858) 974-2295

MARCO
GARDINO
GUN
STUFF

Myers, David

From: Adams, Theresa
Sent: Tuesday, August 16, 2016 11:49 AM
To: Myers, David; Barnett, Mike
Subject: Update on CAL DOJ request

Update on a recent request.

Contact was made with Bureau of Firearms CAL DOJ as requested. An initial inquiry yielded a response from AFIS indicating there were **more than** 150 transactions (unspecified time frame) which would require us to request all information manually. We have placed a phone call to our contact to determine how long this may take. I will let you know when I have more information. A request this large and detailed will require the DOJ Commander to be notified. Please call me with any questions, concerns or direction.

Theresa Adams-Hydar, Captain
Special Investigations Division
San Diego Sheriff's Department

Marco Garino
Gun requests

18

Myers, David

From: Barnett, Mike
Sent: Tuesday, August 16, 2016 12:26 PM
To: Adams, Theresa
Cc: Myers, David
Subject: Re: Update on CAL DOJ request

Let's talk about this face to face before proceeding.

Mike

On Aug 16, 2016, at 11:49 AM, Adams, Theresa <Theresa.Adams@sdsheriff.org> wrote:

Update on a recent request.

Contact was made with Bureau of Firearms CAL DOJ as requested. An initial inquiry yielded a response from AFIS indicating there were **more than** 150 transactions (unspecified time frame) which would require us to request all information manually. We have placed a phone call to our contact to determine how long this may take. I will let you know when I have more information. A request this large and detailed will require the DOJ Commander to be notified. Please call me with any questions, concerns or direction.

Theresa Adams-Hydar, Captain
Special Investigations Division
San Diego Sheriff's Department

MANO GANNO
GUN

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Myers, David

From: Myers, David
Sent: Friday, August 26, 2016 1:37 PM
To: Barnett, Mike
Subject: RE: Meeting with Asst. Sheriff Barnett 8-25-16

Thank you for further clarity.

However, I feel compelled in my role to say I'm very un-easy with the abnormal process going forward with this particular case and the dangerous perception it could set for future employee investigations. The very reason we do investigations is to prove or dis-proven the requisite criminal predicate. In the words of the experts who deal in gun transaction issues "anything over 10 is unusual." As I indicated to you previous, this case has over 150 and potentially more. In my over 30 years of experience, we have opened criminal investigations on far less, tolling the admin investigation.

I understand your decision, the decision of the Sheriff and Undersheriff, and will respect that decision and carry on the mission. I just feel very strongly, that in my position, I had to document my observations and opinion.

Dave

-----Original Message-----

From: Barnett, Mike
Sent: Friday, August 26, 2016 1:24 PM
To: Myers, David
Subject: RE: Meeting with Asst. Sheriff Barnett 8-25-16

Essentially correct. But it will be handled as a human resources issue, not necessarily by the Human Resource Services Bureau.

Also, there is no evidence of any criminal wrongdoing and therefore no reasonable suspicion basis for the requisite criminal predicate to proceed further. Should that change, we will react accordingly.

Thank you for the opportunity to provide clarification.

-----Original Message-----

From: Myers, David
Sent: Friday, August 26, 2016 1:12 PM
To: Barnett, Mike
Cc: Myers, David
Subject: Meeting with Asst. Sheriff Barnett 8-25-16

Mike

This email is to document our meeting yesterday regarding findings I had made you aware of involving a command level Sheriff's Department person. As previously agreed upon, I won't mention the employees name in this email but the subject matter as stated in previous emails does involve what appears to be several hundred firearm transactions.

My understanding based on your statement: the Sheriff, and Undersheriff decided the matter, potentially criminal, would be handled administratively. When I inquired if Sheriff's Internal Affairs would handle, you said "no" but it would

be handled administratively by Human Resources. I again clarified because in my years of experience never heard of such a process, clarifying Internal Affairs would not be handling? You said "that's all you need to know."

David Myers, Commander
San Diego Sheriff's Department
Law Enforcement Services Bureau

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COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

February 1, 2017

TO: Mark P. Elvin, Undersheriff

FROM: Michael R. Barnett, Assistant Sheriff
Law Enforcement Services

Disciplinary Recommendation and Rationale for Captain Marco Garmo #2217

RE: Internal Affairs Case 2016-168.1

RECOMMENDATION

I have reviewed the investigation prepared by Sergeant Jeff Lauhon of the Internal Affairs (IA) Unit which I received on January 23, 2017. Sergeant Lauhon sustained on a charge that Captain Garmo violated the law when he sold and privately transferred more guns than the law permits.

Sergeant Lauhon's investigation was thorough and fair and there is a preponderance of evidence to believe the alleged misconduct occurred. In reviewing the investigation and recordings, I have found no evidence of bias or ill will by Sergeant Lauhon. Captain Garmo's actions were independent of any order given by a superior.

I concur with the findings of IA. As a result of this sustained misconduct **I recommend Captain Garmo receive a written reprimand.**

RATIONALE

The facts of this case are not in dispute. During calendar years 2014, 2015, and 2016, Captain Garmo sold or privately transferred more firearms than the law permits.

Three California Penal Code sections are relevant in the analysis of how many firearms a person may "sell, lease, or transfer." PC 26500(a) states that no person may "sell, lease, or transfer firearms" unless that person has been issued the appropriate license to do so. PC 26520 states that the ban prescribed in PC 26500(a) does not apply to the "infrequent sale, lease, or transfer of firearms." PC 16730(a) defines "infrequent" as "less than six transactions per calendar year." In other words, a person who does not have a license to sell firearms may sell up to five handguns per year without breaking the law.

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Captain Garmo sold eleven (11) handguns in 2014, eight (8) handguns in 2015, and 25 handguns in 2016. Captain Garmo has no sort of firearms dealer's license. Therefore Captain Garmo violated the law with his firearms transactions.


It is worth noting that when this information came to the attention of the San Diego Sheriff's Department, the Sheriff immediately referred the matter to the California Department of Justice (DOJ), Division of Law Enforcement, Bureau of Firearms, for an independent criminal investigation. DOJ Special Agent Peter Tuttle was assigned the investigation and he authored a report which he submitted to the San Diego District Attorney's Office for prosecution. Ultimately, The District Attorney's Office declined to prosecute but opted instead to send Captain Garmo what amounts to a Cease and Desist letter. Captain Garmo's conduct was investigated and analyzed by two independent agencies.

On February 1, 2017, at 1400 hours, I met with Captain Garmo in my office. Captain Garmo was not accompanied by an employee representative. The purpose of this meeting was for Captain Garmo to offer any information he desired for my consideration regarding the findings in this case and for any resultant disciplinary recommendation.

I did not record the meeting with Captain Garmo. He essentially told me his gun transactions were a hobby of his. He was ignorant of the intricacies of the law as outlined above. He assured me he will not make the same mistake again and will be diligent to keeping his firearm transaction in compliance with the laws in California.

There are several factors to consider when deciding on the appropriate level of discipline in this case. On the one hand, Captain Garmo is a tenured command level law enforcement officer who certainly had the ability to educate himself regarding the state of the law surrounding the sale or transfer of firearms. Captain Garmo's actions have exposed his misconduct to outside law enforcement agencies and brought discredit upon himself and the San Diego Sheriff's Department. Simply stated, ignorance of the law is not an excuse. It is appropriate and necessary that law enforcement officers are held to a very high standard in this regard.

On the other hand, the laws in California surrounding firearms are complex and confusing. The DOJ has specially trained investigators to handle such cases. Captain Garmo did seem to be truly ignorant of the law. I believe he made a good faith, even if mistaken, effort to follow the law since he processed all his transactions through licensed dealers. A reasonable person would conclude that if such a sale or transfer were illegal the various processes the sale goes through during the mandatory waiting period would preclude the transfer or sale from completing.

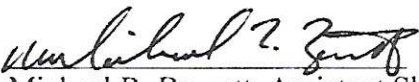
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I believe Captain Garmo's assertion that his sales and transfers were done as a collector and not for profit. He has cooperated with this investigation and he is fully aware of what the ramifications of a criminal prosecution would be for his exemplary career.

I considered a range of disciplinary options in analyzing this case. I believe that even informal discipline such as counseling would correct this behavior. In fact, I have no doubt whatsoever now that Captain Garmo is aware of the law in regard to firearms transactions, he will never again engage in this conduct. There are other issues to consider. Captain Garmo should have known that the complex statutory scheme surrounding the purchase, sale and transfer of firearms, particularly in California, require great care to make sure those involved with firearms transactions are obeying the law. As a senior law enforcement official he has numerous resources at his disposal to educate himself on the law. A private citizen would not be able to claim ignorance of the law as an excuse. Neither can Captain Garmo.

Alternatively, higher forms of discipline such as a suspension were also considered. Captain Garmo has no record of prior discipline, is an exceptional employee, has taken complete responsibility for his actions, and has resolved to exercise greater care in the future to avoid these situations. His services as the commanding officer of one of our largest stations are vital and a suspension from duty would not accomplish anything more than a formal reprimand other than depriving the people of San Diego County his valuable services for a period of time.

This mistake on the part of Captain Garmo needs to be reprimanded and therefore I am respectfully recommending he be issued a written reprimand for his conduct.



Michael R. Barnett, Assistant Sheriff
Law Enforcement Services

2/1/2017
Date

MRB:mrp

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TO 


ENDORSEMENTS:


Mark P. Elvin, Undersheriff

Date 2-2-17

Approve Disapprove

Comments:

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San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William D. Gore, Sheriff

February 1, 2017

Morad M. Garmo
4780 Lee Avenue
La Mesa, CA 91942

Dear Captain Garmo:

WRITTEN REPRIMAND - IA #2016-168.1

I hereby order this letter of reprimand be placed in your departmental disciplinary file for the reasons stated below:

Violation of the San Diego County Sheriff's Department Policy & Procedure Manual, Rules of Conduct, Section:

2.6 Conformance to Laws as it relates to California Penal Code §26500(a)


In that: During calendar years 2014, 2015, and 2016, you frequently sold and privately transferred more handguns to other parties per year than legally allowed per California State Law. You sold eleven handguns in 2014, eight handguns in 2015, and twenty-five handguns in 2016. Department of Justice records reflect these transactions, and you stipulated to the accuracy of those records. Your actions resulted in a criminal investigation by the California Department of Justice and a subsequent review by the San Diego District Attorney's Office.

Although the District Attorney's Office declined to prosecute, selling more than five handguns per calendar year is in violation of California State Penal Code § 26500(a). Violating the law brings discredit to you, to the Department, and to the law enforcement community. I expect you to follow the law, and in doing so uphold the highest virtues of this Department, the County of San Diego, and the law enforcement community.

Written Reprimands cannot be appealed to the Civil Service Commission. However, two other forms of appeal are available, from which you may choose.

- Within thirty (30) days after receipt of the reprimand, the employee may submit a written appeal for consideration to the fourth level supervisor, providing evidence that would refute the allegation(s) and /or mitigate the discipline.

Keeping the Peace Since 1850

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Written Reprimand IA Case #2016-168.1.
Captain Morad M. Garmo
February 1, 2017

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AND/OR

- Within forty-five (45) days after receipt of the reprimand, the employ may pursue an appeal through the grievance procedure as outlined in the Memorandum of Agreement applicable to your classification. Such appeal must be in writing. Please refer to Civil Service Rule VII-Discipline, §7.3(c).


Sincerely,

WILLIAM D. GORE, SHERIFF



Mark P. Elvin. Undersheriff

WDG:MPE:jml

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TO 

JESUS RODRIGUEZ
ASSISTANT DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

<http://www.sandiegoda.com>

BONNIE M. DUMANIS
DISTRICT ATTORNEY

February 23, 2017

Captain Marco Garmo
San Diego County Sheriff's Department
Rancho San Diego Station
11486 Campo Rd.
Spring Valley, CA 91978

Dear Captain Garmo,

Under California law, unlicensed sellers are limited to participating only in the "infrequent" sale, lease, or transfer of firearms. (California Penal Code sections 26500, 26520). For handguns, "infrequent" means less than six transactions per calendar year. For firearms other than handguns, "infrequent" means "occasional and without regularity." (California Penal Code section 16730).

The California Department of Justice has made us aware that in the years 2014-2016, you sold firearms as an unlicensed private citizen in excess of what state law allows. Specifically, records indicate that in 2014 you sold 11 firearms; in 2015, you sold 8; and in 2016 you sold 28 firearms.

Because there is no evidence of a profit motive or an attempt to circumvent the handgun roster laws, and because all transactions involved legal firearms and went through a licensed dealer, we are electing to exercise our prosecutorial discretion not to file charges for the excessive gun sales at this time. However, this letter should serve as notice to you of the legal limits for purposes of your future firearms transactions. Should you exceed the legal limit in the future, you will face criminal prosecution.

If you have any questions or concerns, please do not hesitate to contact me at (619) 515-8182.

Sincerely,



Laura M. Gunn
Deputy District Attorney
Special Operations Division