

Melbourne Village Police Department
Automated Law Enforcement Incident Report

INCIDENT DATA

Incident Type: **CRUELTY TO ANIMALS 8281(1). DISCHARGE OF A FIREARM WITHIN CITY LIMITS CITY OF**
 Address of Occurrence: **5625 LIVE OAK CIRCLE** 99, 51
Melbourne Village, Florida 32904

How Received: **RADIO** Arrival Time: **1837 HRS**
 Type of Premise: **RESIDENCE-SINGLE FAMILY** Time of Call: **1835**

Occurred From: **11/20/2009 1835 HRS** To: **11/20/2009 1915 HRS**
 Date Reported: **11/20/2009** Domestic: **No**
 Time Reported: **1835 HRS** Complaint Status: **ACTIVE**
 Officer Assaulted or Killed: **No** Arson Related: **No**
 Weapon or Objects Used: **FIREARM** Officer Injured: **NO**
 Reporting Officer: **Officer Mike Schrum** Car Number: **2**

REPORTING PARTY

Name: **WILLIAMS, MARGARET W**
 Race: **WHITE** Sex: **FEMALE** Place of Birth: **UNK**
 Marital Status: **UNKNOWN**

Name: **LESTER JR, RALPH R**
 Race: **WHITE** Sex: **MALE** Place of Birth: **UNK**
 Date of Birth: **06/05/1932** Age: **77** SSN: **240-40-7503** Marital Status: **MARRIED**
 Home Address: **5625 LIVE OAK CIRCLE Phone: 213-1887 (321)**
MELBOURNE VILLAGE, FL 32904
 Occupation: **RETIRED**

NARRATIVE

On the above date and time I responded to the above address in reference to alleged animal cruelty. Upon arrival I made contact with Margaret Williams who advised me that she heard what she thought was a cat screaming next door and then approximately five pops like a gun. She then stated that she has a cat that got out of her yard last night described as a fat black cat named Harry. I advised her that I would go next door and do some investigation and let her know what I had found.

I then responded next door and was met by Robert Lester in his driveway. Lester stated that he and his wife heard what he thought was a pig and saw the animal and described it as a large black pig. He then stated that he fired a .22 caliber gun and struck the pig. The animal was lying on the edge of Lesters driveway bleeding from the mouth but alive. I immediately went next door and advised Williams that it was her cat that had been shot. Williams responded with me back to the residence to retrieve her cat and take him to the animal hospital. Before Williams left I advised her that I was not going to arrest Lester tonite and that she should take the night to calm down and make a decision on whether or not she wanted to pursue charges against him when she was not in an emotional and angry state.

After Williams left I spoke more with Lester and advised him that there may be charges against him for cruelty to animals and discharging a firearm within city limits. He stated that he has been having so many problems with pigs tearing his yard up and he was in fear for his wifes safety because he thought it was a pig and they had been terrorizing him and his wife. I explained to him this was a cat and that it was not going to terrorize him nor his wife. I also explained to him that if there were no criminal charges filed against him at the least he would be responsible for doctors fees and he was going to have to make a monetary restitution to Williams for the injuries he had caused to her cat. This case is still pending.

Reporting Officer: Ofc. [Signature] 803

Supervising Officer: _____

Reviewing Officer: SGT-T. SMITH

Date Printed: 11/21/2009

Your Town Police Department
Supplementary Investigative and/or Disposition Report

Time Printed: 7:02:48PM

1 of 2

Complaint Number: 9111925

SUPPLEMENTAL DATA

Reclassification:

Date and Time of Report: 11212009 1810 HRS Case Status: ACTIVE
Reporting Officer: Officer Ryan Pill

ORIGINAL INCIDENT DATA

Incident Type: CRUELTY TO ANIMALS 8281(1) DISCHARGE OF A FIREARM WITHIN CITY LIMITS CITY ORDINANCE 99 S 1

Address of Occurrence: 5625 LIVE OAK CIRCLE
Your Town, Your State 32904

How Received: RADIO Arrival Time: 1837 HRS UCR Code:
Type of Premise: RESIDENCE-SINGLE FAMILY
Occurred From: 11/20/2009 1835 HRS To: 11/20/2009 1915 HRS

WITNESS

Name: HAGERMAN, TOM
Race: WHITE Sex: MALE Place of Birth: UNK
Marital Status: UNKNOWN
Home Address: 0 UNK Phone: 951-8395 (321)
MELBOURNE VILLAGE, FL 32904
Occupation: UNK

NARRATIVE

On 11/21/2009 at approximately 1810 hours, I was called by Mr. Tom Hagerman, who is a neighbor of Robert Lester, at Melbourne Village Police Department in reference to Margaret Williams' cat being shot.

Mr. Hagerman advised me, he has information about the above incident and would come in on Monday to give his statement after Lester gives his statement because he does not want Lester to know about him giving a statement. He then asked me if it was illegal to shoot a firearm of in the city limits. I advised Mr. Hagerman it is illegal. He asked me if Lester was charged with a felony would he get his guns taken in to custody. I advised the guns would be.

No further action was taken by this officer.

MELBOURNE VILLAGE POLICE DEPARTMENT
AFFIDAVIT

State of Florida, County of Brevard;

MARGARET WETZEL WILLIAMS

First

Middle

Last

Being first duly sworn, deposes and says, that in the
Town of Melbourne Village at;

5625 Live Oak Ln Merriville.

(address where offense occurred)

at 6 AM, on FRI NOV 20, 2009

I HEARD A LOW METALLIC BANG THEN A LOW CAT
SCREAM FOLLOWED BY 5 MORE BANGS EACH W/
ANOTHER LOW CAT SCREAM, ^{THEN ANOTHER METALLIC BANG,} THEN QUIET. I
WENT OUT SIDE OVER TO THE LESTER PROPERTY
AND YELLED "WHAT IS GOING ON OVER THERE LESTER?
I AM CALLING THE POLICE." WHICH I DID. WHILE
WAITING FOR AN OFFICER TO ARRIVE I SPOKE WITH
A NEIGHBOR ACROSS THE STREET FROM THE LESTERS.
HE ASKED ME IF I HEARD THE WHOLE THING, I
SAID I DIDNT KNOW. HE PROCEEDED TO TELL ME
WHAT HE HEARD. ~~ESTER~~
THE OFFICER ARRIVED, I TOLD HIM MY CONCERNS, AND
THAT THE CAT COULD BE MINE - BIG AND BLACK. HE
RETURNED FROM LESTERS, TOLD ME IT WAS MY CAT.
I WENT W/ HIM, MR LESTER TOLD ME HE WAS
VERY SORRY HE THOUGHT HARRY WAS A PIG.
I MANAGED TO CATCH HARRY, HE WAS DRAGGING
HIS LEGS BUT MOVING THROUGH THE FOLIAGE.
I PUT HIM IN A CRATE AND LEFT W/ MR LESTER
SAYING HE WAS SORRY, LOVED ANIMALS. I TOOK HARRY
TO THE HOSPITAL. HE IS ALIVE BUT CRITICAL.

Margaret W. Williams

Affiant's Signature

Sworn to and Subscribed Before me
this 21 Day of Nov 2009

DET. T. SWAN
Notary Public, State of Florida

[Signature]
Law Enforcement Officer (F.S. 943.01)

F
V
F
S

Enforcement Only Below This Line

Case # 09-11-1925 Page 1 of 1

MELBOURNE VILLAGE POLICE DEPARTMENT
AFFIDAVIT

State of Florida, County of Brevard;

ROBERT THOMAS HABERMAN

First

Middle

Last

Being first duly sworn, deposes and says, that in the
Town of Melbourne Village at;

5625 LIVE OAK AVE

(address where offense occurred)

at 6-7 ^{AM} ~~PM~~, on NOVEMBER 20, 2009

Friday November 20 2009 Between 6PM and 7PM

I was outside our screen porch. Heard loud noise followed by distressed
cry from a cat. Noise came from several directions of the lot. I
walked to the end of our driveway. Heard multiple loud noises each
followed by a cry from a cat. Noises were coming from the vicinity of
the lotter's driveway. Could not see who made the noises or the cat. Heard
Magnet very "loster" what's going on over there? I'm calling the police"

Robert Thomas Haberman

Affiant's Signature

Sworn to and Subscribed Before me
this 2 Day of DECEMBER 2009

Notary Public, State of Florida
SP. 5 - G.M. 82
Law Enforcement Officer (F.S. 943.01)

Law Enforcement Only Below This Line
Case # 09-11-00 Page 1 of 1

MELBOURNE VILLAGE POLICE DEPARTMENT

CASE# 9111925

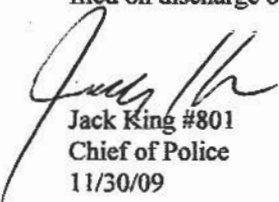
11/30/2009 This case was reviewed including an interview of the complainant who requests to pursue this complaint. She stated to me that she felt that Mr. Lester trapped the cat in a cage and attempted to dispatch the animal. She previously made a written statement that is filed with this case.

I spoke to Mr. Lester who stated that he did not trap this animal and he does at times trap raccoons, that he later frees in the woods. Mr. Lester continued his version of this event as reported in the initial response by Officer Schrum. He was in fear for his family from wild pigs and took action to protect his home. The 22 rifle used in this incident was confiscated and placed into the property room.

I contacted Sergeant Robinson from Brevard Animal Services and Enforcement Department. The sergeant advised me that Mr. Lester has in the past contacted them about wild pigs and his concerns. The sergeant also ventured his opinion that based on his experience and training and facts presented, that this is not an animal cruelty case. The reasons are: 1. Mr. Lester has complained in the past about wild pigs. 2. He thought he was shooting at a pig. 3. Pigs are not a protected class. 4. He has a right to protect his property. The sergeant also was of the opinion that the complainant failed to control her animal and subjected it to rabies which could actually be spread by the pigs. Sergeant Robinson contacted the complainant and explained this to her.

It should be noted at this point that this department has in the past received complaints of wild pigs in the area.

This case is complete and is being sent to the State Attorney for review and a decision if charges are to be filed on discharge of a weapon and cruelty to animals.

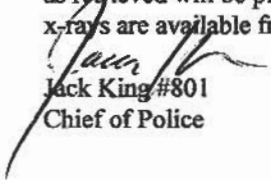


Jack King #801
Chief of Police
11/30/09

12/3/09 By request of State Attorney, this office took a written statement from Robert Hagerman, 5610 Live Oak Dr., Melbourne Village. 321-951-8395. Statement enclosed.

Village Code 12-21 is also provided which makes it unlawful to discharge a weapon and Section 1-9 of the Village code which provides for the punishment for this offense.

Records of treatment of Feline also attached. Only one small bullet fragment was recovered which as soon as retrieved will be placed into property room by this department. The other bullets remain in the body but x-rays are available from the complainant.



Jack King #801
Chief of Police

**Your Town Police Department
Supplementary Investigative and/or Disposition Report**

SUPPLEMENTAL DATA

Reclassification:

Date and Time of Report: **12112009 1828 HRS** Case Status: **ACTIVE**
Reporting Officer: **Officer Mike Schrum**

ORIGINAL INCIDENT DATA

Incident Type: **CRUELTY TO ANIMALS 8281(1) DISCHARGE OF A FIREARM WITHIN CITY LIMITS CITY ORDINANCE 99 S 1**

Address of Occurrence: **5625 LIVE OAK CIRCLE**
Your Town, Your State 32904

How Received: **RADIO** Arrival Time: **1837 HRS** UCR Code:
Type of Premise: **RESIDENCE-SINGLE FAMILY**
Occurred From: **11/20/2009 1835 HRS** To: **11/20/2009 1915 HRS**

NARRATIVE

This supplement is in reference to Cruelty to Animals and Discharging a Firearm within City Limits. Upon my arrival to Williams home I do not recall her saying that Lester was trapping animals on his property. However, I did see two or three green traps on his property. One trap was approximately ten to fifteen yards from where the cat was lying. I did not examine the traps and did not notice any blood trails from the cat to the trap. The only blood I did see was a small pool where the cat was lying just before it took off into the woods when Williams was trying to catch it with a blanket. Lester did state to me that he did not use the trap to catch the cat.

Reporting Officer: _____

Supervising Officer: _____

Reviewing Officer: _____

**Your Town Police Department
Supplementary Investigative and/or Disposition Report**

SUPPLEMENTAL DATA

Reclassification:

Date and Time of Report: 12112009 1828 HRS Case Status: ACTIVE
Reporting Officer: Officer Mike Schrum

ORIGINAL INCIDENT DATA

Incident Type: CRUELTY TO ANIMALS 8281(1) DISCHARGE OF A FIREARM WITHIN CITY LIMITS CITY ORDINANCE 99 S 1

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Reporting Officer: _____

Supervising Officer: _____

Reviewing Officer: _____

OFFICE OF THE STATE ATTORNEY

EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA
BREVARD AND SEMINOLE COUNTIES

Viera Office
2726 Judge Fran Jamieson Way
Bldg. D
Viera, FL 32940
(321) 617-7510

Titusville Office
400 South Street
Titusville, FL 32780
(321) 284-6033

Seminole County Office
101 Bush Blvd.
P.O. Box 8008
Sanford, FL 32772-8008
(407) 685-6000

Seminole Juvenile Center
190 N. Bush Blvd.
Sanford, FL 32773
(407) 663-3454

NORMAN R. WOLFINGER
STATE ATTORNEY



Viera

December 18, 2009

Chief Jack King
Melbourne Village Police Department
555 Hammock Road
Melbourne Village, Florida 32904-2513

Re: MVPD Case No.: 9111925

Dear Chief King:

Thank you for forwarding your investigation to this office for review. Based upon the facts contained in that investigation; the applicable law; and input from Brevard Animal Services Enforcement Officer Sgt. Robinson, it is the conclusion of this office that there is insufficient evidence to support a successful prosecution for any criminal charge.

As the investigation revealed, there is a documented history of problems with hogs in the area and of Mr. Lester's efforts to protect his property from damage; animal control confirmed that a hog is classified as a nuisance animal and that a property owner may shoot a hog to eliminate that nuisance on their private property without first obtaining a license or permit; the Melbourne Village City Ordinance allows a homeowner to discharge a firearm within the city limits to protect a "person or property"; an animal trapper confirmed that there are hogs in the area as small as 20 pounds in weight; and lighting was poor at the time of the incident. Under these circumstances, there is insufficient evidence to overcome Mr. Lester's claim that he believed that he was shooting at a hog and that he had no intention of harming his neighbor's cat.

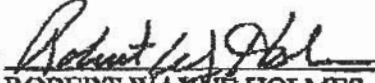
Mr. Lester's words and actions after the incident also support his claim that harming a cat was never intended. Mr. Lester acknowledged his mistake to his neighbor and the police; he advised his neighbor that he would pay for the veterinary bill for the treatment of the cat; the cat's owner advised Mr. Lester of the amount of the outstanding bill; and Mr. Lester has provided proof of payment of \$6,372.50 to the Animal Specialty and Emergency Hospital.

Chief Jack King
December 18, 2009
Page 2

Should you have any questions concerning the decision of this office, please do not
hesitate to contact me.

Sincerely,

NORMAN R. WOLFINGER
STATE ATTORNEY

BY: 
ROBERT WAYNE HOLMES
ASSISTANT STATE ATTORNEY
CHIEF OF OPERATIONS

RWH:clr

MELBOURNE VILLAGE POLICE DEPARTMENT

PROPERTY RECEIPT

555 HAMMOCK RD
MELBOURNE VILLAGE, FL 32904
(321)725-7224

PROPERTY OF DECEASED FOUND PROPERTY TRIAL LABORATORY EVIDENCE STOLEN/RECOVERED

CASE NUMBER 79-11-001925	DATE 11-23-09	LOCATION WHERE STORED MVPD	INVENTORY # 1	TYPE OF CASE FIREARM DISCHARGE		
ADDRESS WHERE PROPERTY IMPOUNDED FROM 5625 LIVE OAK MELBOURNE VILLAGE FL 32909				RACE W	SEX M	DOB
DISCOVERED BY (NAME)		ADDRESS			PHONE #	
OWNERS/SUSPECT (NAME) RALPH LESTER SR		ADDRESS 5625 LIVE OAK MELBOURNE VILLAGE			PHONE #	

ITEM NO.	QUANTITY	DESCRIPTION
1	1	MARLEN FIRE ARMS MODEL 987 T w/ SCOPE BLACK
<i>[Large handwritten signature across the table]</i>		

COMMENTS PERTAINING TO CASE:

I HEREBY ACKNOWLEDGE THAT THE ABOVE LIST REPRESENTS ALL PROPERTY TAKEN FROM MY POSSESSION AND THAT I HAVE RECEIVED A COPY OF THIS RECEIPT.
X *[Signature]*

I HEREBY ACKNOWLEDGE THAT THE ABOVE LIST REPRESENTS ALL PROPERTY IMPOUNDED BY ME IN THE OFFICIAL PERFORMANCE OF MY DUTY AS A POLICE OFFICER.
X *[Signature]* ID # *[ID Number]*

RECEIVED BY:	REASON:	DATE AND TIME RECEIVED: