

**VOLUSIA SHERIFF'S OFFICE
INTERNAL AFFAIRS**

REPORT OF INVESTIGATION

REPORT NUMBER: IA 20-007

PERIOD COVERED: May 16, 2020
DATE REPORTED: May 17, 2020
SUBJECT NAME: Lieutenant James Day #2468
INVESTIGATING OFFICERS: Lieutenant Justin G. Sawicki #7179

BASIS FOR INVESTIGATION:

On May 26, 2020, Sheriff's Office Command Staff received a supervisor's inquiry drafted by Captain Paul Kammerer; the subject of the inquiry was Lieutenant James Day regarding alleged negligent behavior and knowledge of official directives in regards to a block party at 710 West Cincinnati Avenue, DeLand. The block party occurred on May 16, 2020.

OFFENSES:

This investigation is relevant to an alleged violation of Department Standards Directives and Volusia County Merit Rules and Regulations:

Volusia County Merit System Rules and Regulations 86-453. *This violation may be sufficient grounds for disciplinary action ranging from oral reprimand to dismissal, depending on the seriousness of the offense and other circumstances related to the situation.*

RE:

- (2) Disregard for or frequent violations of county ordinances, departmental policies and regulations, including safety rules.
- (5) Violation of any reasonable or official order, refusal to carry out lawful and reasonable directions given by a proper supervisor, or other acts of insubordination.
- (14) Any conduct, on or off duty, that reflects unfavorably on the county as an employer.

(22) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

26.2.5 Neglect of duty offenses include any act, failure to act or instance wherein an employee ignored, paid no attention to, disregarded, failed to care for, give proper attention to or carry out the duties and responsibilities of their position whether through carelessness, oversight or neglect.

26.2.33 Inattention to Duties, Loafing, Sleeping - Employees shall be attentive to job duties and shall not neglect work by inattention, loafing, or sleeping while on duty.
(Violation subject up to a 1 day suspension.)

26.2.41 Negligence Associated with Safety of Persons or Property - Employees shall be attentive to job duties and shall not violate official Directives, orders, supervisory instructions, or knowingly refrain and cause another to refrain from the performance of lawful duties required for the safety of persons or property.
(Violation subject up to a demotion.)

26.2.42 Endangering Others Through Neglect -Deputies shall take appropriate action in response to:

- A. Emergency situations where there is a known danger to the lives of others;
 - B. In response to serious crimes. Particularly those of violent nature, which come to their attention on or off duty.
- (Violation subject up to dismissal.)*

26.2.44 Cowardice - Deputies shall perform their required duties and shall not avoid such duties because of fear, lack of courage or resoluteness. Deputies are not expected to enter imminently hazardous situations without assistance; however, they shall not fail to come to the aid of another member of the VSO who is already engaged in a hazardous situation.
(Violation subject up to dismissal)

INVESTIGATIVE SUMMARY:

On May 27, 2020, Chief Deputy Joseph Gallagher assigned the above incident to the Internal Affairs Unit. This report details the internal affairs investigation conducted by Lieutenant Justin Sawicki.

On May 28, 2020, Lieutenant Sawicki served Lieutenant Day with a Notification of Internal Investigation memorandum along with his Law Enforcement Officer's Bill of Rights at the District Two Substation in DeLand, FL. *(See Tab B for Official Correspondence)*

Lieutenant Sawicki reviewed Captain Kammerer's Supervisor's Inquiry memorandum. The following is a summary of the memorandum:

On May 12, 2020, information was received that there was an unsanctioned/unpermitted block party scheduled for May 16, 2020 at 710 West Cincinnati Avenue, DeLand. The intelligence received indicated large crowds were expected to gather; furthermore, a large after party was scheduled to occur at 901 South Adele Avenue, DeLand. Lieutenant Day was initially scheduled to work on Saturday May 16 and Sunday May 17, 2020, from 0700 hours to 1700 hours each day. It was later determined Lieutenant Day would report to work later in the day on May 16, 2020, to act as incident commander for the block party.

Captain Kammerer determined that Lieutenant Day “...neglected his duties as the Operational Commander related to the planned law enforcement response to manage and control all aspects of the unsanctioned block party event.” Lieutenant Day did not provide clear directions to his subordinates, thus causing a fellow lieutenant to address the incident. At approximately 1700 hours Lieutenant Day turned over incident command to Lieutenant Cody Cochran. However, Lieutenant Day remained in the area until approximately 2100 hours and then returned to the DeLand area at 2300 hours, without advising Lieutenant Cochran of his returning and re-establishing incident command. When Lieutenant Day returned, a large disturbance occurred involving a firearm. Lieutenant Day sought “refuge” in the command post in lieu of responding to the scene as the incident commander. This placed an undue burden on Lieutenant Cochran as he already had operational responsibility to the entire county as Watch Commander. Lieutenant Day’s inactions caused Lieutenant Cochran to respond back to DeLand and take command of a volatile incident. (See Tab C for the Supervisor’s Inquiry)

Prior to conducting this investigation in full Lieutenant Day tendered his resignation on June 11, 2020. Sheriff Chitwood accepted Lieutenant Day’s resignation.

CONCLUSION:

After review, the Sheriff determined the violation of the below listed department policies to be:

Volusia County Merit System Rules and Regulations 86-453:

- | | |
|--|------------------|
| (2) Disregard for or frequent violations of county ordinances, departmental policies and regulations, including safety rules. | Sustained |
| (5) Violation of any reasonable or official order, refusal to carry out lawful and reasonable directions given by a proper supervisor, or other acts of insubordination. | Sustained |
| (14) Any conduct, on or off duty, that reflects unfavorably on the county as an employer. | Sustained |

(22) Any other conduct or action of such seriousness that disciplinary action is considered warranted. **Sustained**

26.2.5 Neglect of duty offenses include any act, failure to act or instance wherein an employee ignored, paid no attention to, disregarded, failed to care for, give proper attention to or carry out the duties and responsibilities of their position whether through carelessness, oversight or neglect. **Sustained**

26.2.33 Inattention to Duties, Loafing, Sleeping - Employees shall be attentive to job duties and shall not neglect work by inattention, loafing, or sleeping while on duty. **Sustained**
(Violation subject up to a 1 day suspension.)

26.2.41 Negligence Associated with Safety of Persons or Property - Employees shall be attentive to job duties and shall not violate official Directives, orders, supervisory instructions, or knowingly refrain and cause another to refrain from the performance of lawful duties required for the safety of persons or property. **Sustained**
(Violation subject up to a demotion.)

26.2.42 Endangering Others Through Neglect -Deputies shall take appropriate action in response to: **Sustained**
A. Emergency situations where there is a known danger to the lives of others;
B. In response to serious crimes. Particularly those of violent nature, which come to their attention on or off duty.
(Violation subject up to dismissal.)

26.2.44 Cowardice - Deputies shall perform their required duties and shall not avoid such duties because of fear, lack of courage or resoluteness. Deputies are not expected to enter imminently hazardous situations without assistance; however, they shall not fail to come to the aid of another member of the VSO who is already engaged in a hazardous situation. **Not Sustained**
(Violation subject up to dismissal)

EXHIBITS:

- A. Report of Investigation
- B. Official Correspondence
- C. Supervisor's Inquiry Memorandum
- D. Digital Media

I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the suspect of the investigation of any rights contained in ss. 112.532 and 112.533, Florida Statutes.

DETECTIVE:  DATE: 07/08/2020

**Lieutenant Justin G. Sawicki
Internal Affairs Detective**

APPROVED BY:  DATE: 7-08-2020

**CHIEF DEPUTY JOSEPH GALLAGHER
VOLUSIA COUNTY FLORIDA**



VOLUSIA SHERIFF'S OFFICE

MICHAEL J. CHITWOOD, SHERIFF

To: Sheriff Michael Chitwood
(via Chain of Command)

Date: June 10, 2020

From: Lieutenant James Day #2468 *JD*
Assistant Commander District 2

File: 052M35.20

Subject: Retirement

It is with mixed emotions that I hereby tender my letter of retirement from the Volusia County Sheriff's Office, effective Friday June 26, 2020. It has been my honor and privilege to serve alongside the members of this agency and I will miss the comradery and fellowship. However, after 28 years of public service and nearly 19 years of dedicated service to this agency, I have decided to retire.

I would like to request to retain my duty weapon and be granted all the rights and privileges of a retired law enforcement officer.

I sincerely wish the best for everyone, and I thank you for the guidance and support.

Respectfully,

James Day Jr.

*COC: Chief Deputy Joe Gallagher *JG* 6-10-2020
Division Chief Brian Henderson - Butt 6-10-2020
Captain AOC Kammerer *AOK**

Sheriff
MICHAEL J. CHITWOOD

OFFICE
(386) 736-5961



VOLUSIA COUNTY SHERIFF'S OFFICE

123 WEST INDIANA AVE • P.O. BOX 569 • DELAND, FLORIDA 32721-0569
(386) 822-5074 (FAX) • WWW.VOLUSIASHERIFF.ORG

June 10, 2020

Lieutenant James Day
[REDACTED]

Dear Lieutenant Day;

I have received your memo notifying me of your intent to retire from the Volusia County Sheriff's Office effective June 26, 2020. I want to express my sincere appreciation for your more than 18 years of dedicated service to Volusia County Sheriff's Office and the citizens we serve.

On behalf of all department members, I wish you much health, happiness and continued success in all your future endeavors. Please do not hesitate to call if we can ever be of assistance.

Sincerely,

Michael J. Chitwood
Sheriff

MJC:dk/040L0132.20

cc: Chief Deputy J. Gallagher
Division Chief B. Henderson
Captain P. Kammerer
Communications
Info Technology
Internal Affairs
Inventory
Payroll
PIO
Personnel
Special Projects
Training
Vehicle Management
Witness Management

FDLE

Florida Department of
Law Enforcement

FIDAVIT OF SEPARATION

Incorporated by Reference in Rules
11B-20.001(3)(a)5.a., and 11B-27.002(3)(a)15., F.A.C.



CJSTC
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1. Last Four Digits of Social Security Number: [REDACTED]		Employment Class <input checked="" type="checkbox"/> Law Enforcement <input type="checkbox"/> Correctional <input type="checkbox"/> Correctional Probation <input type="checkbox"/> Concurrent <input type="checkbox"/> Special Elected or Appointed <input type="checkbox"/> Instructor Employment Type <input checked="" type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Auxiliary
2. Name: <u>Day, James D</u> Last First MI		
3. Agency Name: <u>Volusia County Sheriff's Office</u>		
4. Agency ORI: <u>FL0640000</u>		
5. Date Employed: <u>10/15/2001</u>	6. Separation Date: <u>06/26/2020</u>	

7. Separation Reasons

7A. ADMINISTRATIVE-ROUTINE <input checked="" type="checkbox"/> Voluntary separation not involving misconduct <input type="checkbox"/> Transfer within agency. No break in service <input type="checkbox"/> Retired. Not involving misconduct <input type="checkbox"/> Deceased <input type="checkbox"/> Budgetary constraints. Local and Federal grants not renewed <input type="checkbox"/> Extended leave of absence Type: _____ Periods of Time: _____ <input type="checkbox"/> Military leave of absence Periods of Time: _____ <input type="checkbox"/> Suspension Periods of Time: _____ <input type="checkbox"/> Administrative separation not involving misconduct <input type="checkbox"/> Special elected or appointed Position: _____ Anticipated Term: _____ <input type="checkbox"/> Instructor request for change of affiliation 7B. ADMINISTRATIVE-NON-ROUTINE <input type="checkbox"/> Failure to complete basic recruit training <input type="checkbox"/> Failure to pass the State Officer Certification Examination	7C. ADMINISTRATIVE - SUBSTANDARD PERFORMANCE <input type="checkbox"/> Failure to satisfactorily complete the agency fieldtraining program (training performance issues) <input type="checkbox"/> Failure to perform assigned tasks satisfactorily. 7D. OTHER - EXAMPLE <input type="checkbox"/> Excessive absenteeism, failure to report for duty, sleeping on duty, etc. 7E. UNFAVORABLE - MISCONDUCT <input type="checkbox"/> Voluntary separation or retirement while being investigated for violation of agency or training school policy not involving a moral character violation defined in Rule 11B-27.0011, F.A.C. <input type="checkbox"/> Voluntary separation or retirement in lieu of termination for violation of agency or training school policy not involving a moral character violation defined in Rule 11B-27.0011, F.A.C. <input type="checkbox"/> Terminated for violation of agency or training school policy not involving a moral character violation defined in Rule 11B-27.0011, F.A.C. NOTE: The agency administrator or designee shall provide written documentation of the internal or criminal investigation upon request by Commission staff.	7F. Pursuant to Section 943.130(5), F.S., an employing agency must conduct an internal investigation when having cause to suspect that an officer or instructor it employs or employed at the time of the alleged violation, or employed on a Temporary Employment Authorization is not in compliance with Section 943.13(4) or (7), F.S., or Rule 11B-27.0011, F.A.C. <input type="checkbox"/> Voluntary separation or retirement while being investigated for violation of Section 943.13(4), F.S., or violation of moral character standards defined in Rule 11B-27.0011, F.A.C. <input type="checkbox"/> Voluntary separation or retirement in lieu of termination for violation of Section 943.13(4), F.S., or violation of moral character standards as defined in Rule 11B-27.0011, F.A.C. <input type="checkbox"/> Terminated for violation of Section 943.13(4), F.S., or violation of moral character standards as defined in Rule 11B-27.0011, F.A.C. NOTE: The agency administrator or designee shall provide written documentation of the internal or criminal investigation upon request by Commission staff.
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NOTICE: Section 943.139(2), F.S., requires the execution of an Affidavit of Separation by the employing agency in a case of officer separation.
WARNING: Intentional false execution of this Affidavit of Separation constitutes a misdemeanor of the second degree.

8. Agency Administrator or Designee's Signature: <u>[Signature]</u>	9. Agency Administrator or Designee's Printed Name: <u>Molly Hudson</u>	10. Date: <u>06/26/2020</u>
11. Agency Administrator or Designee's Title: <u>USO DIRECTOR OF HR</u>		

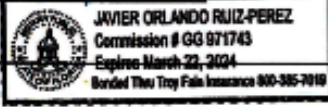
12. OATH

Pursuant to Section 117.05(13)(a), Florida Statutes

STATE OF FLORIDA, COUNTY OF _____

Sworn to (or affirmed) and subscribed before me by means of Physical Presence OR Online Notarization this 26th day of June, year 2020, By Molly Hudson

Signature of Notary Public - State of Florida: [Signature]



Print, Type or Stamp Commissioned name of Notary Public: JAVIER ORLANDO RUIZ-PEREZ Personally Known OR Produced Identification
Type of Identification Produced: _____