

**VOLUSIA COUNTY SHERIFF'S OFFICE  
INTERNAL AFFAIRS**

**REPORT OF INVESTIGATION**

**REPORT NUMBER: IA-16-009**

**PERIOD COVERED:** August 08 and August 12, 2016  
**DATE REPORTED:** August 10, 2016  
**SUBJECT(S) NAME:** Deputy Michael Agostonis #1338  
**INVESTIGATING OFFICERS:** Sergeant Justin G. Sawicki #7179

**BASIS FOR INVESTIGATION:**

On August 08, 2016, Deputy Sharalyn Wilmot contacted Sergeant Jamie Grunder, regarding damage to her department issued vehicle. Deputy Wilmot advised Sergeant Grunder she had parked her vehicle in the parking lot of the S. James Foxman Justice Center in Daytona Beach at approximately 0700 hours on August 08, 2016. When Deputy Wilmot returned to her vehicle at approximately 1555 hours the same day, she observed damage to the vehicle that was not previously there. Deputy Wilmot was unaware what caused the damage to her vehicle. Sergeant Grunder then initiated a supervisor inquiry into the aforementioned incident.

Acting Chief Deputy Michael S. Summers assigned the case for investigation by the Internal Affairs Unit. The supervisor inquiry completed by Sergeant Grunder is referenced by memorandum number: 071M074.16 and is attached and made part of this investigation. (See Tab – C)

**OFFENSES:**

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

*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.*

(12) - *Knowingly giving false statements to supervisors, other officials or the public.*

(13) - *Any conduct, on or off duty, that reflects unfavorably on the County as an employer.*

**26.2.23 Failure to Report Vehicle Accident** - Employees shall immediately report accidents in which they are involved with a Department or County vehicle or equipment. Vehicle includes any form of sea, land or air transport. *(Violation subject up to a 5 days suspension.)*

**26.2.34 Failure to Follow Directive or Order** - Employees shall adhere to all official Directives and/or orders, and shall faithfully execute all the duties and responsibilities of their assigned position. *(Violation subject up to a 5 day suspension.)*

**26.2.98 Careless Handling of Equipment and Vehicles** - Resulting in Damage/Loss - Employees shall utilize Department or County equipment for its intended purpose in accordance with established procedures, and shall not subject such equipment to loss or damage through careless handling. *(Violation subject up to a 5 day suspension and/or loss or suspension of the equipment use privileges.)*

**26.2.106 Untruthfulness** - Employees shall not knowingly make false or untrue statements except as authorized in the performance of duties and as necessary to maintain covert operations during investigation of criminal activities. *(Violation subject up to dismissal.)*

**26.2.129 Misdemeanor Injurious to the Department** - Department personnel shall adhere to all federal, state and local laws and shall not commit any act or crime defined as a misdemeanor, first or second degree, whether chargeable or not, which brings discredit upon the Department or otherwise impairs the operation and efficiency of the Sheriff's Office and/or which is likely to impair the ability of personnel concerned to perform assigned duties. *(Violation subject to dismissal.)*

**26.2.135 Knowledge of Official Directives** - Frequent or repeated violation of these policies, procedures and Directives shall be deemed as indicative of careless disregard by the employee. *(Violation subject up to a 5 day suspension)*

**RE: 26.2.87 Use of Tobacco/nicotine**

**INVESTIGATIVE SUMMARY:**

On August 12, 2016, Acting Chief Deputy Michael S. Summers assigned the above incident to the Internal Affairs Unit. This report details the internal affairs investigation conducted by Sergeant Justin Sawicki.

Sergeant Sawicki reviewed the supervisor inquiry memorandum completed by Sergeant Jamie Grunder. The following is a summary of the memorandum:

On August 08, 2016, Sergeant Grunder was contacted by Deputy Sharalyn Wilmot regarding damage to her department issued vehicle (property number: 178602). Deputy Wilmot informed Sergeant Grunder she had parked her vehicle in the dirt parking lot at the S. James Foxman Justice Center at approximately 0700 hours on August 08, 2016. When Deputy Wilmot returned to her vehicle at 1555 hours, she observed damage to her vehicle. Deputy Wilmot was unaware of how the damage occurred.

Sergeant Grunder inspected Deputy Wilmot's vehicle and observed damage to the passenger side rear bumper and trunk lid. There appeared to be *"gold and green transfer residue that was consistent with the striping on a Volusia County Sheriff's Office vehicle."* Sergeant Grunder then checked other vehicles in the parking lot at that time and did not observe any other vehicles with damage, consistent with being involved in the incident.

On August 09, 2016, as deputies arrived to the Justice Center, Sergeant Grunder inspected the deputies' vehicles for damage. Upon completing the inspection Sergeant Grunder wrote:

*"None of the vehicles had any corresponding damage except for Deputy (Michael) Agostinis' car. I was aware Deputy Agostinis' vehicle had prior damage from an unrelated incident; however, the damaged area appeared to have some newer rub marks. I retrieved a copy of the prior Auto Incident Report reference case number 16-14447, and compared the damage. I noticed there were black rub marks on the rear bumper cover that were not previously there. There also appeared to be slight inconstancies (sic) with the gold pinstripes around the wheel well area."*

The exterior surveillance video from August 08, 2016, was then reviewed by Sergeant Grunder. Sergeant Grunder detailed the video as followed:

*“Deputy Agostinis is observed pulling into the dirt parking lot from Ridgewood Avenue. He drove onto the north side of the dirt lot and began to back up. While backing, the rear passenger side of his vehicle impacts the rear passenger side of Deputy Wilmot’s vehicle, causing her vehicle to jostle forward. Deputy Agostinis pulls forward, breaking the contact between the two vehicles, and backs up into another spot on the east end of the parking lot. Deputy Agostinis sits in his vehicle for a few minutes. At 0901 hours, Deputy Agostinis exits his vehicle, walks to the rear, and appears to look at the damaged area. He then proceeds into the Justice Center. It should be noted the camera was recently installed within the past week and not all the deputies are aware of its functionality.”*

The memorandum narrative is concluded with Sergeant Grunder requesting the inquiry be transferred to the Internal Affairs Unit for further investigation.

Attached to the supervisor inquiry memorandum was the Auto Incident Report along with corresponding photographs of both Deputy Agostinis’s and Deputy Wilmot’s vehicle, and a copy of the video surveillance footage. Sergeant Sawicki reviewed the attached documents and confirmed Sergeant Grunder’s description of the incident and damage to the county vehicles was accurate.

On August 12, 2016, the Florida Highway Patrol (FHP) was contacted to conduct a crash investigation regarding this incident. FHP Sergeant R.J. Steele conducted the crash and criminal investigation regarding Florida State Statute (FSS):

- 316.1985(1) – Improper Backing.
- 316.063(1) – Failure to Leave Information after Crash-Unattended Vehicle/Property.

On August 12, 2016, at 1322 hours, FHP investigators made contact with Deputy Michael Agostinis at the S. James Foxman Justice Center and conducted a sworn recorded interview. The following is a summary of that interview:

At the onset of the interview, Sergeant Steele advised Deputy Agostinis of his Constitutional Rights (Miranda Warning). Upon questioning, Deputy Agostinis stated, *“I don’t recall anything happening. I mean I pull into that parking spot a thousand times a day. Right by the tree. I’ve been doing it mostly last month since we lost Scotty Barnett. He used to park under the tree so I park under the tree. But I, I just pull in there every morning. I get here at a quarter to seven; or a quarter to eight. Smoke a cigarette. I’m not supposed to smoke in the vehicle but I sit there.”*

Sergeant Steele proceeded to inform Deputy Agostinis of his actions captured on the Justice Center’s exterior surveillance video by stating, *“Your car comes in, your car goes westbound in the parking lot, touches the right rear of the other patrol car that was Deputy Wilmot’s patrol car. Goes forward a little bit and then you back into the parking space. You sit in the car for a little while; you get out of the car...”* Deputy Agostinis was asked to clarify his explanation for the crash and he maintained that he did not recall striking another deputy’s vehicle.

Deputy Agostinis was asked to walk the investigators through his actions on the morning of August 08, 2016, and he stated the following:

*“But you know I pulled in. Alright, I come here to work. I get here early. 7:35, 7:40, I pull in. Like I said the last month I been pulling in by the tree since Scotty hasn’t been here and I smoke my cigarette. It’s against policy, I know but come in just to you know get ready for work... the thing that I know that I did wrong was you know smoke inside the car. You’re not supposed to smoke. See I’ve been written up for this, already for the smoking.”*

Deputy Agostinis continued to claim that he did not recall striking another deputy’s patrol vehicle.

At this time during the interview, FHP investigators allowed Deputy Agostinis to view the Justice Center’s external surveillance video of the incident. As Deputy Agostinis watched the video, he confirmed the Ford Crown Victoria pulling into the parking lot is in fact his vehicle and he is the operator of said vehicle. FHP investigators point out to Deputy Agostinis the point of impact, in which his vehicle strikes Deputy Wilmot’s patrol vehicle, as her vehicle is seen

jostling forward. Deputy Agostinis responded by stating, *"I know that's my car. I stopped or I came close to it. I don't think I hit it."*

FHP investigators asked Deputy Agostinis why after the collision with Deputy Wilmot's vehicle, he proceeded to park in a different area of the parking lot. Deputy Agostinis initially did not answer the question as his response was, *"No I agree. I see it move (referring to Deputy Wilmot's vehicle). I, I, I mean if I'm seeing something."* When the question was asked in a different manner, Deputy Agostinis stated, *"I wish I had an answer. Monday is the only thing I'm trying to think back, nothing."* Investigators once again replayed the clip of the video in which the collision occurred. Sergeant Steele asked Deputy Agostinis, *"You didn't feel any kind of impact or anything with the vehicle?"* Deputy Agostinis' response was, *"Uh huh."* Deputy Agostinis was asked if he had any other statements he would like to make, and he stated the following: *"I see, I see the car move. Move forward and I back up. Lock my, I mean when I get out of my car I lock my door and go in."*

Investigators then pointed out, when Deputy Agostinis exited his patrol vehicle; it appeared he looked at the point of impact on his vehicle, as if he were assessing the vehicle for damage. Deputy Agostinis' response was, *"Oh I can't tell you what I; I don't know what I do in the morning."* The interview is then concluded.

Sergeant Steele issued Deputy Agostinis two Uniform Traffic Citations. The first was a non-criminal moving violation for FSS 316.1985(1) and the second was a misdemeanor criminal citation for FSS 316.063(1). Deputy Agostinis signed for both citations and received his copies of the respective citations.

On August 16, 2016, Investigator Glen Bennett served Deputy Agostinis with a Notice of Internal Investigation and Administrative Leave with Pay in Daytona Beach, Florida. Deputy Agostinis was provided a copy of the Law Enforcement Officer Bill of Rights. (*See Tab – B for Official Correspondence*)

It should be noted, when Internal Affairs investigators retrieved Deputy Agostinis' patrol vehicle from his possession, they located a water bottle half full with a brown liquid and cigarette butts inside of the bottle. The water bottle was located in the front center console cup holder. Furthermore, ash from cigarettes was located throughout the cabin of the vehicle, also a clear and distinct odor of cigarette smoke could be smelled in the cabin. Investigators took several photographs of the cabin of Deputy Agostinis's patrol vehicle. *(See Tab – C for Photographs)*

On August 22, 2016, Deputy Agostinis provided a resignation letter to Sheriff Johnson in the form of a congratulatory greeting card. *(See Tab – B for Official Correspondence)*

Due to Deputy Agostinis's resignation and interview with the Florida Highway Patrol, an interview with Internal Affairs investigators was not conducted; however, Deputy Agostinis was afforded the opportunity to complete a written statement in regards to this incident. As of December 13, 2016, Deputy Agostinis has not submitted any written or verbal correspondence to the Internal Affairs Unit.

**CONCLUSION:**

On December 13, 2016, this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the below listed Department Standards Directive to be:

<b>26.2.23 Failure to Report Vehicle Accident</b>	<b>Sustained</b>
<b>26.2.34 Failure to Follow Directive or Order</b>	<b>Sustained</b>
<b>26.2.98 Careless Handling of Equipment and Vehicles</b>	<b>Sustained</b>
<b>26.2.106 Untruthfulness</b>	<b>Sustained</b>
<b>26.2.129 Misdemeanor Injurious to the Department</b>	<b>Sustained</b>
<b>26.2.135 Knowledge of Official Directives</b>	<b>Sustained</b>
<b>RE: 26.2.87 Use of Tobacco/nicotine</b>	
<b><i>Volusia County Merit System Rules and Regulations 86-453 (12)</i></b>	<b>Sustained</b>
<b><i>Volusia County Merit System Rules and Regulations 86-453 (13)</i></b>	<b>Sustained</b>

As a result of the investigation, Sheriff Johnson accepted Deputy Agostonis's resignation.

**EXHIBITS:**

- A. Report of Investigation
- B. Official Correspondence
- C. Supervisory Inquiry Memorandum and FHP Crash Report
- D. Miscellaneous Documents
- E. 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.

INVESTIGATOR: \_\_\_\_\_

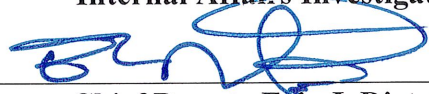


DATE: \_\_\_\_\_

12/13/16

**Sergeant Justin G. Sawicki  
Internal Affairs Investigator**

APPROVED BY: \_\_\_\_\_



DATE: \_\_\_\_\_

12/13/16

**Chief Deputy Eric J. Dietrich  
SHERIFF BEN F. JOHNSON  
VOLUSIA COUNTY FLORIDA**