

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

REPORT OF INVESTIGATION

REPORT NUMBER: FN2018-0014 (IA-18-001)

PERIOD COVERED: October 26, 2017 & December 15, 2017

DATE REPORTED: January 8, 2018

SUBJECT(S) NAME: Deputy Eric Cheek #8208

INVESTIGATING OFFICERS: Detective Tara Burke #1465

BASIS FOR INVESTIGATION:

The Sheriff's Office command staff received two Supervisor Inquiry's drafted by Captain Eric Westfall; the subject of the inquiries was Deputy Eric Cheek. On October 26, 2017, Deputy Cheek allegedly failed to activate his Body Worn Camera (BWC) while actively involved in a fleeing vehicle call (see VCSO case #17-25067). Furthermore, On December 15, 2017, Deputy Cheek allegedly did not activate his BWC during a self-initiated traffic stop/fleeing vehicle incident (see VCSO case #17-30733). *(See Tab- C for Official Correspondence)*

OFFENSES:

This investigation is relevant to an alleged violation of Department Standards Directives:

26.2.132 Job Knowledge and Performance- Failure to maintain required skills, knowledge and abilities within acceptable levels shall result in counseling, instruction or training.

(Violation subject up to a written reprimand.)

26.2.135 Frequent or repeated violation of these policies, procedures and Directives shall be deemed as indicative of careless disregard by the employee.

26.2.137 Subsequent violations and recurrent failure to maintain and demonstrate knowledge of Directives, rules & regulations or standard operating procedures may be cause for dismissal.

26.2.155 Use of Equipment: BWC - Employees shall ensure proper maintenance and utilization of the Department BWC (body-worn cameras) for its intended purpose and in accordance with Directive 41.20 Body-Worn Cameras. *(Violation subject to up to 1-day suspension)*

26.2.156 Body Worn Camera- Employees shall not intentionally - through acts of negligence or inattention - cause interruption or defeat of the BWC for its intended purpose of recording law enforcement encounters. *(Violation subject up to 5- days suspension)*

41.2.58 Vehicle Apprehension: Terminating the Pursuit- Once a pursuit has been terminated, Deputies shall deactivate all emergency equipment and resume driving in compliance with all applicable traffic laws. Deputies may continue following the suspect vehicle route as long as they do so within the speed limit and obey all stop signs, traffic lights and other traffic control devices.

Volusia County Merit System Rules and Regulations 86-453. *Violations of the Volusia County Merit Rules and Regulations are subject to disciplinary action ranging from oral reprimand to dismissal.*

RE: (2) Disregard for or frequent violations of county ordinances, departmental policies and regulations, including safety rules.

(10) Incompetent or unsatisfactory performances of duties.

INVESTIGATIVE SUMMARY:

On January 8, 2018, Chief Deputy John Creamer assigned the above incident to the Internal Affairs Unit. This report details the internal affairs investigation conducted by Detective Tara Burke.

There were two Supervisor Inquiry's drafted by Captain Eric Westfall; the subject of the inquiries was Deputy Eric Cheek. On October 26, 2017, Deputy Cheek allegedly failed to activate his body worn camera (BWC) while actively involved in a fleeing vehicle call (see VCSO case #17-25067). Furthermore, On December 15, 2017, Deputy Cheek allegedly did not activate his BWC during a

self-initiated traffic stop/fleeing vehicle incident (see VCSO case #17-30733).

On March 23, 2018, Deputy Cheek was served with a Notification of Internal Investigation along with a copy of his Officer Bill of Rights. *(See Tab- C for Official Correspondence)*

Deputy Eric Cheek

On March 28, 2018, Detective Burke and Detective Glenn Bennett conducted a sworn recorded interview with Deputy Eric Cheek, also present representing Deputy Cheek was Brodie Hughes. The following is a summary of that interview:

Deputy Cheek has been employed with the Volusia County Sheriff's Office since August of 2013. Deputy Cheek is currently assigned to District-6, patrol.

Deputy Cheek confirmed he was working patrol in District-6 on October 9th and October 10th, 2017, he recalled the incident involving a stolen vehicle out of Daytona Beach. Deputy Cheek explained he was at the ATM machine at the Fairwinds Credit Union on Enterprise in Orange City when Central advised of the call. Deputy Cheek advised he did deploy stop sticks on the southbound side of the intersection at Enterprise and Volusia. Deputy Cheek did not turn on his BWC; he was not aware that it wasn't activated until after the fact because everything happened quickly. Deputy Cheek explained he had limited time after the suspect vehicle was heading his way to retrieve his debit card from the ATM, park, and deploy his stop sticks, while just missing the vehicle. Deputy Cheek had no other involvement with this call. Deputy Cheek advised that not activating his BWC during this incident was not intentional; he explained he didn't even have time to put himself out on the call because everything happened in a matter of seconds. Deputy Cheek did inform a supervisor and documented the failure to turn on his BWC due to the response time in his supplement report.

Deputy Cheek also confirmed he was working patrol in District-6 on December 15, 2017. Deputy Cheek recalled the incident involving an attempt to conduct a traffic stop on a red Toyota passenger vehicle traveling on Charles R. Beall Boulevard in DeBary. Deputy Cheek explained he observed

the vehicle following very closely behind a truck, having difficulty maintaining a single lane, and possibly driving under the influence. Deputy Cheek advised the vehicle never fled from him, but the vehicle did not stop. Deputy Cheek shut off his emergency lights and siren but could still see the vehicle, at this time the vehicle went into the southbound lanes of traffic nearly missing a vehicle. Deputy Cheek remained in the northbound lanes. Deputy Cheek heard other units on the radio assisting, and an officer from Deland Police Department attempted to stop stick the vehicle. Deputy Cheek explained his concern for the safety of the public because of the reckless driving; he called out the location of the vehicle, and the times when the vehicle almost hit other vehicles on the roadway. Eventually the vehicle left the roadway, he witnessed the vehicle go airborne and went into the embankment at the Chick-fil-a in Deland. Deputy Cheek advised there was never a pursuit, and when he was asked if he felt he was conducting an authorized following of the vehicle he stated, *“Um, yes because I feel there was a legit concern for safety and I wasn’t doing anything reckless to maintain that following so.”*

Deputy Cheek explained he thought he activated his BWC when it was in his shirt pocket while he was attempting to conduct the traffic stop. He realized once he was on the scene with the vehicle that his BWC wasn’t activated, he had to hit the button twice for it to activate. Deputy Cheek advised he has since moved the activation button of his BWC to his belt to make certain he can see the light better when it’s activated in the future. Deputy Cheek did document in his report that his BWC was activated during this call, but he did not document when the activation began during the call.

Deputy Cheek was asked if he violated the following policies:

26.2.132 Job Knowledge and Performance	No
26.2.135 Knowledge of Official Directives	No
26.2.137 Knowledge of Official Directives	No
26.2.155 Use of Equipment: BWC	No
26.2.156 Body Worn Camera	No
41.2.58 Vehicle Apprehension: Terminating the Pursuit	No

Volusia County Merit System Rules and Regulations 86-453. (2) No

Volusia County Merit System Rules and Regulations 86-453. (10) No

Prior to completion of the interview, Deputy Cheek was asked by his representative, Brodie Hughes, about Deputy Cheek responding to hundreds of calls and the number of times using the BWC over the past two years (in reference to the incident on October 26, 2017). Deputy Cheek advised there are no other known incidences of when his BWC wasn't activated on prior calls.

Deputy Cheek was also asked by Brodie Hughes about the other incident (in reference to the incident on December 15, 2017), and the accurate distance traveled while following the vehicle. Deputy Cheek advised that the speed limit changes along the roadway, the vehicle was a danger to the public, he followed the posted speed limit, and he was never told by a supervisor not to follow the vehicle.

Prior to ending the interview Deputy Cheek also stated, *"I just, just that all of this in general on either case I feel like I was doing everything that was in the best interest of the agency and safety of the public and nothing intentional and so."* Additionally, in reference to the BWC not being activated during the second incident Deputy Cheek stated, *"With Taser drawn like I didn't even wait. As soon as I noticed I turned it on."* (See Tab- D for Official Transcripts)

Detective Burke reviewed all Sheriff's Office reports, Computer Aided Dispatch (CAD) and evidence involving the original call for service. There was no indication of a pursuit or unauthorized following conducted by Deputy Cheek according to CAD or the reports.

EXECUTIVE SUMMARY:

On January 8, 2018, Chief Deputy John Creamer assigned the above incident to the Internal Affairs Unit. There were two Supervisor Inquiry's drafted by Captain Eric Westfall; the subject of the inquiries was Deputy Eric Cheek. On October 26, 2017, Deputy Cheek failed to activate his body worn camera (BWC) while actively involved in a fleeing vehicle call (see VCSO case #17-25067).

Furthermore, On December 15, 2017, Deputy Cheek failed to activate his BWC during a self-initiated traffic stop/fleeing vehicle incident (see VCSO case #17-30733).

The incident reports, CAD, and BWC videos related to these incidences, were reviewed by internal affairs detectives. It was confirmed that Deputy Cheek did not activate his BWC on October 26, 2017, while involved in the fleeing vehicle call. Furthermore, Deputy Cheek did not initially activate his BWC on December 15, 2017, while on a self-initiated traffic stop/fleeing vehicle incident; however once he realized the BWC was not active he did activate his BWC. Additionally, review of Computer Aided Dispatch (CAD), and evidence involving the original call for service, there was no indication of a pursuit or unauthorized following conducted by Deputy Cheek.

During his interview with internal affairs detectives, while discussing the October 26, 2017 incident, Deputy Cheek advised that not activating his BWC during this incident was not intentional; he explained he didn't even have time to put himself out on the call because everything happened in a matter of seconds. Deputy Cheek did inform a supervisor and documented the failure to activate his BWC due to the response time in his supplement report.

In reference to the incident on December 15, 2017, Deputy Cheek explained he thought he activated his BWC when it was in his shirt pocket while he was attempting to conduct the traffic stop. He realized once he was on the scene with the vehicle that his BWC wasn't activated, he had to hit the button twice for it to activate. Deputy Cheek advised he has since moved the activation button of his BWC to his belt to make certain he can see the light better when it's activated in the future. Deputy Cheek did document in his report that his BWC was activated during this call, but he did not document when the activation began during the call.

Conclusion:

The Sheriff determined the violation of the below listed department and county policies for Deputy Cheek to be:

26.2.132 Job Knowledge and Performance **Not Sustained**

26.2.134 Knowledge of Official Directives
RE: 41.20.51 Body Worn Camera Criminal Investigation Contact **Sustained**

26.2.135 Knowledge of Official Directives	Not Sustained
26.2.137 Knowledge of Official Directives	Not Sustained
26.2.155 Use of Equipment: BWC	Not Sustained
26.2.156 Body Worn Camera	Not Sustained
41.2.58 Vehicle Apprehension: Terminating the Pursuit	Not Sustained
Volusia County Merit System Rules and Regulations 86-453. (2)	Not Sustained
Volusia County Merit System Rules and Regulations 86-453. (10)	Not Sustained

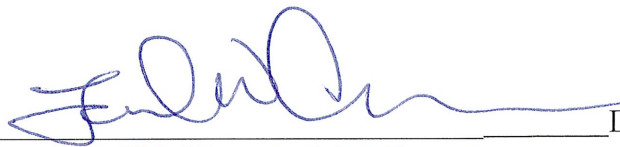
On April 11, 2018, Deputy Cheek was issued a Letter of Reprimand as a result of the findings documented in this report. *(See Tab – C for Official Correspondence)*

Exhibits:

- A. Report of Investigation
- B. Advisement Administration of Oath/Perjury Warning/Garrity Warning
- C. Official Transcript of Deputy Cheek
- 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.

DETECTIVE:  DATE: 04/27/18
Detective Tara Burke
Internal Affairs Detective

APPROVED BY:  DATE: 5/3/18
Chief Deputy John Creamer
SHERIFF MICHAEL J. CHITWOOD
VOLUSIA COUNTY FLORIDA