

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

**REPORT OF INVESTIGATION**

**REPORT NUMBER: IA-18-008**

**PERIOD COVERED:** June 17, 2018

**DATE REPORTED:** June 17, 2018

**SUBJECT(S) NAME:** Sergeant Sean Gowan #2435  
Lieutenant James Day #2468

**INVESTIGATING OFFICER:** Sergeant Ryan Mills #1574

**BASIS FOR INVESTIGATION:**

On June 17, 2018 at approximately 1805 hours, Sergeant Sean Gowan and District-6 deputies responded to 328 Gardenia Avenue, Debary, Florida in an attempt to locate subjects suspected of committing a residential burglary. Witnesses provided sheriff's office dispatch with a description of four juvenile suspects, two females and two males, and the last known direction they were traveling. As Deputy Brandon King arrived in the area, residents walking contacted and told him about two juvenile males matching the suspect's description. Deputy King checked the area and located the two juvenile males, Lucas Montgomery and James Emanuel walking near the intersection of Deleon Road and Bonita Road. Deputy King contacted the two and they were taken into custody. Deputy Eric Cheek and Sergeant Gowan both responded to Deputy King's location.

As Deputy King, Deputy Cheek, and Sergeant Gowan were awaiting the results of a show-up by witnesses to the burglary, Mr. Montgomery was using profanity toward sheriff's office personnel on scene and being disrespectful. When contacted, Mr. Montgomery was also in possession of a backpack matching the description given by witnesses. Sergeant Gowan instructed Deputy Cheek to check the contents of a backpack and Mr. Montgomery began using profanity and insults aimed toward Sergeant Gowan. Sergeant Gowan instructed Mr. Montgomery, who was handcuffed and sitting on the ground to stand up. Sergeant Gowan then grabbed Mr. Montgomery under his arm and assisted him in standing. Once standing, Mr. Montgomery was looking away from Sergeant Gowan. Sergeant Gowan then stated, "Why don't you say that to my fucking face" and grabbed Mr. Montgomery by his neck and chin area, turning his face toward Sergeant Gowan.

At the conclusion of the incident, Sergeant Gowan reported the incident to the Watch Commander on duty, Lieutenant James Day. Sergeant Gowan completed his shift and when he did not hear anything about his report to Lieutenant Day, he "self-reported" the incident again to his direct supervisor,

Lieutenant Michelle Newman. According to the Supervisor Investigation conducted by Lieutenant Newman, Sergeant Gowan felt Lieutenant Day was not going to proceed any further with the information unless the parents of Mr. Montgomery made a complaint. Lieutenant Newman contacted Lieutenant Day and confirmed that Sergeant Gowan did report the incident to him on the night the incident occurred. Lieutenant Newman conducted a Supervisor Investigation into the incident. *(See Tab B for Official Correspondence)*

**OFFENSE(S):**

***Sergeant Sean Gowan;***

**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:**
- (10)** Incompetent or unsatisfactory performances of duties.
  - (13)** Any conduct, on or off duty that reflects unfavorably on the county as an employer.
  - (21)** Any other conduct or action of such seriousness that disciplinary action is considered warranted.

**Volusia County Sheriff's Office Standards and Directives.**

**26.2.101 Excessive or Unnecessary Force Not Resulting in Injury** - Deputies shall not use excessive force even though it does not result in injury to another. *(Violation subject up to a 5 day suspension.)*

**26.2.134 Knowledge of Official Directives-** Department personnel are required to possess a sound working knowledge of policies and procedures established by the Standards Directives *(Violation subject up to a 5- day suspension.)*

***Lieutenant James Day;***

**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:**
- (1)** Willful neglect in the performance of the duties of the position to which the employee is assigned.

(10) Incompetent or unsatisfactory performances of duties.

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

**Volusia County Sheriff's Office Standards and Directives.**

**26.1.60 Accountability** - Failure of a supervisor to take proper disciplinary action when necessary is considered neglect of duty and will itself be subject to disciplinary action against the supervisor. *(Violation subject up to a 5-day suspension.)*

**26.2.119 Reporting Violations by Employees** - Employees knowing of other employees violating a law, rule or directive shall report the violation in writing via their chain of command. *(Violation subject up to a 5-day suspension.)*

**26.2.5 Neglect of Duty** - 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. *(Violation subject up to a 5-day suspension.)*

**26.2.40 Negligence, Not Endangering** - Employees shall not ignore or violate official Directives, orders, or supervisory instructions or knowingly fail to properly execute the duties and responsibilities of their assigned positions. *(Violation subject up to a 5 day suspension.)*

**INVESTIGATIVE SUMMARY:**

On June 21, 2018, Chief Deputy John Creamer assigned the above described incident to the Internal Affairs Unit for investigation. This report details the investigation conducted by Sergeant Ryan Mills.

During the initial review of the investigation, Sergeant Mills reviewed the Body Worn Camera videos, hereinafter referred to as BWC, recorded by Deputy Eric Cheek and Deputy Brandon King. Both Deputy Cheek and Deputy King were present and witnessed the incident involving Sergeant Gowan and Lucas Montgomery. The two videos captured the incident from two separate point of views. Deputy King was behind Mr. Montgomery and Deputy Cheek was located behind and to the right of Sergeant Gowan. Deputy Cheek appeared to be closer to Sergeant Gowan and his vantage point was clearer as the incident unfolded.

Both videos illustrated Mr. Lucas using profanity and being disrespectful, to not only Sergeant Gowan, but other deputies on scene as well. As Sergeant Gowan was giving direction to Deputy Cheek to conduct a search of the backpack recovered from Mr. Montgomery, Mr. Montgomery continued to make profane comments directed toward Sergeant Gowan. Although, the statement made by Mr. Montgomery was not clear, it provoked a reaction from Sergeant Gowan. Sergeant Gowan proceeded to grab Mr. Montgomery under his right arm and tell him to stand up. As Mr.

Montgomery stood, Sergeant Gowan made a statement, “*Why don’t you say that shit to my fucking face*”. Sergeant Gowan initially grabs Mr. Montgomery by his upper arm and shoulder area. Mr. Montgomery then looks to the left and not at Sergeant Gowan while being addressed. Sergeant Gowan then appears to move both of his hands to the neck and chin area, under the ears of Mr. Montgomery. Sergeant Gowan appears to grab Mr. Montgomery on the side of his neck and chin area only. His hands were not completely extended and did not appear to be wrapped around Mr. Montgomery’s neck, as the front side of Mr. Montgomery’s neck was still visible in the video. Mr. Montgomery then made a statement, which sounded like you choked me. Sergeant Gowan then stated, “*I didn’t choke you, I’m telling you right now stop*”. Mr. Montgomery then makes another statement about being choked and Sergeant Gowan responds with, “*OK, Stop what you’re doing*”.

Mr. Montgomery was then leaned over the front of Deputy King’s patrol vehicle with his chest touching the hood. Mr. Montgomery then proceeded to slam his own head multiple times on the hood of the vehicle causing Sergeant Gowan to have to physically restrain Mr. Montgomery by standing behind Mr. Montgomery and wrapping his arms though the elbow area of Mr. Montgomery. A few minutes later, after a show-up, Mr. Montgomery was identified by a witness as one of the males responsible for burglarizing a nearby residence. Mr. Montgomery was then secured in the back seat of a patrol vehicle without further incident.

On June 22, 2018, a copy of Deputy Cheeks BWC video was supplied to Detective Keith Earney of the Sheriff’s Office Digital Forensics Unit. Detective Earney was requested to slow the portion of the video showing the incident involving Sergeant Gowan and Mr. Montgomery. Detective Earney successfully completed the request and Sergeant Mills was able to review the slowed video. Sergeant Mills determined after reviewing the slowed video that Sergeant Gowan appeared to grab Mr. Montgomery along the bottom of his jaw line and turned his head toward Sergeant Gowan. Sergeant Mills concluded after watching the new video that Sergeant Gowan appeared to be using Mr. Montgomery’s chin line to direct Mr. Montgomery’s attention to Sergeant Gowan in order to address Mr. Montgomery’s behavior directly.

After reviewing all associated documents and videos, Sergeant Mills contacted the Department of Juvenile Justice, hereinafter referred to as DJJ, and inquired whether Mr. Montgomery made a complaint of any injuries when being processed into their facility. Sergeant Mills is aware that DJJ asks juveniles a series of questions when being detained; specifically juveniles are asked a question as to whether they are injured or have any complaint of injury. Sergeant Mills was informed Mr. Montgomery made no complaints of injury to DJJ staff. It should also be noted, to date Sergeant Mills has not received any complaints from Mr. Montgomery or his parents regarding the incident.

On June 26, 2018, Sergeant Mills met with and served both Lieutenant Day and Sergeant Gowan with their “Notice of Internal Investigation” letter. (*See Tab B for Official Correspondence*)

On June 30, 2018, Sergeant Mills received an email from Sergeant Gowan requesting to waive subsection (d) of the Law Enforcement Officers Bill of Rights and schedule an interview as soon as available. Subsection (d) of the Law Enforcement Officer Bill of Rights indicates a subject of an administrative investigation may waive witness interviews and submit their own statement. Sergeant

Mills responded to Sergeant Gowan's email as acknowledgement.

**Interview of Sergeant Sean Gowan**

On July 12, 2018, Sergeant Gowan arrived early, before his appointment time, and by himself. Sergeant Gowan was supplied all documents and video as it relates to the incident. Sergeant Gowan was supplied a private area, the administrative conference room and given as much time as needed to review the items prior to the interview. At approximately 0900 hours, Sergeant Gowan informed Sergeant Mills he was ready to proceed with the interview. Prior to the interview beginning, Sergeant Gowan was supplied a document explaining Garrity Warning, for which he reviewed and signed.

At 0907 hours, Sergeant Mills and Detective Tara Burke began an audio recorded interview with Sergeant Gowan. Sergeant Gowan was sworn in and read a perjury warning from a prepared document in regards to making false statements during the interview. Additionally, Sergeant Mills reviewed the allegations as it pertains to Volusia County Merit System Rules and Volusia County Sheriff's Office Standards and Directives. Sergeant Gowan advised he understood and the interview began. *(See Tab E for Official Transcripts)*

Sergeant Mills addressed Sergeant Gowan being without representation and confirmed he was comfortable proceeding with the interview. Sergeant Gowan indicated he was ready to proceed. Sergeant Mills also confirmed, Sergeant Gowan still wished to waive his rights to have additional witnesses interviewed prior to himself and he indicated he wanted to proceed.

Sergeant Gowan has been employed by the Volusia County Sheriff's Office for 18 years. Prior to the Sheriff's Office, Sergeant Gowan was employed by both the Orange City Police Department and the Volusia County Beach Department. Sergeant Gowan has a total of 24 years in law enforcement experience. Sergeant Gowan is currently assigned to the DeBary, District-6 office as a patrol supervisor and has been since October of 2017.

Sergeant Gowan was asked if he recalled a burglary call on June 17, 2018 at 328 Gardenia Avenue, DeBary involving four juveniles. Sergeant Gowan acknowledged he did and explained the call was right at shift change and he was the oncoming supervisor. The deputies were setting up a perimeter. The kids were running from there so he was trying to help set up the perimeter and then responded to the scene once they were secured. Sergeant Gowan was asked if he remembered coming in contact with Lucas Montgomery which Sergeant Gowan acknowledged coming in contact with Mr. Montgomery.

Sergeant Gowan was asked to describe his contact with Mr. Montgomery. Sergeant Gowan stated Mr. Montgomery had been arrested and explained,

*"He was handcuffed sitting down in the roadway along with another juvenile James Emmanuel, Deputies King, and Deputy Cheek so I came up there. I was asking some questions of Deputy King and Deputy Cheek. I acknowledged both of them because I had prior dealings with both of these juveniles in the past and let them both know that they had*

*some felony charges. Lucas started getting kind of mouthy, cussing, kind of raising cane and just being overall disrespectful to us. Which is kind of common behavior for him. I asked the deputies if they had searched the backpack that Lucas had been wearing at the time he was arrested. They said they hadn't. I instructed them to go ahead and do that search and that started another dialog with Lucas using some profanity and just disrespecting us."*

Sergeant Gowan was asked what Mr. Montgomery said. Sergeant Gowan explained, he did not remember exactly what he said and explained,

*"I'm pretty sure he called me an asshole. I don't remember what else he said. So I told him to stand up and I went over and he was handcuffed so I reached down and grabbed him by the arm and helped him stand up and when he stood up I told him, I think what I told him was, why don't you say that shit to my fucking face? And he just stood there for a couple minutes and it was, or I say a couple minutes, it was a couple seconds. He was just kind of being indifferent to it all. And I reached out and I grabbed him with both hands. Somewhere around the jaw, chin, neck, front face, we were facing each other. The contact was very brief. If I had to guess, I'd say one or two seconds at the most. I let him go. And he said something about you can't choke me or something along those lines. I walked him a couple more steps over to the hood of the patrol car that was there and just kind of leaned him over the patrol car. He was breathing heavy and was agitated. I'm telling him hey listen you need to calm down just relax. He started banging his head on the hood of the car so I stood him back up, I turned him away from the car and I just held him. Held his arms and just; now at this time I was standing behind him and he was facing away from me and I was just talking to him until he calmed down. They did a show up. He was identified and they finished their paperwork."*

Sergeant Mills asked Sergeant Gowan what his intention was by grabbing Mr. Montgomery around the neck and chin area. Sergeant Gowan explained this was not something planned and not something he normally does but what Sergeant Gowan was trying to do was get his attention. Sergeant Gowan explained, he wanted Mr. Montgomery to focus on Sergeant Gowan and understand what Mr. Montgomery was doing, was wrong. Sergeant Mills confirmed Sergeant Gowan's intention was for Mr. Montgomery to pay attention and Sergeant Gowan answered in the affirmative.

Sergeant Gowan continued to describe Mr. Montgomery's attitude during the entire incident. Sergeant Gowan explained,

*"He was sitting down when I got there and him and James Emmanuel were talking back and forth to each other. Talking about the deputies. Talking about how they should have just ran because none of them would have caught them. Some things like that. He was using a lot of profanity towards us just general disrespect. This is a kid that we deal with probably on a weekly basis. Habitual runaway and when he's in his runaway status he's committing crimes. So I guess overall disrespect, profanity just indifferent to the fact that he was being arrested for a burglary."*

Sergeant Gowan was asked to compare Mr. Montgomery's attitude during this incident compared to

*happened.”*

Sergeant Gowan was asked if he felt he violated the previously listed Volusia County Merit Rules and Regulation or the Sheriff’s Office Directives. Sergeant Gowan responded to each as follows:

(10) Incompetent or unsatisfactory performances, **“YES”**

(13) Any conduct, on or off duty that reflects unfavorably on the county as an employer, **“YES”**

(21) Any other conduct or action of such seriousness that disciplinary action is considered warranted, **“YES”**

**26.2.101** Excessive or Unnecessary Force Not Resulting in Injury, **“YES”**

**26.2.134** Knowledge of Official Directives, **“YES”**

Sergeant Gowan was asked if he had any further information he would like to add. Sergeant Gowan responded,

*“No. I mean just I tried to figure out why, why exactly this happened and if there was anything else that comes to mind. Like I said I’ve been doing this for 24 years I don’t have anything like this in my file. And mostly, the only other thing that I think that is, it doesn’t excuse the behavior or doesn’t make it right doesn’t anything else, but I just been working an extreme amount of overtime. I probably worked close to 300 hours in a month. Just covering a bunch of shifts and stuff. So just the stress of that, comes with that. The fatigue, the just get wore down I think is probably a contributing factor in all that. So I modified that and you know I’ll take a couple days here and there but I’m watching more closely and it actually helps me with watching my guys now too to make sure that they don’t get overburdened or overstressed trying to work too much so.”*

Detective Burke then asked some clarifying questions. Detective Burke asked Sergeant Gowan if Lieutenant Newman already knew about the incident when he spoke to her and Sergeant Gowan indicated she did not, and to his knowledge Lieutenant Day never told Lieutenant Newman about the incident. Sergeant Gowan was asked how many times he reported the incident to Lieutenant Day and Sergeant Gowan explained,

*“I told him that night. Then I told Lieutenant Newman a couple days later because we were off Monday, Tuesday so I wouldn’t have seen or talked with Lieutenant Day. And then I think that Wednesday I think we talked about it because he asked me if I had spoke to Lieutenant Newman. And I told him I had and he says ok yeah I guess she had reached out to him to ask him what he was going to do about it and he had indicated to me that he told her as far as he was concerned it wasn’t a complaint filed and so therefore he didn’t have any intention of*

*doing anything about it unless a complaint was filed. And that was really all we talked about it.”*

Sergeant Gowan was asked if he addressed the incident with members of his shift that were present and he explained,

*“I say right after it happened within an hour or two of it happening I went and I met with Deputy Cheek somewhere by himself and I just said hey listen man what happened, happened. I need you to make sure you write it in the report. I’m not giving you words. I just want you to know that whatever happened I want you to write it how you saw it in your report. And then I met with Deputy King at a different location and gave him that same thing. That same talk and we’ve talked about it as a shift just as a general rule of thumb that you know that’s not the right way to handle that so we just kind of used it as a teachable moment I guess for lack of a better word.”*

With no additional information provided, the interview concluded at 0924 hours.

#### **Interview of Lieutenant Michelle Newman**

On July 31, 2018 at 0918 hours, Sergeant Mills, Detective Glen Bennett, and Detective Burke conducted an audio recorded, sworn interview with Lieutenant Michelle Newman. *(See Tab F for Official Transcripts)*

Lieutenant Newman has been employed by the Volusia County Sheriff’s Office nearly 20 years and she has been a Lieutenant with the agency for 9 years. Lieutenant Newman is currently assigned to the Sheriff’s Office District-6, Debarry office as the Assistant District Commander.

Lieutenant Newman was asked if she was familiar with the investigation involving Sergeant Gowan and Lieutenant Day on June 17, 2018. Lieutenant Newman indicated she was familiar. Lieutenant Newman explained her first knowledge of the incident was on June 19, 2018 when Sergeant Gowan reported the incident to her. Lieutenant Newman’s account of the incident was consistent with all of the incident reports and the statement made by Sergeant Gowan to the Internal Affairs Unit on July 12, 2018.

Lieutenant Newman confirmed that on the day of the incident Lieutenant Day was the on duty Watch Commander. Lieutenant Newman was asked if Sergeant Gowan indicated to her whether he reported the incident to Sergeant Gowan. Lieutenant Newman replied in the affirmative and further explained,

*“He did. He said that he immediately told Lieutenant Day after the incident occurred. He knew that it was wrong. He tried to self-report it to Lieutenant Day and he said that he, he got the feeling from Lieutenant Day that he, that the lieutenant was not going to take any action and Sergeant Gowan explained to me that he felt that was wrong. He knew that we as an agency needed to get out in front of it. He didn’t want to embarrass the agency and he just kind of wanted to take his punishment if there were to be any and to move on but he*



*immediately felt from Lieutenant Day that Lieutenant Day wasn't going to do anything."*

Lieutenant Newman explained Lieutenant Day never informed her of the incident and it was not until Sergeant Gowan made his report to her that she contacted Lieutenant Day and spoke to him. Lieutenant Newman explained,

*"I asked if he was aware of the situation he acknowledged that he was. He said that Sean told him right away but in JD's words when I asked him ok so did you already address it? You already took care of it? And he said that you know he didn't feel like anything needed to be done with because the guy was a "scumbag" basically the juvenile was a "scumbag" and unless somebody made a complaint he didn't see the need to do anything with it so I reconfirmed so you didn't do anything with this? And he said no and then he asked me do you want me to do something with it? And I told him at the time no I'll take it from here."*

Sergeant Mills confirmed with Lieutenant Newman, to her knowledge Lieutenant Day took no action when the incident was reported to him. Lieutenant Newman stated, "No. No. It was my understanding based off of what Sergeant Gowan self-reported and then also what JD, or Lieutenant Day said over the phone that he took no action as far as reviewing the BWC, the report, like he didn't do anything as far as my understanding." Lieutenant Newman was asked, to her knowledge did Lieutenant Day report the incident to anyone? Lieutenant Newman stated, "No. He specifically said on the phone he did not report it to anyone."

Lieutenant Newman was asked if during her tenure as a lieutenant, whether she has performed the duties of a watch commander and she indicated she has. Lieutenant Newman was asked, based on her experience as a Lieutenant and as a Lieutenant whom has performed the duties of a watch commander, what the proper procedure would have been once Lieutenant Day received the report from Sergeant Gowan. Lieutenant Newman answered,

*"There's several important things that after a deputy or sergeant reports something to that magnitude you would want to notify your immediate supervisor. You would want to review the reports. You would want to see any type of witness statements if there were any. You'd want to review body camera. Depending on the direction from your supervisor at that time, you may want to immediately contact the parents then to interview the parents and the juvenile to find out their side of the story to see what happened in conjunction with reviewing the BWC footage. But I mean really the first and most important part of that whole puzzle is making the proper notifications to seek direction from your supervisor and moving forward as quickly as possible to prevent any embarrassment to the agency and to address with the employee what they did wrong to correct behavior."*

With no additional information provided, the interview concluded at 0927 hours.

### **Interview of Lieutenant James Day**

On August 9, 2018, Lieutenant Day arrived by himself for his scheduled appointment time. Lieutenant Day was supplied all documents and video as it relates to the incident. Lieutenant Day was supplied a private area, the administrative conference room and given as much time as needed to review the items prior to the interview. At approximately 0910 hours, Lieutenant Day informed Sergeant Mills he was ready to proceed with the interview. Prior to the interview beginning, Lieutenant Day was supplied a document explaining Garrity Warning, for which he reviewed and signed.

At 0916 hours, Sergeant Mills and Detective Bennett began an audio recorded interview with Lieutenant Day. Lieutenant Day was sworn in and read a perjury warning from a prepared document in regards to making false statements during the interview. Additionally, Sergeant Mills reviewed the allegations as it pertains to Volusia County Merit System Rules and Volusia County Sheriff's Office Standards and Directives. Lieutenant Day advised he understood and the interview began. *(See Tab G for Official Transcripts)*

Sergeant Mills addressed Lieutenant Day being without representation and confirmed he was comfortable proceeding with the interview. Lieutenant Day indicated he was ready to proceed.

Lieutenant Day has been employed by the Volusia County Sheriff's Office for 17 years. Prior to the Sheriff's Office, he was employed by the Bradford County Sheriff's Office. Lieutenant Day has a total of 21 years in law enforcement experience. He has held his current title of lieutenant for the past 3 years and he is currently assigned to the West Side Watch Commander position on the Charlie/Delta rotation. Lieutenant Day has approximately 1.5 years total experience in his current position as Watch Commander.

Lieutenant Day was asked if he recalled the incident on June 17, 2018 involving Sergeant Gowan and the arrest of a juvenile for burglary in Debary. Lieutenant Day acknowledged remembering the call. Lieutenant Day acknowledged being the on duty West Side Watch Commander on the day of the incident. When asked, Lieutenant Day informed Sergeant Mills that Sergeant Gowan made him aware of the incident.

Lieutenant Day explained he was notified by Sergeant Gowan during the shift on June 18 at 0200 hours. Lieutenant Day explained, Sergeant Gowan reported the incident because, *"he wanted to be ahead of the, if there was a complaint he wanted to be in front of the complaint if there was one."* Lieutenant Day continued,

*"On that particular, at that particular time I was in Seville doing an EPN. We previously on the night before we actually had a shooting up in that area and command staff had addressed that they wanted additional patrol for that area. District two guys were busy, nothing severe but they were busy with their calls and I was up there doing my portion so that way I can say we were doing extra patrol for Seville. Sean called me and he asked if I was anywhere near and I explained to him no I was up in Seville. I said, I'm 90% sure I said, "What's up?" I know there was previous interaction with this particular juvenile just a couple of days before this incident and I saw him but I don't know if I could have picked him out of a line up*

*anymore but I knew who he was talking about. He's got a, he has a partner that he's running with and doing various crimes in Debary area. He said "Look I don't want, I don't know if anything's gonna come of this but I wanted to be up front that it could be perceived that I may have choked him" he said, "I picked him up around the..." he indicated he picked him up around the neck area. And I'm sure I asked him "ok so did you choke him?" and he said "no but it could be perceived if you looked at it or if someone was looking at it" but he says, "no I did not choke him" I confirmed or verified through the conversation that this child was not injured and that this child was making this rant and rave statements as he was being transported to DJJ and it was brought to Sergeant Gowan's attention by one of his deputies and that was another reason he wanted to be up front of, well you just wanna be in front of it. Whatever "it" was going to be. I verified that the young lad was taken out to DJJ and he had scored out to be out there and Sergeant Gowan even told me that the father had already been contacted and I believe something along the lines the father said "that's fine this kid needs attention" From my interpretation of that, that the father was at his wits end with this child. So I verified he was, he was not injured verified with the father. I said "so do we have a complaint?" and Sean said "no" I said "alright" and I said "ok well lets take it little one step at a time here" first off I know Sgt. Gowan I think very well or better than average. And for him to be telling me this up front I really did appreciate it and was almost thinking he was overly concerned about it and I was like "alright one step at a time here" So we have no one hurt, he's been secured and went that route I said, and I made direct, gave him directions "alright make sure you send Lieutenant Newman an email on this situation" Did not tell him to CC me I somewhat assumed he would but I did not give that direction but I did make sure that I said make sure Lieutenant Newman knows about it because she's going to be getting this if a complaint is going to come in it's going to come in the morning time. And I made sure to tell him to get an email to her so that she's not blindsided. He assured me that would be accomplished and I don't, I had no other interaction with him after that point."*

Lieutenant Day was asked if he conducted any follow-up after receiving the call from Sergeant Gowan. Whether he reviewed any BWC video or responded to Debary and Lieutenant Day indicated no. Lieutenant Day was asked, "As a watch commander when a significant event is reported to you what would you typically do with that information? What's the procedure for it?" Lieutenant Day explained, "*As my understanding as watch commander duties I deal with here and now, things of urgency or emergencies. In this particular case, I gave direction for Sergeant Gowan to notify his chain of command on this incident. Again, I had, the information was presented that it was around his neck or neck area. I'd like to correct my, it is neck area. Around his neck. Neck area is what I can firmly can tell you I know was said. But any and all those type of things typically go back right to the district.*"

Lieutenant Day was asked if he ever relayed the information given to him by Sergeant Gowan to anyone and Lieutenant Day replied "*No, I did not*". He was then asked whether he conducted any follow-up to ensure Lieutenant Newman knew about the incident and he responded "*I did not*", but he knew she had been notified when Lieutenant Newman called him. Lieutenant Day continued to state, "*it appears after reading over the transcript, that email was not sent. It appears if I'm, if I'm reading this correctly he actually goes in on Tuesday to tell Lieutenant Newman. I can appreciate why Lieutenant Newman was upset.*" Lieutenant Day continued and indicated he had given direction

to Sergeant Gowan to send an email to Lieutenant Newman. Lieutenant Day explained he was unable to send an email to Lieutenant Newman because when he received the report he was in Seville and had no internet connection. Sergeant Mills inquired whether Lieutenant Day told his supervisor, Captain Richard Fortin about the incident and Lieutenant Day indicated he did not. Lieutenant Day was asked if he felt the incident wasn't significant enough to report to his supervisor and why he did not conduct any follow-up of the incident? Lieutenant Day responded,

*"It was not something, and my, again my understanding is we deal with them. If the child had been injured then I would have taken it but had the parent came in with a complaint at that point oh yeah I would probably have jumped right in it at that point. Or at least had more working but both of these cases I didn't have it. The reviewing of the BWC footage could have been done but depending on the nature and how long it takes those things to download it could have been three to four hours later before they actually officially download. And there again it was, the way the information was presented Sean wasn't exactly sure if it weren't, he knows he didn't hurt him he knows he didn't choke him and he was just, but it was like the perception was there. Fine. Let, that's a district, that's a district thing. It wasn't gonna reach the media at that point and that's why I made the decision."*

Lieutenant Day was asked if he recalled a conversation with Lieutenant Newman about the incident and he did. Lieutenant Day recapped the conversation, Lieutenant Newman asked,

*"JD what have you done? Did you do anything with this Sean thing?" and I explained to her in fact I was taken aback by it because again it was my understanding of my duties that this would have been investigated by the district level. I explained to her no I hadn't done anything other than tell him that to make sure he notified her. I do not recall saying that this kid was a scumbag but I could see myself saying that too. So I, but I explained to her that I didn't have any complaint but if there was anything that she needed me to do I would be glad to do it. But again this was under my understanding of my duties and responsibilities this was a district, the district lieutenant would have looked into this situation and me giving Sean directions to file an email with her."*

Lieutenant Day was asked if in the past, as a Watch Commander, was he given direction to not take corrective action or to not report certain incidents? Lieutenant Day explained his action depends on the type of incident reported. Lieutenant Day went on to give an example of an incident where a complaint was made about a prisoner being inappropriately touched by a deputy when arrested. Lieutenant Day explained he spent a significant amount of time waiting for and reviewing BWC video. The complaint was determined to be unfounded and when Lieutenant Day reported the incident to his supervisor, Lieutenant Day was questioned why he investigated the incident when it was the sergeants responsibility to investigate the complaint.

It should be noted, by Lieutenant Day's own example, while the sergeant was the deputies' immediate supervisor and should have investigated the complaint, Lieutenant Day was at the time of the incident, Sergeant Gowan's immediate supervisor and Lieutenant Day should have initiated an investigation and documented the incident reported by Sergeant Gowan.

Sheriff's Office Directive 12.1.16, Command and Control lists the Watch Commanders as "*in charge*" regardless of personnel with equal rank available although the Watch Commander may relinquish command to the District Commander or Assistant District Commander. In addition, 12.3, Watch Commander, which lists the Watch Commander responsibilities indicates the Watch Commander shall be "***aware and responsible***" for all Departmental activities during their tour of duty. Watch Commanders duties and responsibilities "***will include***" under directive 12.3.6 "***responding to all serious incidents***". 12.3.6 Also lists Watch Commander responsibilities as "*Notification of the District Commander when appropriate. The **Watch Commander** shall notify the District Commander or if unavailable the Assistant District Commander, of all serious incidents.*"

Furthermore, Sheriff's Office Directive, 26.1.54, Supervisor Responsibilities, "***Supervisors are responsible for, and have the duty to counsel, train, initiate punitive actions and conduct investigations into allegations of misconduct involving employees under their immediate command.***" Directive 26.1.55, Supervisor Investigations, elaborates, "***Supervisors are responsible for initiating a prompt investigation into any and all complaints of misconduct by their employees and conducting full investigations into allegations of employee misconduct***". Directive 26.1.56 states, "*Supervisors must be acutely aware of, and explicitly follow, the provisions of Directive 52.1 in conducting these investigations to ensure their actions are **timely**, reasonable, consistent and legal.*"

By all accounts, Sergeant Gowan "self-reported" and filed a complaint against himself for misconduct. Sheriff's Office Directive 52.1 is to establish guidelines for the investigation of complaints against the Volusia County Sheriff's Office and its employees so the facts in each incident are determined and carried to a proper disposition. Directive 52.1.22 states, "*Investigations by supervisory personnel shall be forwarded in memo form to the Sheriff, via chain of command for review to ensure citizen complaints are resolved satisfactorily. After the Sheriff's review, the supervisory review containing all chain-of-command input shall be forwarded to Internal Affairs Section for record maintenance.*" Directive 52.1.24 documents "*A Supervisor's comprehensive investigative report shall be prepared on all investigations.*" Directive 52.1.34 directs, "*All complaints against the VCSO and its personnel will be documented and investigated*" and Directive 52.1.56 follows up the previous direction with "***Complaints initiated by employees shall be handled using the same procedure as for citizens' complaints.***" Lastly, Directive 52.1.55 notes "*The Sheriff shall be notified immediately from the level at which the complaint is received when the following complaints are received against the VCSO, or its employees.*" The directive specifically lists "*Allegations of the use of excessive force or brutality, and there is evidence to support the allegation*".

Sergeant Mills then reviewed the Volusia County Merit Rules and Standards of Directives again with Lieutenant Day. Lieutenant Day was asked whether he felt he committed the allegations and he answered,

(1) Willful neglect in the performance of your duties, "**NO**"

(10) Incompetent or unsatisfactory performance of your duties, "**NO**"

(21) Any other conduct or action of such seriousness that disciplinary action is considered warranted, **“NO”**

26.1.60 Accountability, **“NO”**

26.2.119 Reporting violations by employees, **“NO”**

26.2.5 Neglect of duty, **“NO”**

26.2.40 Negligence not endangering, **“NO”**

Lieutenant Day was asked if he had anything further he wanted to add. Lieutenant Day stated he made a decision and stands by his decision. Lieutenant Day continued, *“If I’ve done wrong I’ll, you know ok I’ve done wrong. But with the information that was presented to me at the time of this incident. With the information and my understanding of what my duties of watch commander are.”*

With no additional information provided, the interview concluded at 0943 hours.

#### **CONCLUSION:**

On August 21, 2018, this investigation was presented to the Sheriff and his administrative staff.

The Sheriff and staff determined that Sergeant Gowan failed to follow Volusia County Sheriff’s Office Standards and Directives. As a result, Sergeant Gowan received a Letter of Reprimand.

The Sheriff and Staff determined that Lieutenant Day failed to follow Volusia County Sheriff’s Office Standards and Directives and Volusia County Merit Rules. As a result, On September 5, 2018, Lieutenant Day was served with a “Letter of Intent” to suspend him for eight work hours.

On August 29, 2018, Lieutenant Day met with Sheriff Chitwood to discuss the proposed discipline. After earnest consideration, the Sheriff decided to issue Lieutenant Day a Letter of Reprimand for his violations.

#### **Summary of Violations**

##### ***Sergeant Sean Gowan;***

**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.*

(10) Incompetent or unsatisfactory performances of duties. – **NOT SUSTAINED**

(13) Any conduct, on or off duty that reflects unfavorably on the county as an employer.  
- **NOT SUSTAINED**

(21) Any other conduct or action of such seriousness that disciplinary action is considered warranted.  
- **NOT SUSTAINED**

**Volusia County Sheriff's Office Standards and Directives.**

26.2.101 Excessive or Unnecessary Force Not Resulting in Injury – **NOT SUSTAINED**

26.2.134 Knowledge of Official Directives – **SUSTAINED**

***Lieutenant James Day;***

**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.*

(1) Willful neglect in the performance of the duties of the position to which the employee is assigned  
- **SUSTAINED**

(10) Incompetent or unsatisfactory performances of duties – **SUSTAINED**

(21) Any other conduct or action of such seriousness that disciplinary action is considered warranted  
- **SUSTAINED**

**Volusia County Sheriff's Office Standards and Directives.**

26.1.60 Accountability – **SUSTAINED**

26.2.119 Reporting Violations by Employees – **SUSTAINED**

26.2.5 Neglect of Duty – **SUSTAINED**

26.2.40 Negligence, Not Endangering – **SUSTAINED**

**EXHIBIT(S):**

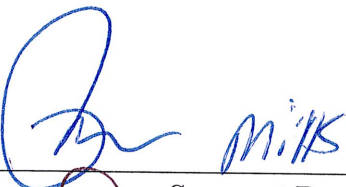
A) Report of Investigation


- B) Official Correspondence
- C) Copies of VCSO Incident reports and Supplements
- D) CAD history of call #P181681484
- E) Transcripts of Interview with Sergeant Sean Gowan
- F) Transcripts of Interview with Lieutenant Michelle Newman
- G) Transcripts of Interview with Lieutenant James Day
- H) Digital Media

**WITNESSES:**

Lieutenant Michelle Newman  
 Volusia County Sheriff's Office  
 (386) 736-5961

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: 10/12/2018  
**Sergeant Ryan Mills**  
**Internal Affairs Investigator**

APPROVED BY:  DATE: 10/12/18  
**Chief Deputy John Creamer**  
**SHERIFF MICHAEL J. CHITWOOD**  
**VOLUSIA COUNTY FLORIDA**