

# Memo



**To:** Henry Osterkamp, Chief of Police

**Fm:** R.J. Godfrey, Lieutenant

**Da:** December 12th, 2013

**Re:** Internal Affairs Investigation #IA 13-004

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**Complainant:** Mr. Jake Davis, family member

Corporal Kim Davis, Flagler County Sheriff's Office

**Employee:** Sergeant James Davis

**Witnesses:** Mr. Danny Davis, family member

Mr. John Steadman, family member

Ms. Melissa Sommerville, Denny's employee

Ms. Kaitlyn Loguidice, Denny's employee

Ms. Kristina Thomas, Denny's employee

Ms. Marjorie Paige, Denny's employee

Mr. Mark Carter, Denny's employee

Officer Austin Chewing, City Of Ormond Beach

Officer Danielle Reagan, City Of Ormond Beach

Officer Keaton LaBrie, City Of Ormond Beach

Officer Richard Rubin, City Of Ormond Beach

Officer Thomas Garcia, City Of Ormond Beach

Detective Jim Voegtle, City Of Ormond Beach

Detective Tom Larsen, City Of Ormond Beach

Corporal Chart Pliapol, City Of Ormond Beach  
Corporal Tom Elkins, City Of Ormond Beach  
Sergeant Jamie Gogarty, City Of Ormond Beach  
Lieutenant James Crimins, City Of Ormond Beach  
Corporal Matthew Mortimer, City Of Bunnell  
Deputy Bradley Schindleheim, Volusia County Sheriff's Office  
Deputy Jerry Dittolla, Flagler County Sheriff's Office  
Sergeant Phil Reynolds, Flagler County Sheriff's Office  
Lieutenant Chris Sepe, Flagler County Sheriff's Office  
Lieutenant Bob Weber, Flagler County Sheriff's Office  
Under Sheriff Rick Staley, Flagler County Sheriff's Office

### **Allegation Summary**

Sergeant Davis is alleged to have violated several Department policy(s) over a three year period regarding the commission of a misdemeanor crime(s) by committing an act of domestic violence. He is also alleged to have violated Department policy regarding the failure to report off-duty incidents. He is alleged to have violated Department policy regarding the use of his Department issued identification card while consuming alcoholic beverages. He is alleged to have violated Department policy regarding conflicts of interest in personal domestic or civil disputes, specifically threatening his son with arrest for sending harassing text messages. He is alleged to have violated Department policy by being untruthful when asked by his superiors about his relationship with a civilian. He is alleged to have violated Department policy regarding the proper notification to the Department of his home address. He is also alleged to have violated Department policy regarding leaving his assigned work area. He is alleged to be negligent by failing to execute the duties and responsibilities of his assignment. He is alleged to have exhibited conduct unbecoming a member of the Police Department, specifically by committing a misdemeanor crime.

## Investigation

On 7-15-2013 I received a phone call from Mr. Jake Davis, the adopted son of Sergeant Jim Davis of our Department and Corporal Kim Davis of the Flagler County Sheriff's Office. Mr. J. Davis made allegations that Sergeant Davis hit his mom (Kim Davis) and knocked her through a screen door. Mr. Davis advised that he was not a witness to this allegation but he also added that his mom, Kim Davis had photographs of her injuries.

On 7-17-2013, I conducted a formal interview with Jake Davis. A transcribed copy of this interview is attached for reference. During the interview, Jake Davis showed this writer some texts that he alleged were from Sergeant Davis. (Photos of these texts have been incorporated into this report.) Based on the information obtained during the interview, Chief Osterkamp ordered that an internal affairs investigation be conducted. I was assigned the case and initiated an investigation.

On 7-24-2013, I conducted a formal interview with Corporal Kim Davis. A transcribed copy of this interview is attached for reference.

Kim Davis was asked to explain the allegations that her adopted son, Jake Davis, relayed to me previously. Kim Davis made several allegations that amount to State Statute and Ormond Beach Police Department Departmental policy violation allegations against her husband, Sergeant James Davis, dating back to 2010.

The allegations by year were as follows:

### 2010

- Memorial Day party at their house, Kim Davis alleges that Sergeant Jim Davis got intoxicated and got into a fist fight with his brother, Danny Davis. Possible State Statute and Departmental policy violation.
- November 20<sup>th</sup>, 2010 incident at their house, while getting ready to take their youngest son to the movies, an argument started and Sergeant Jim Davis, who was intoxicated, allegedly "jabs" Kim Davis in the chest then pushed the son, causing him to hit his back on the counter.

- November 28<sup>th</sup>, 2010 incident where Flagler County deputies were called to the Davis home after a disturbance. No reports of domestic violence by Kim Davis.

### 2011

- July 24<sup>th</sup>, 2011 incident where Deputies were called to the Davis home after a disturbance. Bunnell Police Officers contact Sergeant Jim Davis at a local convenience store. He had been drinking and was detained until Flagler County Sheriff's deputies arrived on scene and relieved the Bunnell Police department officers. Possible State Statute violation and Departmental policy violation for failing to notify a supervisor, rudeness, and misusing your identification while consuming alcoholic beverages
- October 2011, Kim Davis speaks to Lieutenant Kenny Hayes on the phone about Sergeant Jim Davis' excessive drinking. No allegations of Domestic Violence are brought forward.

### 2012

- An undated incident in 2012 that occurred in the Davis home where Kim Davis alleges that Sergeant Jim Davis shoved her. Possible State Statute and Departmental policy violation. This incident was not reported to our department. Flagler Sheriff's Office has no record of this incident either.

### 2013

- April 26<sup>th</sup>, 2013 incident where Kim Davis alleges that a physical confrontation occurred in the Davis home between her and Sergeant Jim Davis. Possible State Statute and Departmental policy violations.

Kim Davis was asked why she never reported the incidents to the police, she replied, "Because... number one it's embarrassing...and...between you and I... I'm not sure that I trust the people that are coming to responding to my house with the lies that he... I mean he's obviously scared when stuff happens... I'm not saying that he's not remorseful because... because he is... but...you know... oh.... I'll tell them you did this... I'll tell them you did this. "

The investigation into the allegations levied by Kim Davis led to several interviews of persons connected to Kim Davis. On 8-15-2013 I interviewed Undersheriff Rick Staley, Lieutenant Chris Sepe and Sergeant Phil Reynolds of the Flagler County Sheriff's Office. Those interviews are incorporated into this report and have been transcribed for reference.

Undersheriff Rick Staley is Kim Davis' direct supervisor and he was asked what he knew about April of 2013 domestic violence incident between Kim and James Davis. He answered, "Uh... so I spoke with uh... Corporal Davis... uh... she stated that uh... yes... there was uh... an...a... a recent occasion of domestic violence. She said it was not the first time. Uhm... that her uh... husband has a serious drinking problem ... Uhm... I encouraged her to uh... to file a... a criminal complaint... Uhm... you know... that we would investigate and uhm... she declined... Uh... stating that... you know... she didn't want to get her husband in trouble. Uhm... that she was just hoping that he would... uhm... do something about his drinking. Uhm... I suggested to her that ... you know... she's a sworn law enforcement officer and that uhm...uhm... she had indicated that she was considering a ... uh... separation... or divorce and uhm... and I suggested to her that... You know... she is ... takes some full action, because if they do get a divorce, he'll be dating someone else and... you know... you don't want this to perpetuate uh... with someone else... But... but she declined to uh... to pursue it... I suggested your agency... and she indicated that she was already uh..

Lieutenant Chris Sepe was interviewed and asked if he knew anything about the recent (April 2013) domestic violence incident, he responded, "Uhm... Corporal Davis and I didn't really talk much about it. Uh... she left CID shortly after that... within months... I believe it was...uhm... we don't have a social relationship so there wasn't many conversations that occurred... uhm... recently... probably in the first six months of this year... there's been some uh... just brief conversations between her and I... we work at the same building and...uhm... just talking about the... the possibility of being separated or divorced... and uhm... Jim was drinking more than ever and uhm... you know... it's getting bad... it's getting bad... and uhm... at one time she said it was abusive... but she didn't go into any... into any great detail. "

Lieutenant Sepe was asked to clarify what he meant by abusive and he answered, "It's only my interpretation... uhm... it could be verbally or it could be physical. She did not specify one or the other. Uhm... so it would really just be my own interpretation. Uh... the... few... I mean...Kim's uh... she's a detective... she's

dealt with these types of uhm... you know... calls and crimes and for her to use the word abusive...I would interpret that as physical just because she seems like the person wouldn't complain about a verbal...a verbally abusive situation but once again that is strictly my opinion."

Sergeant Reynolds was on the scene of one of the incidents, specifically on November 28<sup>th</sup>, 2010. Sergeant Reynolds was asked to recount what happened on that night and he answered, "Sure... on November twenty eighth, around six PM... uh... during my shift...I was dispatched to \_\_\_\_\_ I... located in \_\_\_\_\_ in reference to a uh... domestic call... domestic violence... husband / wife... When I got there... I made contact with Kim Davis, the complainant who advised that she was concerned for her uh... husbands actions that night... uh... her statement to me was that ...he seemed intoxicated and she did not like the way that he was speaking to the children... uhm... in reference to his tone and his comments. She also stated that she told him that she wanted a divorce and at that time he became irate and started uh...yelling at her and once I did the investigation... I... I... wanted to see if either party wanted to complete a voluntary statement and they both declined. However, uh... during my observation...of the male half...I ... once I made entry into the home... I did... with Kim Davis' permission of course... made contact with the male half uh... Mr. Davis...uhm... appeared intoxicated by slurrness of speech. Had to maintain his balance by holding on to things within the house. Just on basic conversation... he denied any involvement in any kind of domestic violence activity on that day. I treated it as any other domestic uh... I offered the opportunity for both parties to sign a statement. Both refused to do so. I provided Kim Davis a Domestic Violence Pamphlet on which she signed... With some domestic violence information on there. And she took the kids for the evening and stayed elsewhere... uh... per our policy... I went down the checklist that night... notified my chain of command and also Kim Davis's chain as well. Once I did that, I completed a Domestic Violence report and I notified uh my chain of command... which at the time was either Sergeant or Lieutenant Weber who had approved my report and that... pretty much was my involvement in this case."

On 11-12-2013, I conducted a formal interview with Sergeant James Davis. A transcribed copy of this interview is attached for reference.

Sergeant Davis was presented with the allegations of domestic violence reported by his wife, Kim Davis and offered an opportunity to explain his account of what occurred on the listed dates and incidents.

## 2010

*Memorial Day party at their house, Kim Davis alleges that Sergeant Jim Davis got intoxicated and got into a fist fight with his brother, Danny Davis. Possible State Statute and Departmental policy violation.*

Sergeant Davis answered under oath that he was at the above mentioned party and he was wrestling with his brother (Danny) and his nephew (John). He advised he was drinking and that there were no punches thrown as alleged by Kim Davis. There were several interviews conducted with Officers (Sergeant Gogarty, Corporal Elkins and Detective Larsen) that were present at the party that evening as well as both Danny Davis and John Steadman. Transcribed copies of the interviews are attached for reference. All of those interviewed did not see any type of fist fighting and only observed wrestling or heard about the wrestling at a later date.

*November 20<sup>th</sup>, 2010 incident at their house, while getting ready to take their youngest son to the movies, an argument started and Sergeant Jim Davis, who was intoxicated, allegedly "jabs" Kim Davis in the chest then pushed the son, causing him to his back on the counter.*

Sergeant Davis testified that her allegations of physical violence in this case were "not true". He did state that they had a heated verbal argument and "got into each other's faces" but that was extent of the incident. Sergeant Davis did state that he had been consuming alcohol during this incident. When asked about the physical contact upon his son happened, he answered, "No".

*November 28<sup>th</sup>, 2010 incident where Flagler County deputies were called to the Davis home after a disturbance. No reports of domestic violence by Kim Davis, however possible policy violation for or failing to notify supervisors.*

Sergeant Davis testified that it was on a Sunday, he has a porch where he sits and watches the football games out there so he can smoke his cigars. He stated that they were arguing and she called the Deputies on him. He did acknowledge that he was drinking during this incident. He stated he told (verbally) Sergeant Gogarty about the incident on Tuesday (11-30-2010), while calling in sick. He stated he did not document the incident after telling Sergeant Gogarty. (See Sergeant Gogarty's transcribed statement regarding his recollection of this incident.)

**Note:** The incident occurred on 11-28-2010, our Department was notified of the incident via fax from the Flagler County Sheriff's Office on 11-29-2010; Sergeant Davis admittedly did not notify his supervisor until Tuesday, 11-30-2010.

## 2011

*July 24<sup>th</sup>, 2011 incident where Deputies were called to the Davis home after a disturbance. Bunnell Police Officers contact Sergeant Jim Davis at a local convenience store during the incident. He had been drinking and was detained until Flagler County Sheriff's deputies arrived on scene and relieved the Bunnell Police Department officers. Possible State Statute violation and Departmental policy violation for failing to notify a supervisor, rudeness, and misusing your identification while consuming alcoholic beverages.*

Sergeant Davis testified that he and Kim were arguing and she was throwing things around the house. Kim called the Deputies and he was going to his father's house for the night. He stopped at the convenience store, bought some beer, came outside and was stopped by Officer Chewning of the Bunnell Police Department. Sergeant Davis stated that he was crying and very upset over the incident. He did state that he had been drinking during this incident, to the extent of "one or two beers". Sergeant Davis apologized for being rude to the Officers as they both alleged, blaming it on frustration. Sergeant Davis did admit to giving his Police identification card to Officer Chewning, "just so there was no question, here, I work here; this is what I do for a living." Sergeant Davis then re-answered that he might have had "two or three beers" that evening and Lieutenant Weber of the Flagler County Sheriff's Office let him drive to his father's house. Sergeant Davis stated under oath that he notified this writer of the encounter with law enforcement but did not document the incident.

On 8-13-2013, I conducted a formal interview with Officer Austin Chewning of the Ormond Beach Police Department. A transcribed copy of this interview is attached for reference. Officer Chewning testified that he made contact with Sergeant Davis as a result of the incident that occurred at his home on the night in question. He made contact with Sergeant Davis outside of the "Kangaroo store as he was exiting the store with a twelve pack of beer". Officer Chewning stated that after he asked if he was Corporal Davis (corporal at the time of the incident), he replied that he was and Davis asked "if he was legally detained?", to which Officer Chewning advised him that he was not free to leave until the Flagler County Sheriff's Office arrived as they wanted to speak to him. Officer Chewning then stated, "so he whipped out his I.D., showed that it was an Ormond Beach Police Department I.D. card and uh...after that, he was very confrontational".

On 8-21-2013, I conducted a formal interview with Corporal Matthew Mortimer of the Bunnell Police Department. A transcribed copy of this interview is attached for reference. Corporal Mortimer testified that he arrived at the convenience store after Officer Chewning made initial contact with Sergeant Davis. He described Sergeant Davis' behavior as "he was ...he was being rude...he wasn't dropping profanity but he was...he was speaking to both myself and Officer Chewning like...we were

dumb...like we didn't know what we were doing." Corporal Mortimer stated that Sergeant Davis "appeared to be under the influence uhm...of alcohol"

On 8-13-2013, I conducted a formal interview with Deputy Jerry Dittolla of the Flagler County Sheriff's Office. A transcribed copy of this interview is attached for reference. He responded to the Davis household after Jake Davis called. Deputy Dittolla testified that Sergeant Davis was gone prior to his arrival and that Kim Davis did not report any acts of domestic violence. Deputy Dittolla stated that Kim told him that, "he (Sgt. Davis) had been drinking all day...and was belligerent...uhm...and cursing in front of the children and they just weren't getting along".

On 8-23-2013, I conducted a formal interview with Lieutenant Bob Weber of the Flagler County Sheriff's Office. A transcribed copy of this interview is attached for reference. Lieutenant Weber spoke to Sergeant Davis at the convenience store after relieving the Bunnell Police officers of the stop. Lieutenant Weber testified that Sergeant Davis "appeared to be intoxicated to a certain extent". Lieutenant Weber stated that he did not conduct any "field sobriety tests or anything like that." Near the end of his interview, when speaking of his familiarity with Sergeant Davis, Lieutenant Weber stated that he has known Sergeant Davis for ten years. When asked if he has ever run into Sergeant Davis in an off-duty capacity while Sergeant Davis had been drinking, Lieutenant Weber offered, "If I had to say anything...I would say that uhm...Jim (Sergeant Davis) might have a problem with alcohol."

*October 2011, Kim Davis speaks to Lieutenant Kenny Hayes on the phone about Sergeant Jim Davis' excessive drinking. No allegations of Domestic violence are brought forward. Sergeant Jim Davis was*

Sergeant Davis answered under oath he did not know.

## 2012

*An undated incident in 2012 that occurred in the Davis home where Kim Davis alleges that Sergeant Jim Davis shoved her. Possible State Statute and Departmental policy violation.*

Sergeant Davis was asked if he hit her in the face in the hallway in 2012, he answered with "absolutely not". When asked if he ever got into shoving matches with her, as alleged, he answered, "Yeah, usually when I tried to leave or get myself in my son's room and lock the door". When asked why the Police weren't called, he answered, "Yeah... she... she pretty much told me... uhm... that it's her agency... her department and their going to take her word for it. So... I don't think I could have got a fair shake. So I just... I didn't... and... was that the right decision... I don't know... probably not."

### 2013

*April 26<sup>th</sup>, 2013 incident where Kim Davis alleges that a physical confrontation occurred in the Davis home between her and Sergeant Jim Davis. Possible State Statute and Departmental policy violations.*

Taken from Kim Davis' transcribed account of the event, "So he went to.. room and closed the door and I waited for probably about forty five minutes to an hour and uhm... I just knocked on the door and said what is wrong... why are you doing this today? Like I could just tell that the day was going to end up this way. Uhm... just 'cuz of things that have happened in the past. We've had a rough three years. It's been about three years since... two thousand ten... and uh... he came to the door and he started you know... yelling, name calling, just the usual stuff and uhm... the door wasn't even open... well it was opened but it was like cracked... so if you were standing in the hallway... to the back of me is a little front bedroom that was closed and then there's a bathroom and then there's room. So... I opened the door and I said what is wrong with you... I don't understand why is this getting so crazy over nothing... You know... we don't have to do this thing in the backyard. With that ... he uhm... hit me... a couple times in the face... and kicked me in the stomach. Now I didn't go through a screen door. I don't know if that's what you... the... words Jake exactly used but I had went into the door that was behind me. I didn't go through the door or anything. So I fell on the ground, I'm still in the hallway like right at the ... uhr door and he was still there... and... he's grabbing a hold of me. I went to reach up and grab his glasses and then... he had a hold of me... but I had grabbed his groin so he let go and he's... I can't believe you did that... I'm like... I can't believe you just punched me in the face three frickin times... you know... with that saw a lot of it... not the whole thing but he saw some of it so he was screaming.... He was upset... call the police, call the police. I grabbed him... I went into the other room. Uhm... and just...uh... obviously both of us were upset. He ended up... I want to say ended up staying in the room. I don't even know if he ended up finishing his beer or what... what have you. Uh...I took some pictures... I stayed there. I didn't call law enforcement. Uhm... you know... he kept saying... I'm going to... you know if you call law enforcement, you're going to go to jail too and it was just... really bad. That was probably the worst that anything's ever gotten... to that point. "

Sergeant Davis transcribed account of the event, "It was a Friday and there was a smoke event at the Big Smoke coming up on Saturday. Now I had never been allowed to go at all .... Period ... to them... uhm... She just didn't want me going. She had a real hard time about me doing anything without her or anything with friends. So... I kind of made up my mind.... I said... yeah... I'm going and that's it. I'm... I'm just going to go... I'm tired of it. It's one to four. I'll be back at four thirty. So we got into it... I mean it started at like... when she got home from work that Friday... it was a fight all night... all night... yelling, screaming. I finally locked myself in my son's room, locked the door and uh... she would come in. She'd beat on the door. She'd start kicking the door. She says I'm going to kick this door in. You ain't going anywhere. Blah, blah, blah. So I finally opened the door and she would punch me. She would always try and swing like this and I'd... look hey... cut it out... stop it... cut it out... cut it out. So... she smacked me a couple times like this and then she just hauled off with a right and drilled me right here... collapsed my glasses. Knocked the frame out. Or knocked the lens out of the frame. So I'd try to trap her arm and just push her back... get her the heck away from me... so she grabbed my arms. I got some scratches on my arms which you can see in the video... or the uh... the pictures and uh... I broke free from that. She tried to grab my crotch. And... and... twist. And the only thing I could do is just push back and just put one foot in her and push her back... the heck away from me.

When asked if she went back into the doorway, he responded, "Absolutely... yes she did."

Sergeant Davis was asked if he hit her in the face three times and he answered, "no.' Sergeant Davis was asked if he kicked her in the stomach, he answered, "I... yeah... I pushed... whatever... it's ....it's a .... It's called a thrust kick or something, just to get her the heck ... she was up on me... grabbing my crotch."

Both Davis's testified that their youngest son most likely saw some of this event and heard some of it as well.

Sergeant Davis was questioned about the photographs that Kim Davis supplied and asked, "Is there anything other than what they appear to be that we need to know?" Sergeant Davis responded, "I don't know when they're from... or when she's alleging these things happened. You know... these injuries that she got but yeah... I can definitely tell you there was a physical confrontation between both of us... her and I."

Sergeant Davis was asked if the photographs that he gave to me were a representation of what happened on that night and he answered, "Yes". He further answered that those were pictures of his injuries that he sustained from Kim Davis during the above mentioned incident.

Sergeant Davis was asked why nobody called the Police, he answered, "Again... I... I didn't want to. 'cause of the things that she said and it was a personal matter... I... I... just knew right then and there I just had to go... that was it. I just... that was the... the final straw... I had to get out."

In regards to the photos that Sergeant Davis took of his injuries, he was asked if was fearful of being arrested and he answered, "Uh... no... she... well... again... with... with that agency I don't know... you know... she made it clear... she says if... if I decide to call... it's going to be me that's going to jail. No matter what happens."

When asked if he was intoxicated during this incident, he stated that he has a few beers, but stated that he was not intoxicated. When asked to clarify what he meant by "not intoxicated" he stated, "Well like... two or three... or four... that's fine... That's usually what I would buy... just like four beers... that's it."

This writer then asked Sergeant Davis, "OK...and in regards to domestic violence allegations or actions... is there anything that I didn't ask you about or anything that you'd like to say regarding the aforementioned domestic violence allegations?"

Sergeant Davis replied, "Yes there is... There's a couple of them... She uhm... we were driving to Savannah and I think it was uh... I want to say it was October... October two thousand ten. I want to say it was Halloween and we were going up there... they were having a uhm... some kind of Halloween thing at uh... the state park up there in Savannah... Skid...skid something... oh heck... I don't know... I don't remember... but anyway... we were driving on ninety five. Now I got me, Kim... I'm in my expedition... Jake, the two dogs in the back and my trailer. So we start fighting. She starts accusing me of cheating on her. So as we're driving on ninety five... she starts punching me in the arm and tries to smack me in the face. While we are on ninety five. Jake saw that, and saw that."

When asked what happened, he stated, "I... I pulled off the ... the road... I pulled into a rest area... I'm like... what... what are you doing... I said... I... I'm driving... I got fricking four hours to drive... How can you do this now? But that was with her... I mean... she was up and down. She had a bunch a where she was really high and very happy and really furious at a lot of things."

Sergeant Davis was asked if he called the Police or Troopers and said that he stated, "No... No... I just ... I pulled over on the side of the road... I'm like... hey we're going camping... what are you doing... why are you doing this? You know... this is crazy. You know... she's... she's kicked me square in the groin on... on two or three occasions."

This writer asked if they happened at his house, he answered, "Yeah ... just flat drilled me. You know there was an incident where she would take my work phone and she would... you know... go through all my phones and she saw... it was Garcia's number... and she comes screaming into my son's room at like seven thirty in the morning. I went to bed at four thirty, maybe five... and she's screaming and hollering that I'm calling this person and... it's not listed on there... so... I...I'm waking up ... but... I popped the phone open and I'm like... it says Garcia... what are you doing... what... what is this? Well, I didn't see that. So... she's just very ... you know... just very jealous... very jealous..."

During this investigation, information was reported to me by Sergeant Gogarty that he heard a rumor that Sergeant Davis was caught by a Volusia County Deputy with the Denny's waitress. He told me that the rumor was widespread and well known. This writer contacted Lieutenant Erik Eagan of the Volusia County Sheriff's Office and asked him to inquire at his agency if anyone at that agency heard of the rumor. Lt. Eagan contacted me later the same day and told me that I should contact Deputy Bradley Schindleheim.

On 9-06-2013, I conducted a formal interview with Deputy Bradley Schindleheim. A transcribed copy of this interview is attached for reference. Deputy Schindleheim stated that he did contact the Denny's waitress, later identified as Mellissa Somerville, on September 13, 2012 at 0442 hours in the area of Broadway Avenue and Atlantic Road, in the County, which was and still is a clearly marked "No Trespassing" construction site. Deputy Schindleheim stated that he found Ms. Sommerville in her personal vehicle in that area. As he and his trainee were handling the incident, Sergeant Davis showed up on scene and left shortly afterward. Sergeant Davis was on-duty and acting in a back-up capacity.

On September 23, 2013 I conducted a formal interview with Ms. Sommerville. A transcribed copy of this interview is attached for reference. Ms. Sommerville was asked about the incident where she was contacted by Volusia County Deputies in the area of Broadway Avenue and Atlantic road. She stated she went out there for several reasons; to listen to music, to watch the stars, to read, to write in her journal. It was a quiet place for her to relax. She also added, "I had asked Jim at some point because it was like a closed road...dead end...whatever and said...you know... am I going to get any shit for being back there. And he was like no... I mean... it's not really the safest places for you to be.... And he was... you know... well just be careful. You know there's vagrants... there's you know... turn your headlights on every once in a while, look around you get your bearings... make sure nobody is sneaking up on you. "Ms. Sommerville was asked if she had ever been to that location before and she replied, "I had been to that spot before. Yes... I have... ' Ms. Sommerville was asked if there were any other incidents involving the Police to include Sergeant Davis showing up. She replied, "The only time that I have ever had an incident with the police is when I was on that street and Brad and his trainee came

and... and... they didn't cite me ... they didn't tell me not to ever be there again... he said for training purposes... I'm going to have her run your ID because she's new and she needs the experience of it... and I went... well fantastic. And then him and I stood there and talked about vanilla milk shakes while she ran my ID."

Sergeant Davis was asked about the law enforcement encounter that Ms. Somerville experienced and what his involvement in that incident was. He answered, "I would smoke up there... like maybe five o'clock till five thirty and uh... I'd be outside my car... just burning a small uh... rubusto or something... and uh... she knew that I kind of smoked up there, so I don't know... if it was her intention to surprise me or what the story was, but... when I found out she was there... I... I... I was... well... I was less than pleased.

Sergeant Davis acknowledged that he called Ms. Sommerville several minutes prior to the Deputies contacting her on this incident.

When asked, "Did she call you when the deputies were out with her?"

Sergeant Davis replied, "No... I saw Brad heading down there... and I... like I said I go... I was at the Race Trac at the time... it was... it must have been like five or a couple minutes to... and I was getting ready to go down there and burn one and I saw Brad go down there ... I said... oh.... I wonder where he's going..."

When Ms. Sommerville was asked if she called Sergeant Davis while the Deputies were out with her she answered, "No... I don't remember using my phone. I may have butt dialed him..."

This writer then asked, "OK... so the only... the only thing where anybody could put anything together was when the deputies... when Brad called out with her and you showed up 'cause you were right nearby?"

Sergeant Davis answered, "Yeah... I was at the Race Trac."

An analysis of Sergeant Davis' AVL data, CAD records and his City cellular phone records on the night of 9-13-2012 indicate the following:

CAD records show Sergeant Davis never logged himself out as back up on Deputy Schindleheim's call.

At 0432 hours, AVL data shows Sergeant Davis stationary at the Ormond Beach Police Department.

At 0433 hours, Sergeant Davis calls Ms. Somerville on his City issued cellular phone for a period no longer than one minute.

At 0435 hours, AVL data shows Sergeant Davis moving 29.2 mph in a northwest direction on US 1.

At 0440 hours, AVL data shows Sergeant Davis moving 52.3 mph in a northwest direction on US1.

At 0441 hours, AVL data shows Sergeant Davis moving 13.2 mph in a north direction very close to the area of Indiana Street and Broadway Avenue.

At 0442 hours Deputy Schindleheim is logged out in CAD with a Suspicious Vehicle in the area of Atlantic Road and Broadway Avenue.

At 0443 hours Deputy Schindleheim enters Ms. Somerville's Driver's license into the FCIC/NCIC system to check its validity, per CAD records.

At 0445 hours, Sergeant Davis' City issued cellular phone receives a call from Ms. Somerville's cellular phone for a period of no more than one minute.

At 0451 hours, the deputies clear the call, per CAD records.

At 0509 hours, Sergeant Davis calls Ms. Somerville on his City issued cellular phone for a period no longer than one minute.

At 0530 hours, Sergeant Davis' City issued cellular phone receives a call from Ms. Somerville's cellular phone for a period of no more than four minutes.

There was no AVL data that showed Sergeant Davis was at the Race Trac Gas Station during this incident.

Deputy Schindleheim was asked if Sergeant Davis was already inside the "No Trespassing" area and he answered, "As we were coming in... he was... this was still behind us and he was coming off of US One..."

The investigation into the allegation that Sergeant Davis was untruthful with the Chief of Police and Lieutenant Crimins when asked about his relationship with the Denny's waitress (Ms. Sommerville) in a meeting in the Chief's office in May of 2013 resulted in the interviewing of several witnesses, to include officers of this Department and employees (both present and former) of the Denny's restaurant located at 215 Williamson Boulevard in Ormond Beach.

During the meeting, Sergeant Davis was asked if he was having an affair with the Denny's waitress by Chief of Police Osterkamp where he replied that they were "just friends". The meeting was adjourned and no further action was taken concerning the Denny's waitress allegations.

On 9-03-2013, I conducted a formal interview with Corporal Tom Elkins. A transcribed copy of this interview is attached for reference. Corporal Elkins was asked what he knew about the Denny's waitress and he stated, "I know that... when I first came back to the shift... when I got promoted...uh.... you know people were talking about this girl at Denny's... I never met her before.... Uh... you know once we started going out there every night... you know her and Jim were always friendly with each other. Uhm... I know that people had ... you know...again... the rumors floating around that.... That... Jim and this Denny's waitress... you know... were extra flirtatious with each other and that you know... everybody was convinced something was going on but again...nothing that Jim ever directly came to me and said hey... you know... keep it on the downlow... this is what's going on or... you know... I... I don't think he would ever put me in that position even if... even if there was something going on... I don't think that he would put me in the middle of that. Now... was there anything going on and that's why he split or that's why he moved out... I don't know... I... I... can only go on what ... you know... the rumors that were out there and... you know... I never saw Jim do anything inappropriate on duty that I would say... you know...Oh Jim... you probably need to not do this or do that...or whatever..."

On 9-09-2013, I conducted a formal interview with Mark Carter. A transcribed copy of this interview is attached for reference. Mr. Carter was the individual that met with the Chief of Police and Lieutenant Crimins in May of 2013 to discuss Sergeant Davis and Melissa Sommerville. He was most concerned with any retaliation that he may face as a result of someone at Denny's thinking he was the anonymous caller from March of 2013. (Lieutenant Crimins handled an anonymous phone call that basically claimed that Sergeant Davis was having an affair with a Denny's waitress, later identified as Ms. Sommerville in March of 2013) Mr. Carter advised that he saw Sergeant Davis and Ms. Sommerville kiss. When asked if he saw them do anything outside, he stated, "He would hug her... he would grab her butt and ..." Mr. Carter advised that this happened in February of 2013. When asked to describe the kiss, Mr. Carter answered, "It was lip to lip."

On 9-13-2013, I conducted a formal interview with Officer Jim Voegtle. A transcribed copy of this interview is attached for reference. Officer Voegtle was asked if he ever saw any interaction between Sergeant Davis and Ms. Sommerville while at Denny's. He answered, "...she went over and gave him a hug and a kiss... That... that was about it." When asked if the kiss was on the cheek or the mouth, he answered, "Uh... appeared to be the mouth area." Officer Voegtle stated that he was in the Denny's with Officer Reagan, sometime after January of 2013, as he was on the Crime suppression team and Sergeant Davis was his supervisor.

On 9-13-2013, I conducted a formal interview with Ms. Marjorie Paige. A transcribed copy of this interview is attached for reference. Ms. Paige works at Denny's

restaurant at 215 Williamson Boulevard in Ormond Beach. Ms. Paige stated that she noticed that they were "not just friends" anymore was after he moved out of his house (April 2013). She stated, "Hugs became longer, and it would have been obvious to anybody watching that they just weren't friends anymore." When asked when she was told that Sergeant Davis moved out, she stated, "It had to have been the first beginning of summer, like I said I can't, I couldn't tell you if the kids were out of school or not, I can't remember."

On 9-13-2013, I conducted a formal interview with Ms. Kaitlyn Loguidice. A transcribed copy of this interview is attached for reference. Ms. Loguidice works at Denny's restaurant at 215 Williamson Boulevard in Ormond Beach. Ms. Loguidice stated that in late 2011 or early 2012 Ms. Sommerville told her, "that she met his family, he met her family" they went to dinner a couple of times with her family and Ms. Sommerville met Sergeant Davis' family. Ms. Loguidice stated that she witnessed Sergeant Davis kiss Ms. Sommerville on the mouth, inside and outside of the Denny's while in uniform. She stated that it was early 2013 when she saw them kiss like a "boyfriend girlfriend kiss".

On 9-15-2013, I conducted a formal interview with Ms Kristina Thomas. A transcribed copy of this interview is attached for reference. Ms. Thomas is a supervisor at the Denny's restaurant at 215 Williamson Boulevard in Ormond Beach. Ms. Thomas was asked what she knew about Sergeant Davis and Ms. Somerville's relationship. She answered, "Well uhm... year ago... maybe December... maybe Novem... end of November (2012)... I find out... they started dating....because she started telling me... everybody she's dating but it was kind of confidential. She no want nobody else to find out. So she told us, keep it to yourselves... but my... another server I guess... run her mouth and told everybody. So... it was probably like year... eight months." When asked why Ms. Sommerville wanted Ms. Thomas to keep it to herself or keep it quiet (the relationship), she answered, "She just said she doesn't want nobody to know for now. I guess he was still living with his wife. That's why... because... he was living still with his wife...but what she said... they have very abusive relationship. And she was abusing him. And he just staying there, I think...for his son... if I'm not mistaken. He has son \_\_\_\_\_

Something like that... and she said... I think that is because of why ... till he goes through divorce....that's something like that."

On 9-16-2013, I conducted a formal interview with Officer Danielle Reagan. A transcribed copy of this interview is attached for reference. Officer Regan was asked to recount what she observed at the Denny's restaurant in April of 2013. She replied, "Uh... Voegtle and I went into eat first and we were sitting at the table and Sergeant Davis and I believe Corporal Elkins walked in and Melissa went up to them and gave Sergeant Davis a hug and then kissed him on the lips." She stated that Elkins did not get kissed on the lips and that they were all in uniform and on-duty at the time. She also stated that at the time of the incident, Sergeant Davis was her supervisor.

On 9-18-2013, I conducted a formal interview with Officer Thomas Garcia. A transcribed copy of this interview is attached for reference. Officer Garcia described Sergeant Davis and Ms. Somerville's relationship as "very friendly". Officer Garcia thought it was "odd" that she knew certain details about the unit. Officer Garcia stated that Ms. Sommerville would tell him about arrests that he made and he felt that they (Sergeant Davis and Ms. Sommerville), "were very close". Officer Garcia recounted a kiss on the lips that he witnessed between Sergeant Davis and Ms. Sommerville and even asked Ms. Sommerville what that was about and he stated that she said, "Merely friendly, and uhm, just friends, nothing else is going on." Ofc. Garcia stated that this incident occurred in "April or May...roughly."

On 9-18-2013, I conducted a formal interview with Officer Richard Rubin. A transcribed copy of this interview is attached for reference. Officer Rubin stated that Ms. Sommerville was more friendly with Sergeant Davis than the other Officers that frequent Denny's. He did witness Sergeant Davis hug Ms. Sommerville and kiss on the cheek. He couldn't say for sure if he ever saw them kiss on the mouth. Officer Rubin did state that on one occasion he noticed that Ms. Sommerville was leaving Denny's with food and he inquired, "where is she going?" and he was told, "Oh, she is going to meet up with Davis..." Officer Rubin was told this by one of the other Denny's employees and it was two or three in the morning.

On 9-29-2013, I conducted a formal interview with Officer Keaton LaBrie. A transcribed copy of this interview is attached for reference. Officer LaBrie was asked about Ms. Sommerville and Sergeant Davis' actions inside the Denny's while on duty. He answered, "Uh... there's a certain waitress there that is just very friendly with everyone. She would... whenever you would come in, she'd come and give you a hug and either ...get a kiss on the cheek... made me ... kind of feel uncomfortable... but she didn't do it just to me... she did it to all the officers." When asked if he witnessed Ms. Sommerville kiss Sergeant Davis on the mouth, he answered, "It's possible... like a quick peck or something... not like a ...." He was then asked a clarification question as to what type of kiss and he responded, "Yeah... a quick peck... correct." He advised he witnessed this in late 2012, while working for Sergeant Davis on the midnight shift.

On 10-9-2013 I conducted a formal interview with Lieutenant James Crimins. A transcribed copy of this interview is attached for reference. Lieutenant Crimins was asked what he heard Sergeant Davis answer when asked by the Chief of Police if he was having an affair with Ms. Sommerville, in the aforementioned May 2013 meeting that occurred in the Chief's office. Lt. Crimins answered, "If he asked him that... you know...whether or not they were having an affair... and Jim Davis said no... they were just basically friends. And just somebody he knew from Denny's." when asked if the Chief asked him, "if they ever did anything outside of work or off duty together?"

Lt. Crimins responded, "I don't recall that. I just remember him asking him... directly... that... you know... A... did he threaten Mark. He said no. Never threatened him with retaliation... Davis said basically this guy Mark has a thing for Melissa. He... he was stalking her ... you know... kind of like ... wouldn't leave her alone... he'd follow her around and uh... you know... that was about it. And then he point blank asked him whether or not they were actually having an affair... you know... because of allegations of him leaving... you know with this girl for over an hour... then... you know... she would come back to work after they were gone... No body... nobody had any idea where they were going... including Mark.... Nobody followed them. But... you know... he denied having an affair with her and just said she was an employee and a friend. That's it... He just knew her from Denny's."

Sergeant Davis was asked, "...when do you think your relationship changed from being friends to something other than that?" He answered, "Oh... well I remember when I ... when I got into the big fight and left my house in April, I had called her and she came up to my mom's house to... to visit me and uh we talked and we chatted. I think she ... I don't know if she went home that night or spent the night. I think she might have spent the night that night... but we didn't... if you're asking the first time we were intimate... it wasn't until like maybe mid to end of May." Sergeant Davis was asked how many times he kissed Ms. Sommerville on the lips while on duty and he replied, "Every time I saw her, probably..."

Sergeant Davis City issued cellular phone records indicate that he called Ms. Somerville's telephone approximately fourteen (14) times, from the time period of 6-15-2012 to 12-01-2012.

Sergeant Davis city cellular phone records indicate that Ms. Somerville called his cellular telephone approximately twelve (12) times, from the time period of 6-15-2012 to 12-01-2012.

When asked during his interview about telephone calls to Ms. Sommerville, Sergeant Davis indicated that he used both his City issued phone and his personal phone to communicate with her. Records indicate a majority of the calls were placed while Sergeant Davis was on-duty and a small amount of them were placed on his off time.

The investigation into the possible untruthfulness regarding the Denny's waitress led to the discovery of AVL data that showed Sergeant Davis was leaving the City while on-duty and positioning himself in a location that is clearly marked a "No Trespassing" construction site in the County of Volusia. The location in question is Indiana Street and Broadway Avenue. This area is part of marked "No Trespassing" construction site just outside of the City limits, on the City's northwestern border.

AVL data revealed the following information.

On 5-26-2012 Sergeant Davis was located at that location for 26 minutes.

On 6-23-2012 Sergeant Davis was located at that location for 18 minutes.

On 7-15-2012 Sergeant Davis was located at that location for 35 minutes.

On 7-22-2012 Sergeant Davis was located at that location for 45 minutes.

On 7-28-2012 Sergeant Davis was located at that location for 22 minutes.

On 9-15-2012 Sergeant Davis was located at that location for 54 minutes.

On 9-16-2012 Sergeant Davis was located at that location for 24 minutes.

On 9-20-2012 Sergeant Davis was located at that location for 45 minutes.

Sergeant Davis was asked if the location mentioned above, Indiana Street and Broadway Avenue is in the City or County. He answered, "It's barely in the County. I don't know what it is... it's a hundred feet or something like that..." When asked if it was a clearly marked No trespassing site, he answered, "yes". When asked to explain his actions, he answered, "Yeah, I would go up there and smoke." When asked to explain his action about a different date at the same location he answered, "Yeah....proba... again... probably a smoke or just finishing up some of the reports. Launching the commander's report. You know... I... I kind of picked that spot because it was out of the public eye if I was going to burn one."

When asked if his actions (the AVL activity) set a good example for his subordinates, He answered, "What... just sitting for what... it can be excessive...but you're sitting for thirty minutes... like I said, I could be out smoking, then I'm out checking some reports and sending them back or sending an email. I mean that thirty minutes wasn't just all idle. I.... I can tell you that. You know... it depends if we were not busy and there was nothing to check... yeah... it probably was a lot of idle time."

### **Findings of Fact**

1. Sergeant Davis was involved in two documented Police incidents in Flagler County between the dates of November 28<sup>th</sup>, 2010 through July of 2012.
- 2.
3. Prior to April 2013, there were no formal investigations or supervisory reviews ordered by the Chief of the Police in regards to Domestic Violence allegations between Sergeant Davis and his wife, Kim Davis as there were no allegations or complaints of this nature brought to Command Staff's attention..

4. Sergeant Davis supplied this writer with photographs of his injuries that he claims he sustained during a domestic violence incident between him and his wife, Kim Davis that occurred in April 2013.
5. Kim Davis supplied this writer with photographs of her injuries that she claims she sustained during a domestic violence incident between her and her husband, Sergeant Davis that occurred in April 2013.
6. Sergeant Davis kissed Ms. Sommerville on the mouth, while on-duty, in uniform, in front of his subordinates more than once and in front of six (6) witnesses to include Denny's employees and untold members of the general public/restaurant customers..
7. Sergeant Davis called Ms. Sommerville from his personal cellular phone and City issued cellular phone while on and off-duty.
8. Sergeant Davis City issued cellular phone records indicate that he called Ms. Somerville's telephone approximately fourteen (14) times, from the time period of 6-15-2012 to 12-01-2012.
9. Sergeant Davis city cellular phone records indicate that Ms. Somerville called his cellular telephone approximately twelve (12) times, from the time period of 6-15-2012 to 12-01-2012.
10. Sergeant Davis left the City in his marked Police vehicle a total of eight (8) times between 5-26-2012 through 9-20-2012 and remained stationary in a clearly marked "No Trespassing" site. According to his AVL data, he spent 269 minutes or nearly four and one half hours in this area.
11. Ms. Somerville was contacted in the same location that Sergeant Davis frequented, outside the City in the "No Trespassing" site by Volusia County deputies on 9-13-2012.

### Conclusion and Recommendations

1. As to the 2010 allegation that Sergeant Davis failed to report an off-duty incident, I recommend that allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

The investigation revealed that Sergeant Davis did tell his immediate supervisor of the incident, however he did not inform him of the incident until he came back to work, a few days after the incident. Additionally, his immediate supervisor was already aware of the incident as the responding

agency had already faxed a copy of the incident report to our Internal Affairs investigator.

Sergeant Davis' actions appear to have violated the following departmental Directives:

**A-5-00 Administrative Paperwork Section II. A.**

**Reporting off-duty incidents:** Any employee involved in an off-duty incident which is likely to reflect on the Department/City, or where official police action is exercised while off duty, will immediately inform the on-duty supervisor. The supervisor may require a written synopsis of the incident, or the creation of a police report to document the incident.

**C-2-00 Code of Conduct Section 2.B.19.**

**Failure to Follow General Orders, Directives:** Members will adhere to general orders, policies, and directives, and will faithfully execute all duties and responsibilities of their assigned position.

2. As to the 2010 allegation that Sergeant Davis got into a fist fight with a family member during a Memorial Day party at his house, I recommend that allegation be classified as **NOT SUSTAINED**: The investigation disclosed insufficient evidence to prove or disprove the allegation(s).
3. As to the 2010 allegation that Sergeant Davis "jabbed" Kim Davis in the chest and pushed his son, causing him to hit his back on the counter, I recommend that allegation be classified as **NOT SUSTAINED**: The investigation disclosed insufficient evidence to prove or disprove the allegation(s).
4. As to the July 2011 allegation that Sergeant Davis was detained by Bunnell Police officers, was "rude" to them, misused his Police identification and failed to notify his supervisors, I recommend the following for each allegation.

As to the "rudeness" allegation to both Bunnell Police officers, I recommend that the allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

As to the misuse of the Police Identification while consuming alcoholic beverages, I recommend that the allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

As to the notifying a supervisor when involved in an off-duty incident, Sergeant Davis did notify his immediate supervisor of the encounter with law enforcement. , I recommend that allegation be classified as **NOT**

**SUSTAINED:** The investigation disclosed insufficient evidence to prove or disprove the allegation(s).

The investigation revealed that Sergeant Davis had been drinking, by his own admission, on the night of this encounter. Sergeant Davis did not fully disclose the details of the incident. Although he reported the contact with Police officers, there was no mention of Deputies responding to his house for a disturbance and this Department was never notified by the Flagler County Sheriff's Office of the incident. Both Bunnell Police officers testified that Sergeant Davis was not acting in a professional manner during the encounter. Sergeant Davis admitted that he displayed his Police identification to one of the officers. Sergeant Davis stated that he notified his immediate supervisor of the encounter, which he did.

Sergeant Davis 'actions appear to have violated the following departmental Directives:

**C-2-11 Code of Conduct Section 2.B.34**

**Misuse of Identification while Consuming Alcoholic Beverages**

Members, while off duty and partaking of alcoholic beverages and/or frequenting premises established primarily for consumption or sale of alcoholic beverages, will do so only as private individuals and will not display Police Department identification unless necessary to perform official duties.

**C-2-11 Code of Conduct Section 2.A.19**

**Failure to Follow General Orders, Directives:** Members will adhere to general orders, policies, and directives, and will faithfully execute all duties and responsibilities of their assigned position.

**C-2-11 Code of Conduct Section 2.B.61**

**Conduct Unbecoming a Member of the Police Department:** Conduct unbecoming a member of the Police Department is defined as any conduct or act, which has an adverse impact upon the operation of the Department, and destroys public respect and confidence in the Police Department and its employees. Such conduct may include, but is not limited to, participation in any immoral, indecent or disorderly conduct, or conduct that causes substantial doubts concerning a person's honesty, fairness, or respect for the rights of others, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime. Per the labor contract, any charge of "conduct unbecoming an officer" or any other similar shall include specifications supporting the charge.

The following specifications support the charge of Conduct Unbecoming a Member of the Police Department:

- Misuse of Identification While Consuming Alcoholic Beverages
  - Failure to Follow General Orders, Directives
5. As to the 2012 allegation that Sergeant Davis and his wife shoved each other, I recommend that the allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

During the investigation, Sergeant Davis admitted to being involved in shoving matches with his wife, Kim Davis.

Sergeant Davis' actions appear to have violated the following Departmental Directives:

**C-2-11 Code of Conduct Section 2.A.19**

**Failure to Follow General Orders, Directives:** Members will adhere to general orders, policies, and directives, and will faithfully execute all duties and responsibilities of their assigned position.

**C-2-11 Code of Conduct Section D.1 and 2**

**Unlawful Conduct Offenses:** Disciplinary measures resulting from unlawful conduct may be imposed independently of, or concurrent with, civil and criminal prosecutions. The administration of internal disciplinary measures for unlawful conduct, both on or off duty, depends upon individual case circumstances and will be determined by the Police Chief.

**1. Non-criminal Violations:** Members will adhere to all federal, state, and local laws and ordinances including those punishable by no other penalty than a fine, forfeiture, or other civil penalty. This includes but is not limited to traffic infractions.

**2. Commission of Misdemeanor:** Members will adhere to all federal, state, and local laws and will not commit any act or crime defined in Florida law as a misdemeanor.

**C-2-11 Code of Conduct Section 2.B.61**

**Conduct Unbecoming a Member of the Police Department:** Conduct unbecoming a member of the Police Department is defined as any conduct or act, which has an adverse impact upon the operation of the Department, and destroys public respect and confidence in the Police Department and its employees. Such conduct may include, but is not limited to, participation in any immoral, indecent or disorderly conduct, or conduct that causes

substantial doubts concerning a person's honesty, fairness, or respect for the rights of others, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime. Per the labor contract, any charge of "conduct unbecoming an officer" or any other similar shall include specifications supporting the charge.

The following specifications support the charge of Conduct Unbecoming a Member of the Police Department:

- Violating Florida State Statute 741.28, Domestic Violence which is a misdemeanor.
6. As to the April 2013 allegation that Sergeant Davis and Kim Davis were in a physical confrontation at their home, I recommend that the allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

During the investigation, Sergeant Davis admitted to being involved in a physical confrontation with his wife, Kim Davis.

Sergeant Davis' actions appear to have violated the following Departmental Directives:

**C-2-12 Code of Conduct 2.20**

**Failure to Follow General Orders, Directives:** Members will adhere to general orders, policies, and directives, and will faithfully execute all duties and responsibilities of their assigned position.

**C-2-12 Code of Conduct 3.60**

**Conduct Unbecoming a Member of the Police Department:** Conduct unbecoming a member of the Police Department is defined as any conduct or act, which has an adverse impact upon the operation of the Department, and destroys public respect and confidence in the Police Department and its employees. Such conduct may include, but is not limited to, participation in any immoral, indecent or disorderly conduct, or conduct that causes substantial doubts concerning a person's honesty, fairness, or respect for the rights of others, or the laws of the state or nation, regardless of whether such act or conduct constitutes a crime. Per the labor contract, any charge of "conduct unbecoming an officer" or any other similar shall include specifications supporting the charge.

The following specifications support the charge of Conduct Unbecoming a Member of the Police Department:

- Violating Florida State Statute 741.28, Domestic Violence which is a misdemeanor.

### **C-2-12 Code of Conduct 5.1**

**Unlawful Conduct Offenses:** Disciplinary measures resulting from unlawful conduct may be imposed independently of, or concurrent with, civil and criminal prosecutions. The administration of internal disciplinary measures for unlawful conduct, both on or off duty, depends upon individual case circumstances and will be determined by the Chief of Police.

**A. Non-criminal Violations:** Members will adhere to all federal, state, and local laws and ordinances including those punishable by no other penalty than a fine, forfeiture, or other civil penalty. This includes but is not limited to traffic infractions.

**B. Commission of Misdemeanor:** Members will adhere to all federal, state, and local laws and will not commit any act or crime defined in Florida law as a misdemeanor.

7. As for the 2013 allegation that Sergeant Davis violated Departmental policy by being officially involved in a personal domestic dispute with Jake Davis via text messaging, I recommend that allegation be classified as **NOT SUSTAINED**: The investigation disclosed insufficient evidence to prove or disprove the allegation(s).

Investigation into this allegation revealed that although Sergeant Davis texted Jake Davis that he was going to file a complaint against him, he did not.

8. As for the 2013 allegation that Sergeant Davis was untruthful when asked by the Chief of Police about his relationship with Ms. Sommerville, I recommend that the allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

The investigation revealed that several witnesses saw Sergeant Davis kiss Ms. Sommerville on the lips while on duty. There are City cellular phone records that indicate Sergeant Davis was calling her both on and off-duty. Sergeant Davis' affirmed under oath that he shared details about his domestic violence and child custody issues with his wife to Ms. Sommerville prior to his May 2013 meeting with the Chief. Sergeant Davis admitted that he met her at the Race Trac gas station "several" times after he got off of work.

Sergeant Davis' actions appear to have violated the following Departmental Directives:

### **C-2-12 Code of Conduct 3.51**

**Untruthfulness:** Members will not knowingly make untrue statements, except as authorized in the performance of duties and as necessary to maintain covert operations during investigation of criminal activities.

9. As for the 2013 allegation that Sergeant Davis failed to notify the Department of his home address, I recommend that the allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

Sergeant Davis stated that he was told by his attorney not to change it.

Sergeant Davis' actions appear to have violated the following Departmental Directives:

### **C-2-12 Code of Conduct 2.6**

**Notification of Correct Address and Telephone Number:** Members will keep the Chief's secretary informed of their current residential address in accordance with established procedures.

10. As to the 2013 allegation that Sergeant Davis left his assigned work area, I recommend that the allegation be classified as **SUSTAINED**: The investigation disclosed that the accused member committed all or part of the alleged act.

The investigation revealed that Sergeant Davis left the City in his marked Police vehicle a total of eight (8) times between 5-26-2012 through 9-20-2012 and remained stationary in a clearly marked "No Trespassing" site outside of the City limits. According to his AVL data, he spent 269 minutes or nearly four and one half hours in this area.

Sergeant Davis' actions appear to have violated the following Departmental Directives:

### **C-2-12 Code of Conduct 2.17**

**Leaving Assigned Work Area:** Members will remain at or within their assigned work areas during working hours unless the Communication Center is notified, or when authorized by a supervisor.

### **C-2-12 Code of Conduct 2.27**

**Negligence - Not Endangering:** Members will not ignore or violate official directives, policies, procedures, orders, supervisory instructions, or knowingly

fail to execute the duties and responsibilities of their assigned position properly.

**C-2-12 Code of Conduct 5.1**

**Unlawful Conduct Offenses:** Disciplinary measures resulting from unlawful conduct may be imposed independently of, or concurrent with, civil and criminal prosecutions. The administration of internal disciplinary measures for unlawful conduct, both on or off duty, depends upon individual case circumstances and will be determined by the Chief of Police.

A. **Non-criminal Violations:** Members will adhere to all federal, state, and local laws and ordinances including those punishable by no other penalty than a fine, forfeiture, or other civil penalty. This includes but is not limited to traffic infractions.

B. **Commission of Misdemeanor:** Members will adhere to all federal, state, and local laws and will not commit any act or crime defined in Florida law as a misdemeanor.

C. **Commission of Felony:** Members will adhere to all federal, state, and local laws and will not commit any act or crime defined by Florida law as a felony, whether chargeable or not.

11. This investigation revealed that Sergeant Davis stated two times during his interview that he was "at the Race Trac" when asked about the circumstances surrounding the September 2012 incident when a Deputy found Ms. Sommerville in a clearly marked "No Trespassing " site outside of the City that Sergeant Davis freely admitted to spending time in.

AVL data and Deputy Schindleheim's statement do not support his claims to have been at the Race Trac gas station and indicate that he was on travelling on US1 and then travelling on Broadway Avenue.

Sergeant Davis' actions appear to have violated the following Departmental Directives:

**C-2-12 Code of Conduct 3.52**

**Untruthfulness in An Official Inquiry:** Members will not knowingly make false statements to a supervisor, a professional standards investigator, or to any official of a government agency during an official or administrative inquiry.