

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

REPORT OF INVESTIGATION

REPORT NUMBER: IA- 09-010

PERIOD COVERED: March 19, 2009

DATE REPORTED: June 4, 2009

SUBJECT(S) NAME: Deputy David Higgins ID #7034

INVESTIGATING OFFICER: Sergeant Timothy Morgan

BASIS FOR INVESTIGATION:

On June 1, 2009, Sergeant Brian Barnard completed a Supervisor's Inquiry, Memo #054M082.09 involving Deputy David Higgins. The inquiry was in reference to a telephone complaint by Mrs. Pauline Whitrock, which was received by Sergeant Brian Nardiello. The complaint was in reference to an allegation of alleged misconduct and improper processing of a burglary scene by Deputy Higgins while at her residence on March 19, 2009. Mrs. Whitrock also alleged that he (Deputy Higgins) located a \$20.00 dollar bill in the complainants' backyard, but Deputy Higgins kept the money for himself. Sergeant Barnard spoke with Deputy Higgins in regards to the allegations and Higgins admitted to finding the \$20.00 dollar bill, and not marking the found money into property.

OFFENSE(S):

26.2.118 Code of Ethics for Public Officers and Employees - Employees shall strictly adhere to the code of ethics for public officers and employees and shall not violate the Code of Ethics for Public Officers and Employees as set forth in Florida law and the County Merit System. (*Violation subject up to dismissal*)

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

26.2.96 Processing Property and Evidence - Property and evidence which have been received in connection with official duties will be processed in accordance with the provisions of Chapters 83 and 84. Department personnel shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property or evidence held in connection with an

investigation or other official action except in accordance with established procedures. *(Violation subject up to dismissal)*

26.2.95 Handling Monies and Property - Money or other property coming into the possession of Department personnel which does not belong to such personnel shall be delivered to the proper custodian, and a report shall be made of the transaction in accordance with the provisions of Chapters 17, 83 or 84, as applicable. *(Violation subject up to a 5 day suspension)*

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

26.2.40 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)*

Volusia County Merit System Rules and Regulations 86-453 (13) Any conduct, on or off duty that reflects unfavorably on the County as an employer. *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.*

INVESTIGATIVE SUMMARY:

On June 4, 2009, Chief Deputy William Lee assigned the above-described incident to the Internal Affairs Unit for investigation. This report details the investigation conducted by Sergeant Morgan and Lieutenant Goggin.

On June 4, 2009, Sergeant Morgan obtained the initial supervisory inquiry documented in Memorandum 054M082.09. The memorandum completed by Sergeant Brian Bernard advised the following:

Sergeant Bernard obtained and reviewed the incident report composed by Deputy Higgins on 03/19/2008, incident report #09-8818. Sergeant Bernard's memorandums reads, Deputy Higgins report advises that he (Deputy Higgins) was unable to locate any type of physical evidence while on scene. Deputy Higgins details in his report that he checked all the windows located at the residence, and they showed evidence of cob webs indicating that the windows had not been opened or disturbed. Deputy Higgins report reads that there appeared to be no signs of forced entry into the residence. According to Sergeant Bernard's supervisor inquiry, Deputy Higgins failed to include any reference to money that may have been found on scene during his burglary investigation.

Sergeant Bernard memorandum reads, Deputy Stone responded to Mrs. Whitrock's residence on May 29, 2009, for a follow up to a burglary that occurred on March 19, 2009. According to Deputy Stone's supplement report read, while on scene Mrs. Whitrock advised Deputy Stone that her landlord located pry marks, and a piece of broken glass on the window sill located in her daughter's

bedroom a day after the original incident. Deputy Stone was not able to determine if the pry marks were new damage or present when Deputy Higgins's responded to the residence on the 19th of March.

On June 1, 2009, Sergeant Bernard's conducted an interview with Deputy Higgins in reference to the complaint alleged against him. During that interview, Deputy Higgins advised that he could not recall the exact details of the incident as reported on March 19, 2009. However, Deputy Higgins advised that all the facts contained within the report he composed were accurate. Deputy Higgins advised that during his investigation, he did locate a \$20.00 dollar bill while conducting his neighborhood canvass. Deputy Higgins advised Sergeant Bernard that after determining that that the \$20.00 dollar bill was not related to the original crime scene, he elected to keep the money that he found. *(See attached memo, Tab-B.)*

On June 04, 2009, Sergeant Morgan obtained the supplement report #09-8818 that was composed by Deputy Stone which read:

On May 29, 2009, he responded to 1198 Azora Dr., and conducted a follow investigation in reference to a burglary. Upon arrival, he contacted Mrs. Paulina Whitrock and Ms. Kristina Whitrock. They advised that after the original burglary report was completed by Deputy Higgins on March 19, 2009, they discovered pry marks and a screen missing from the daughter's window.

According to Deputy Stone's report, he did observe two pry marks on the window sill. However, he was unable to determine if the pry marks were recent or present during the initial burglary investigation that was conducted by Deputy Higgins. Deputy Stone obtained pictures of the pry marks and placed the pictures into evidence.

Deputy Stone advised in his supplement report that Mrs. P. Whitrock believed that the residence was burglarized by her daughter's former boyfriend. Deputy Stone conducted a check of the pawn shop data base to determine if the property was pawn by the former boyfriend but met with negative results. *(See Tab-B)*

On June 05, 2009, Investigator James Gabriel of the Internal Affairs Unit, served Deputy David Higgins with a Notice of Internal Investigation and provided him with a copy of the Law Enforcement Officers Bill of Rights.

On June 09, 2009, Sergeant Morgan obtained a sworn statement from Mrs. Pauline Whitrock at 1198 Azora Dr., Deltona Fl.

Mrs. Pauline Whitrock

Mrs. Pauline Whitrock advised that on March 19, 2009, she had the Sheriff's Office respond to her residence because her home was burglarized.

Mrs. Whitrock stated that when the deputy later indentified as Deputy Higgins arrived on

scene; he walked around the inside of the residence, and advised, "*He did not see where they had messed with anything*". Mrs. Whitrock advised that Deputy Higgins then went outside to check the residence for signs of forced entry. Mrs. Whitrock advised that she attempted to walk outside with Deputy Higgins, but he (Deputy Higgins) advised her, "*He would walk around out there by his self because it was really hot*". Mrs. Whitrock advised that while Deputy Higgins was outside, she noticed that the doors to her jewelry cabinet were slightly ajar and items were missing.

Mrs. Whitrock stated that when Deputy Higgins returned from checking the perimeter of the home, he asked, "*Do you know if you're missing \$20.00?*" Mrs. Whitrock advised that Deputy Higgins then told her that he located a twenty dollar bill in her backyard. Mrs. Whitrock advised that he stated, "*Well it probably fell out of their pocket because it was nicely folded. I have four children and I'm divorced, I can use this twenty dollars. I'll just put it in my pocket.*"

Mrs. Whitrock stated that, she then attempted to point out possible physical evidence that she located within the residence. Mrs. Whitrock stated that she advised Deputy Higgins that the suspect(s) must have been injured because she located a spot of blood on one of her shoes, but Deputy Higgins advised her that there was nothing he could do about the blood stain. Mrs. Whitrock stated that she showed Deputy Higgins a window located in her daughter's bedroom where several items were either moved, disturbed, or missing from the window sill. She stated that after showing Deputy Higgins the window with the missing and out of place items. He just replied, "*Well they might have just moved it just to make it look like they came in that way.*" Mrs. Whitrock advised that Deputy Higgins did not attempt to lift latent prints while at her residence. Mrs. Whitrock stated that Deputy Higgins advised her that, "*It's not that easy to take them finger prints and that he was the best of the best and that he could look around and tell if he would be able to get any fingerprints.*" Mrs. Whitrock advised that Deputy Higgins completed a report, provided her with a case number, and advised her that it appears the suspect(s) utilized a key to gain access to her residence.

Mrs. Whitrock stated that she was discouraged by the lack of the investigation conducted by Deputy Higgins, and upon speaking with different law enforcement friends; she realized that the investigation may not have been conducted properly. Mrs. Whitrock advised that she did not want to get the deputy in trouble. However, she believed that someone should know about Deputy Higgins conduct and his lack of investigation while at her residence. (*See Tab-D*)

On June 09, 2009, Sergeant Morgan obtained a sworn statement from Ms. Kristina Whitrock at 1198 Azora Dr., Deltona Fl.

Ms. Kristina Whitrock

Ms. Kristina Whitrock advised that on March 19, 2009, she returned home with her mother, Mrs. Paulina Whitrock and discovered that their home had been burglarized.

Ms. K. Whitrock advised that prior to the deputy's arrival, she noticed several items that were disturbed within her room. Ms. K. Whitrock stated that Deputy Higgins arrived, and conducted a

room to room walk through of the residence, and then he (Deputy Higgins) walked around the outside of their residence. Ms. Whitrock advised, when he (Deputy Higgins) returned from checking the perimeter, he asked us, if we lost or were missing twenty dollars, and we replied "No.", at which time Deputy Higgins stated, "*Well I have four children at home so I could use this*" and he stuck the money in his pocket. Ms. Whitrock was asked, "*Did he tell you where he found the twenty dollar?*" and Ms. Whitrock advised, "*He said he found it in the backyard*", and "*He said it probably fell out the person that came in the house it probably fell out of their pocket.*" Mrs. K. Whitrock stated that she pointed out several items that were disturbed in her room. However, Deputy Higgins did not dust for prints, and advised them that he could only recover fingerprints off of smooth glass like surfaces. Ms. K. Whitrock advised that Deputy Higgins told them that there were no signs of forced entry, and that the suspect(s) probably utilized a key to gain access to their residence.

Ms. K. Whitrock stated that the landlord, Mr. Ken Hoff arrived at there residence a day or two after the burglary in an attempt to locate the screen from her window. She advised that, Mr. Hoff inspected the window and discovered two pry marks on the frame, and a piece of broken glass, which was later identified as her (Ms. K. Whitrock) angel figurine. Ms. K. Whitrock stated that Mr. Hoff advised them, "*Well obviously you can tell that they broke in through this window because right there is the pry marks.*" (See Tab-D)

On June 10, 2009, Sergeant Morgan contacted Mr. Ken Hoff via telephone. Mr. Hoff stated that he is the property manager of 1198 Azora Dr.; Mr. Hoff advised that he was contacted by Mrs. Whitrock after the burglary occurred because there was a screen missing from the residence. Mr. Hoff stated that he responded to the residence and walked the perimeter of the residence in an attempt to locate the screen. While checking the perimeter he noticed two pry marks on the window sill that was located at the rear of the residence. Mr. Hoff added that he also observed a piece of broken glass sitting on the window sill. Mr. Hoff stated that he showed the pry marks and the broken piece of glass to Mrs. Whitrock, at which time Mrs. Whitrock identified the broken piece of glass that he located as a piece of an angle figurine which belonged to her daughter.

On June 12, 2009, Sergeant Morgan obtained a sworn statement from Sergeant Bernard at the Volusia County Sheriff's Office in Deland.

Sergeant Brian Bernard

Sergeant Brian Bernard's statement mirrored that of his memorandum 054M082.09 dated June 4, 2009. Sergeant Bernard stated that on June 1, 2009, he received an e-mail from Sergeant Nardiello and Lieutenant Morgan in reference to Deputy Higgins improperly investigating a burglary at 1198 Azora Dr., which occurred on March 19, 2009. The complainant also alleged that Deputy Higgins found twenty dollars during his investigation and he (Deputy Higgins) kept the money.

Sergeant Bernard advised that during his interview with Deputy Higgins. Deputy Higgins advised that he (Deputy Higgins) was unable to provide him (Sergeant Bernard) with specific details of his investigation due to the time lapse, but Deputy Higgins advised him (Sergeant Bernard) that his original incident report was an accurate account of the burglary. Sergeant Bernard stated, that

Deputy Higgins admitted that he did find twenty dollars, and that he (Deputy Higgins) kept the money after determining that the money did not belong to the victim. Sergeant Bernard stated that after Deputy Higgins admitted to him (Sergeant Bernard) that he kept the money that was found, he (Sergeant Bernard) terminated the interview with Deputy Higgins. (See Tab-E)

On June 15, 2009, Sergeant Morgan and Investigator James Gabriel obtained a sworn statement from Deputy David Higgins at the Volusia County Sheriff's Office in Deland, Fl. Also present during the interview was union representative Jeff Candage.

Deputy David Higgins

During Deputy David Higgins sworn statement he advised that he responded to 1198 Azora Dr., on March 19, 2009, in reference to a possible burglary. Upon arrival, he contacted Mrs. Paulina Whitrock who advised that her residence was burglarized, and her jewelry was missing from her jewelry box located in her bedroom.

Deputy Higgins advised that the Mrs. Whitrock did identify several items that were disturbed within the daughter's bedroom. However, he (Deputy Higgins) doesn't recall her (Mrs. Paulina Whitrock) mentioning a blood spot. Deputy Higgins stated that the window blinds, a Playstation, and a picture frame were moved in the daughter's room. However, he was able to eliminate the window as a point of entry due to the lack of physical evidence outside of the residence. Deputy Higgins advised that upon checking the outside of the residence, he noticed that the perimeter of the victim's house was surrounded by soft sand, and he notice that there were no footprints at what appeared to be the alleged point of entry. Deputy Higgins advised that he did check the windows of the residence during his investigation, and he did not locate any type of pry marks. Deputy Higgins advised that he only located cob webs and dirt on the window sills, and that fact was documented in his incident report. Deputy Higgins advised that he believes that the suspect(s) may have used a key to gain access to the residence. Deputy Higgins stated that Mrs. Whitrock thought that the suspect may have been her daughter's ex-boyfriend. Deputy Higgins advised that he did not attempt to lift latent prints from the items that were disturbed, because he believed that the surfaces were not conducive for dusting for latent prints.

Deputy Higgins advised that while conducting his neighborhood canvass, he found a twenty dollar bill sitting on the "*public right away slightly of set from 1194 Azora Dr*". Deputy Higgins stated that he placed the money into his pocket and continued his neighborhood canvass. Upon returning to the victim's residence to complete his report, he asked Mrs. Whitrock, "*Did you have any money anywhere in here missing, can you check for me?*" Deputy Higgins advised that after determining that the money was not part of the crime scene, he "*pocketed*" the twenty dollars. Deputy Higgins advised that he did not recall his reply to Mrs. Whitrock after she advised that the twenty dollars was not hers. However, he (Deputy Higgins) believes he may have said, "*It's my lucky day*". Deputy Higgins advised that, "*I made a bad judgment*".

Deputy Higgins stated that, he failed to obtained photographs of the disturbed items, list the twenty dollars, and list the ex-boyfriend as a possible suspect in his incident report. Deputy Higgins advised that he feels that he violated the above listed departmental policies. (See Tab-C)

Conclusion:

On June 23, 2009, this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the above listed Department Standards Directives to be:

26.2.118 Code of Ethics for Public Officers and Employees	Unfounded
26.2.5 Neglect of duty	Sustained
26.2.96 Processing Property and Evidence	Sustained
26.2.95 Handling Monies and Property	Sustained
26.2.34 Failure to Follow Directive or Order	Sustained
26.2.40 Negligence, Not Endangering	Sustained
Volusia County Merit System Rules and Regulations 86-453 (13)	Sustained

EXHIBIT(S):

- A) Official Correspondence
- B) Supervisor Inquiry 054M082.09
- C) Transcript of Deputy Higgins
- D) Transcript of Paulina Whitrock and Kristina Whitrock
- E) Transcript of Sergeant Barnard
- F) Audio Disc of interviews Sergeant Barnard, Deputy Higgins, Paulina Whitrock and Kristina Whitrock

WITNESSES:

Sergeant Brian Bernard
District IV/Alpha Shift

Deputy David Higgins
District IV/Alpha Shift

Mrs. Pauline Whitrock
1198 Azora Dr., Deltona Fl

Ms. Kristina Whitrock
1198 Azora Dr., Deltona Fl

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: Sergeant Timothy Morgan DATE: June 30, 09
Sergeant Timothy Morgan
Internal Affairs Investigator

APPROVED BY: William R. Lee DATE: 8/13/09
Chief Deputy William R. Lee
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA

Sheriff



Ben F. Johnson

VOLUSIA COUNTY SHERIFF'S OFFICE

123 W. Indiana Avenue

P.O. Box 569

DeLand, FL 32721-0569

July 07, 2009

Deputy David Higgins, ID # 7034
Volusia County Sheriff's Office
LES / District IV

Final Suspension

Deputy Higgins:

Be advised that as a result of your actions documented in IA#09-010, it has been determined you did violate the following Volusia County Sheriff's Office Standards Directives:

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

26.2.96 Processing Property and Evidence - Property and evidence which have been received in connection with official duties will be processed in accordance with the provisions of Chapters 83 and 84. Department personnel shall not convert to their own use, manufacture, conceal, falsify, destroy, remove, tamper with or withhold any property or evidence held in connection with an investigation or other official action except in accordance with established procedures. *(Violation subject up to dismissal)*

26.2.95 Handling Monies and Property - Money or other property coming into the possession of Department personnel which does not belong to such personnel shall be delivered to the proper custodian, and a report shall be made of the transaction in accordance with the provisions of Chapters 17, 83 or 84, as applicable. *(Violation subject up to a 5 day suspension)*

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

26.2.40 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)*

And, Volusia County Merit System Rules and Regulations 86-453 (13), Any conduct, on or off duty, that reflects unfavorably on the County as an employer. *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.*

To wit:

On March 19, 2009, at 1604 hours, you were dispatched to 1198 Azora Dr, Deltona in reference to a burglary of a residence. Upon your arrival, you contacted Mrs. Paulina Whitrock and Ms. Kristina Whitrock, homeowners, who advised you that their home had been burglarized. Mrs. Paulina Whitrock stated that while you were on scene they identified a Playstation 2, a picture frame, and a jewelry cabinet that were moved as a result of the burglary.

By your own admission during your sworn interview, you stated while you were on scene the homeowners did identify several items within the residence that they believed may have been disturbed during the burglary. However, you disregarded their concerns and you failed to document the items identified to you by the homeowners in your incident report. You stated that you did not attempt to dust the items identified to you for latent prints because the surfaces of the items were not conducive for latent prints, but you failed to document this investigative fact in your incident report.

Mrs. Whitrock stated during her sworn statement, that during your investigation, you showed her a twenty dollar bill that you recovered outside of her residence, and after determining that the money was not part of the investigation, you elected to keep the money.

Deputy Higgins, during your sworn statement you stated that while conducting your neighborhood canvass, you in fact found a twenty dollar bill on the ground. You stated that you attempted to determine if the twenty dollar bill was related to the burglary by asking the homeowner, and after determining that the twenty dollar bill was not part of the burglary you kept the money.

You stated during your sworn statement, that after completing your investigation at the residence, you believed that the suspect(s) may have utilized a key to enter the residence. Mrs. Whitrock identified a possible suspect based on your investigation as a recent ex-boyfriend of her daughters. However, you failed to document this fact in your incident report.

Deputy Higgins, although you were forthright during this investigation you failed to follow departmental policy governing the handling of residential burglaries. Your failure to properly document and investigate this incident resulted in a second deputy responding to the victim's residence to re-investigate an incident that you were initially assigned to investigate. This action resulted in additional work hours and hardship on

your co-workers. Your lack of professionalism during this investigation resulted in embarrassment to yourself and the Volusia County Sheriff's Office.

You have previously been the subject of the following disciplinary action:

07/30/08	26.2.005 Neglect of Duty	Sustained
	26.2.131 General Proficiency	Sustained
07/10/07	26.2.005 Neglect of Duty	Sustained
	26.2.123 Prompt Compliance with Lawful Order	Sustained
07/06/07	26.2.035 Submission of Reports and Documents	Sustained
05/23/07	26.2.098 Careless Handling of Equipment and vehicle	Sustained
03/19/07	26.2.131 General Proficiency	Sustained
	26.2.132 Failure to Maintain Required Skills	Sustained
	26.2.134 Knowledge of Policy and Procedure	Sustained
02/19/07	26.2.005 Neglect of Duty	Sustained
02/09/07	26.2.047 Courtesy	Sustained
	26.2.048 Use of Profanity	Sustained
	26.2.062 Derogatory Ethnic Remarks	Sustained
	26.2.115 Tortuous Acts	Sustained
02/08/07	26.2.005 Neglect of Duty	Sustained
	26.2.131 General Proficiency	Sustained
11/10/06	26.2.034 Failure to Follow Directive or Order	Sustained
	26.2.005 Neglect of Duty	Sustained
	26.2.099 Intentional Abuse of Equipment or Vehicle	Sustained
01/30/06	26.2.96 Careless Handling of Equipment and vehicle	Sustained

Deputy Higgins you were served with an Intent to Suspend Letter on June 25, 2009, advising you of my intent to suspend you from duty **without pay** for one (1) workday, which equates to eight (8) work hours. You were given the opportunity to make an appointment and appear before me in order to respond to this intended action. You elected not to meet with me and therefore my decision to suspend you remains unchanged. You are hereby suspended from duty **without pay** for one (1) workday, which equates to eight (8) work hours.

The date of your suspension will be **July 28, 2009**.

You may not work any additional hours (i.e. scheduled days off) during the pay period in which the suspension is taken. The Division Commander, at his discretion, may waive this prohibition.

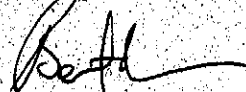
If there is any problem or condition that is troubling you that I am unaware of, please advise me so that I can have the opportunity to assist you in correcting this problem.

Any subsequent activity of a similar nature will result in additional disciplinary action, including termination of employment. Take due care and govern yourself accordingly. **Be especially aware of Progressive Discipline 26.1.1.**

Pursuant to the Volusia County Merit System Rules, Section 86-455, the Volusia County Legal Department and Personnel Director have reviewed and concur with this intended action.

If you wish to appeal my decision in this matter, you may do so by filing a written request through the County Personnel Director within ten (10) days of receipt of this notification.

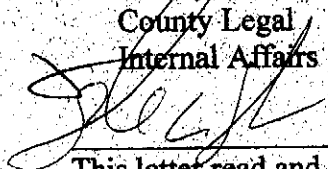
Sincerely,



Ben F. Johnson
Sheriff

BFJ/tm040L0257.09

cc: County Personnel
County Legal
Internal Affairs


This letter read and received by:
Deputy David Higgins, ID # 7034

Date: 7-10-09

Time: 0745