

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

REPORT OF INVESTIGATION

REPORT NUMBER: IA-14-013

PERIOD COVERED: July 14, 2014

DATE REPORTED: July 15, 2014

SUBJECT(S) NAME: Deputy Martin Fletcher ID 7935
Deputy Jerome Childers ID 8183

INVESTIGATING OFFICERS: Lieutenant Erik Eagan ID 2273

BASIS FOR INVESTIGATION:

On July 14, 2014, Deputies Martin Fletcher and Jerome Childers responded to a report of a mentally unstable adult male who may have overdosed on prescription medications. It is alleged that during the handling of the call; deputies allowed the subject of the Baker Act to arm himself with weapons. After the subject was transported to Halifax Hospital in Daytona Beach, FL, the subject's personal property was inventoried by a hospital technician and a pen gun unintentionally discharged in the Psych Ward processing area. *(See Tab – C For VCSO and DBPD Incident Reports)*

OFFENSES:

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

26.2.41 Negligence Associated with Safety of Persons or Property - Employees shall be attentive to job duties and shall not violate official Directives, orders, supervisory instructions, or knowingly refrain and cause another to refrain from the performance of lawful duties required for the safety of persons or property. *(Violation subject up to a demotion.)*

26.2.132 Failure to maintain required skills, knowledge and abilities within acceptable levels shall result in counseling, instruction or training. *(Violation subject up to a written reprimand.)*

INVESTIGATIVE SUMMARY:

On July 16, 2014, Chief Deputy Mike Coffin assigned the Internal Affairs Unit an investigation of an allegation against Deputies Fletcher and Childers for being neglectful in their duties by allowing a person taken into protective custody to transport weapons into a secure hospital area, potentially endangering the lives of hospital staff and clients.

It is alleged deputies did not maintain the job knowledge, skills and abilities required for the performance of the duties and responsibilities attendant to their positions. This report details the internal affairs investigation conducted by Lieutenant Erik Eagan.

On July 28, 2014, Lieutenant Eagan met with an evidence technician from the Daytona Beach Police Department and photographed the pen gun that was recovered by Police Officer Anthony Pfleger on July 14, 2014, from Halifax Health Security Officer Evan McLaughlin. The firearm was a blue metallic pen like design that resembled a retractable pen with a pocket clip and push button. The tip of the pen gun was silver and had been unscrewed and removed from the frame. Inside the tip of the gun was what appeared to be a discharged rimfire .22 caliber round. The rim of the bullet had an indentation that was indicative of a firing pin had struck the round. *(See Tab – I for Photographs of Pen Gun)*

On July 28, 2014, Lieutenant Eagan met with Captain Gary McElroy, the Halifax Health Safety and Security coordinator. He was able to obtain a copy of the Halifax Health Security Services incident report authored by Security Officer Evan McLaughlin, which documented the pen gun incident. According to the report, on July 14, 2014, sometime before 1300 hours, hospital technician John Francis was inventorying William Swartz's personal property and found what appeared to be a pen within his property. Mr. Francis unintentionally discharged the pen gun and smoke filled the immediate area of the J-Pod nurses' station. The report indicates that nothing was projected from the gun and there was no damage. *(See Tab – C for Halifax Health Security Services Incident Report)*

On July 28, 2014, Lieutenant Eagan met with hospital staff members who were working when the incident occurred on July 14, 2014. Susan Bocskey, a registered nurse (RN) at the J-Pod unit at Halifax Hospital, told Lieutenant Eagan she was in the adjacent room completing paperwork when she heard a loud bang. When she walked into the adjoining hallway; she immediately smelled and saw smoke in the hallway. Ms. Bocskey showed Lieutenant Eagan what she believed was a bullet hole in the wall a few inches below a screw in the J-Pod nursing area. She said the hole was from the pen gun discharging and was not there prior to the incident. She also indicated the hole trajectory and placement on the wall was consistent with the manner the technician was holding the pen gun when he told Ms. Bocskey what happened immediately after the incident. Closer inspection of the alleged bullet hole appeared to be shallow (5 mm) in depth and narrow (3 mm) in width. The hole appeared to be similar size of a .22 caliber discharge; however, the depth was consistent with a blank round or similar non-metallic projectile such as paper. Security officers described tiny pieces of paper on the counter where the pen gun was discharged. *(See Tab – I for Photographs of Alleged Bullet Hole)*

On July 30, 2014, Sergeant Tom Tatum served Deputy Childers with his Notification of Internal Investigation and he was provided a copy of the Law Enforcement Officer's Rights at the 7-11 store at Taylor Road and I-95 in Port Orange, FL. *(See Tab – B for Official Correspondence)*

CNA John Francis

On July 29, 2014, Lieutenant Eagan conducted a sworn recorded interview with certified nursing assistant (CNA) John Francis in the J-Pod nursing station at Halifax Hospital. The following is a summary of that interview:

Mr. Francis told Lieutenant Eagan that as an employee working at Halifax Hospital in the psych unit, he came into contact with William Swartz. As one of his responsibilities as a psych aide, he was inventorying Mr. Swartz's personal property when he came across a pocket knife and a pen gun. Mr. Francis explained that he originally thought the pen gun was a pen until it exploded. Mr. Francis did not remember exactly where the gun was originally located, but believes it came from his property bag or from his wheelchair or electric scooter device.

Mr. Francis said something came out of the pen gun when it discharged. He was not sure if a hole in the wall adjacent to where he unintentionally discharged the gun was a result of the pen gun or someone removing a screw from the wall. He explained that there were remnants or small pieces of matter on the nurses' counter from the discharge.

Mr. Francis told Lieutenant Eagan that when he spoke with Mr. Swartz about the pen gun, Mr. Swartz questioned whether he was being charged criminally. According to Mr. Francis, Mr. Swartz told him the pen gun was a tear gas gun that was his grandfather's or uncle's. Mr. Francis believed Mr. Swartz knew right from wrong and said, *"Yes. For sure, 'cause I mean a person who knows, in my opinion, a person who knows the difference between right and wrong if he did not he would not, I don't think he would be concerned about if he was going to be charged for it."*

Mr. Francis said he was not injured during the incident, but did have a tingling feeling in his finger and was seen by an emergency department doctor, confirming no injury. (See Tab – E for Complete Transcript of Interview)

On July 31, 2014, Sergeant Tom Tatum served Deputy Fletcher with his Notification of Internal Investigation and he was provided a copy of the Law Enforcement Officer's Rights at his residence. (See Tab – B for Official Correspondence)

Deputy William Weaver

On August 21, 2014, Lieutenant Eagan and Sergeant Tatum conducted a sworn recorded interview with Deputy Weaver in the Volusia County Sheriff's Office, Internal Affairs office at the County Administration building in DeLand, FL. The following is a summary of that interview:

Deputy Weaver is a three year deputy sheriff who has worked the New Smyrna Beach area for the past eight months. Deputy Weaver retired from the New York State Department of Corrections after 25 years of service. He told investigators he was one of the oncoming deputies in District 5, and responded to 361 Western Road, New Smyrna Beach, to assist the deputies who were on scene.

Deputy Weaver explained to investigators he had very little involvement in the call, but he did see Mr. Swartz laying on a gurney being wheeled out of the driveway toward the ambulance. He said Mr. Swartz appeared to be naked with a blanket over top of him. Deputy Weaver elaborated that he never went into Mr. Swartz's residence, nor did he know why Mr. Swartz was being transported by ambulance. He said he had a brief conversation with the deputies on scene about not putting comments in the call, because he would not have responded had he known the call was wrapping up.

Deputy Weaver had never dealt with Mr. Swartz on any previous call and no additional information about the call. *(See Tab – F for Complete Transcript of Interview)*

Deputy Martin Fletcher

On October 1, 2014, Lieutenant Eagan and Sergeant Tatum conducted a sworn recorded interview with Deputy Fletcher in the Sheriff's conference room at the County Administration building in DeLand, FL. The following is a summary of that interview:

Deputy Fletcher is just shy of serving three years as a deputy sheriff and has worked in District 5 since completing training. Deputy Fletcher told investigators he remembered handling the disturbance call at 361 Western Road, New Smyrna Beach. Deputy Fletcher said he was dispatched as a backup unit to Deputy Jerome Childers.

He explained to investigators he arrived on scene at the same time as Deputy Childers and the two approached the residence and met Mr. Swartz's mother who was hysterical at the front door. Deputy Fletcher said he spoke with Mr. Swartz's mother as Deputy Childers contacted Mr. Swartz in his bedroom. Deputy Fletcher described the residence as a state of disarray with pills on the floor.

After making sure the scene was safe; deputies had rescue personnel come into the residence to treat Mr. Swartz. Deputy Fletcher told investigators Mr. Swartz was naked during initial contact and he observed Mr. Swartz putting on underpants during his contact in the small bedroom. Deputy Fletcher said he did not witness Mr. Swartz putting on shorts, but took responsibility for the oversight of not checking the shorts or underpants for contraband. Deputy Fletcher described the bedroom as small and crowded, and there was little room for deputies and medical personnel, so he stood in the hallway the majority of the time.

Deputy Fletcher said he had Mr. Swartz's mother complete a witness statement and the original incident report for Deputy Childers, who was scheduled for vacation at the end of his shift. Deputy Childers completed the mental health involuntary examination form.

Deputy Fletcher told investigators he believed Mr. Swartz was a paraplegic and was confined to a wheelchair. He explained that he had never handled an incident involving someone in a wheelchair, who was initially naked. He acknowledged responsibility for not searching Mr. Swartz and admitted it was a unique situation for him, and he learned a valuable lesson. Deputy Fletcher admitted that he or Deputy Childers should have

followed EVAC to the hospital.

Deputy Fletcher was questioned if he felt he violated the below listed policies regarding this investigation. These are his responses to the alleged violations:

26.2.41 Negligence Associated with Safety of Persons or Property -	Yes
26.2.132 Failure to maintain required skills, knowledge and abilities -	No
<i>(See Tab – G for Complete Transcript of Interview)</i>	

Deputy Jerome Childers

On October 8, 2014, Lieutenant Eagan and Sergeant Tatum conducted a sworn recorded interview with Deputy Fletcher in the Sheriff's Public Information Office conference room at the County Administration building in DeLand, FL. The following is a summary of that interview:

Deputy Childers is a one and one half year deputy sheriff who has worked in District 5 since completing training. He remembered the disturbance incident and responding to 361 Western Road, New Smyrna Beach. Deputy Childers told investigators he was the primary deputy assigned to the call and Deputy Fletcher was his backup deputy.

Deputy Childers explained that he and Deputy Fletcher arrived simultaneously and made contact with Mr. Swartz's mother who was visibly upset. Mrs. Swartz told Deputies Fletcher and Childers that her son was in his bedroom cathing [urinary catheterization]. Deputy Childers described the scene as there were pills everywhere and Mr. Swartz blamed the pills in disarray on the dog. Mr. Swartz appeared somewhat slow moving and lethargic and he was suspected of overdosing on the prescription medication. Mr. Swartz was naked when deputies contacted him and later pulled a sheet over his pubic area.

Deputy Childers said he moved to the hallway when EVAC personnel arrived on scene to allow the medical personnel to treat Mr. Swartz. Deputy Childers said he and Deputy Fletcher discussed Mr. Swartz's behavior and decided to Baker Act him for mental health evaluation and to have EVAC transport him.

Deputy Childers told investigators neither he nor Deputy Fletcher followed EVAC to the hospital. Deputy Childers said it was a situation where they thought Mr. Swartz was ok and would not cause any problems. He mentioned in hindsight it was improper for them not to follow EVAC to the hospital.

Deputy Childers found out about the pen gun discharge incident and knife being found with Mr. Swartz, while he was on vacation, and Deputy Fletcher called him and told him they screwed up. Deputy Childers was unaware whether Mr. Swartz's wheelchair had a storage compartment or pocket as suggested by CNA Francis from Halifax Hospital.

Deputy Childers accepted responsibility and sole culpability for the incident stating, *"I mean I should have patted him down. I take full responsibility and it was my call, Fletcher was there just to help me out and it should be me not him that faces anything because I take pride in handling my calls and this one I dropped the ball on."*

Deputy Childers was questioned if he felt he violated the below listed policies regarding this investigation. These are his responses to the alleged violations:

26.2.41 Negligence Associated with Safety of Persons or Property - Yes

26.2.132 Failure to maintain required skills, knowledge and abilities - No
(See Tab – H for Complete Transcript of Interview)

CONCLUSION:

On October 30, 2014, this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the below listed Department Standards Directive to be:

26.2.41 Negligence Associated with Safety of Persons or Property – Sustained

26.2.132 Failure to maintain required skills, knowledge and abilities – Not Sustained

Sheriff Ben Johnson determined Deputy Childers and Fletcher would receive an employee performance notice (EPN) – counseling, for their discipline as a result of this internal investigation.

EXHIBITS:

- A. Report of Investigation
- B. Official Correspondence
- C. Complaint/Supervisor Inquiry
- D. Administration of Oath/Perjury Warning
- E. Official Transcript of CNA John Francis
- F. Official Transcripts of Deputy William Weaver
- G. Official Transcript of Deputy Martin Fletcher
- H. Official Transcript of Deputy Jerome Childers
- I. Miscellaneous Documents
- J. Digital Media

WITNESSES:

CNA John Francis
Halifax Health Systems
303 N Clyde Morris Blvd
Daytona Beach, FL 32114
(386) 254-4000

Deputy William Weaver
Volusia County Sheriff's Office
386-736-5961

I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the suspect of the investigation of any rights contained in ss. 112.532 and 112.533, Florida Statutes.

INVESTIGATOR:  DATE: 10-30-14

Lieutenant Erik Eagan
Internal Affairs Investigator

APPROVED BY:  DATE: 10/31/14

Chief Deputy Mike Coffin
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA

