

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

REPORT OF INVESTIGATION

REPORT NUMBER: IA-15-004

PERIOD COVERED: February 19, 2015
DATE REPORTED: February 19, 2015
SUBJECT(S) NAME: Deputy Joseph Kearsch #2465
INVESTIGATING OFFICERS: Investigator Glen Bennett #1452

BASIS FOR INVESTIGATION:

On February 19, 2015, Sergeant Theodore Richard, the on duty sergeant assigned to the Daytona Beach Courthouse Annex, overheard Deputy Joseph Kearsch talking about having to write an incident report. When asked what for, Deputy Kearsch advised Sergeant Richard it involved a prisoner that had fallen out of his transport van at the Branch Jail. Deputy Kearsch advised Sergeant Richard that the inmate had no injuries other than the complaint of pain in his ankle, and the prisoner refused medical attention. Deputy Kearsch was advised to complete an incident report documenting the event.

Deputy Kearsch allegedly did not notify his sergeant of the incident when it occurred at the jail, nor did he photograph possible injuries. Furthermore, when Deputy Kearsch wrote his initial incident report it lacked the detail necessary to identify the alleged injury to the prisoner's ankle.

Approximately one month prior, Deputy Kearsch received instruction from Sergeant Michael Odgers on the proper procedures to follow should an incident like this occur. This was a result of a somewhat similar incident involving a prisoner that sustained a minor injury while in the custody of Deputy Kearsch.

OFFENSES:

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

26.2.35 Submission of Reports and Documents - Employees shall originate, complete, and submit all reports and documents required in the execution of their duties prior to concluding a tour of duty except as authorized by a supervisor. *(Violation subject up to a 1 day suspension.)*

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.)*

26.2.133 General Proficiency Repeated failure to maintain necessary skills, knowledge and abilities after counseling and instruction shall result in increasing the severity of disciplinary actions. *(Violation subject up to dismissal.)*

INVESTIGATIVE SUMMARY:

On March 2, 2015, Chief Deputy Robert L. Jones, III assigned the above incident to the Internal Affairs Unit. This report details the internal affairs investigation conducted by Investigator Glen Bennett.

On March 5, 2015, Investigator Bennett served Deputy Kearsch with a Notice of Internal Investigation at the Daytona Beach Courthouse Annex in Daytona Beach, FL and he was provided a copy of his Officer Bill of Rights. *(See Tab – B for Official Correspondence)*

Investigator Bennett reviewed the supervisor's inquiry authored by Sergeant Michael Odgers. According to the inquiry, Sergeant Richard overheard Deputy Kearsch talking to another deputy about having to write an incident report. When asked why he needed to write a report Deputy Kearsch advised Sergeant Richard of a prisoner that fell out of his transport van at the Volusia County Branch Jail (Jail). Deputy Kearsch assured Sergeant Richard that the prisoner sustained no injury other than a complaint of pain in an ankle. Deputy Kearsch was advised to complete a report documenting the incident.

Upon reviewing the initial incident report authored by Deputy Kearsch, Sergeant Odgers found it to be poorly written containing information that was not clear or concise. Additionally, Deputy Kearsch did not take photographs of the reported injury nor was it accurately described in his report. The injury was only described as "his ankle hurt" and did not specify which ankle.

In an interview with jail personnel, Sergeant Odgers was told that Deputy Kearsch did make them aware of the incident; however, it was after the prisoner had already been taken to his assigned housing unit. Jail personnel had the prisoner removed from his unit and taken to the medical clinic for evaluation. Sergeant Odgers obtained the medical report from the clinic which detailed abrasions to the prisoner's left elbow and knee. The prisoner's abrasions were cleaned and treated by the jails medical staff.

Sergeant Odgers interviewed Deputy Anthony Lovechio, who was present in the sally port when the prisoner fell. Deputy Lovechio said the prisoner denied medical attention after being asked multiple times. Deputy Lovechio advised Sergeant Odgers that he observed an abrasion on the prisoners left elbow.

Sergeant Odgers contacted the prisoner at the jail who advised him that he told Deputy Kearsch several times he did not need medical attention. During the interview with the prisoner, Sergeant Odgers observed the abrasion on his left elbow. Sergeant Odgers took photographs of abrasions to the prisoner's left elbow and knee, both of which were a result of the fall. Those photographs were submitted along with Sergeant Odgers supervisor's inquiry.

While at the jail, Sergeant Odgers obtained security video from the sally port on the date the incident occurred. A review of that video clearly showed the prisoner falling from the transport van onto the floor as deputies came to his aid. While in the sally port the prisoner does not appear to receive medical aid as he was helped to his feet and observed walking unassisted into the booking area. *(See Tab – G for Still Photographs of Security Video)*

Also documented in Sergeant Odgers supervisor's inquiry was a prior incident that occurred on January 26, 2015 (VCSO #12-2260). According to Sergeant Odgers, Deputy Kearsch improperly handled an incident involving a female prisoner that sustained a minor injury while in his transport van. Sergeant Odgers was notified of the incident by another deputy approximately forty five minutes after it occurred. As a result, Sergeant Odgers directed Deputy Kearsch to write a report and instructed him on how to operate the digital camera that was issued to him the first week of January 2015. *(See Tab – C for Supervisors Inquiry)*

Sergeant Michael Odgers

On March 13, 2015, Investigator Glen Bennett conducted a sworn recorded interview with Sergeant Michael Odgers at the Daytona Beach Courthouse Annex (Annex) in Daytona Beach, Fl. The following is a summary of that interview:

Sergeant Odgers has been with the Sheriff's Office for over seventeen years and has held the rank of sergeant for the last eleven.

Sergeant Odgers was questioned about a prior incident involving a female prisoner that sustained a minor injury while in Deputy Kearsch's custody. Sergeant Odgers said in January of 2015, Deputy Kearsch, while driving a prisoner transport van, stopped short in order to avoid an accident. As a result of the stop, the female prisoner in the van sustained a minor injury to her arm. Sergeant Odgers explained that Deputy Kearsch did not follow proper procedure in documenting the incident. Sergeant Odgers said he personally advised Deputy Kearsch on what was expected of him when or if a prisoner sustains an injury while in his custody. Sergeant Odgers explained, *"I told him [Deputy Kearsch] he needs to notify his supervisor right away. Take any pictures of the injuries and seek medical attention if need be and he needs to write a report."*

According to Sergeant Odgers, Deputy Kearsch did not follow his prior instructions in the handling of the prisoner that fell from his transport van on February 19, 2015. Sergeant Odgers stated that all prisoner transport deputies were issued cameras in January of 2015 and advised to photograph all injuries immediately, which Deputy Kearsch did not do. Sergeant Odgers said that Deputy Kearsch did ask the prisoner if he needed medical attention which was denied; however, according to Deputy Kearsch the prisoner complained of ankle pain as a result of the fall. Deputy Kearsch did not take photographs while at the jail nor did he immediately notify his sergeant. Furthermore, when Deputy Kearsch wrote the first draft of his incident report, he was not specific on which ankle the prisoner complained of pain.

In the course of Sergeant Odgers supervisor's inquiry, he interviewed Deputy Anthony Lovechio, who was present in the sally port when the prisoner fell. Deputy Lovechio said the prisoner was asked several times but denied medical attention. According to Sergeant Odgers, Deputy Lovechio said he observed an abrasion to the prisoners left elbow which was later treated by the medical staff at the jail.

Sergeant Odgers explained that based on his investigation, Deputy Kearsch did not follow proper procedure. The initial incident report authored by Deputy Kearsch lacked the content necessary to accurately understand the prisoner's specific complaint of injury and resulted in the report having to be re-written. Furthermore, Deputy Kearsch not only failed to immediately notify his sergeant but he never took any photographs of the prisoner's ankle. Additionally, Deputy Kearsch never identified the abrasions to the prisoners elbow or knee which were later discovered to be a result of the fall. When Sergeant Odgers was asked if he felt Deputy Kearsch properly handled the incident, he replied, "*After my investigation, I don't believe so, no.*" (See Tab - D for Official Transcript)

Deputy Joseph Kearsch

On April 14, 2015, Investigator Bennett and Sergeant Justin Sawicki conducted a sworn recorded interview with Deputy Joseph Kearsch at the Sheriff's administrative offices in Deland, Fl. Also present during the interview representing Deputy Kearsch was Attorney Michael Lambert.

Deputy Kearsch had begun his law enforcement career with the Holy Hill Police Department in 1979 before retiring after twenty years of service with the Ormond Beach Police Department. Deputy Kearsch joined the Sheriff's Office in 2001 and is presently assigned to the Daytona Beach Courthouse Annex.

Deputy Kearsch stated that he received formal training in all aspects of his duties when first assigned to the Annex. This training also included how to handle an incident when a prisoner, while in his custody sustains an injury; however, he was never provided a written policy on how to handle such an incident. According to Deputy Kearsch, when faced with an injury to a prisoner, he would first ascertain if medical attention is needed and then report it to a supervisor.

Deputy Kearsch said he was assigned to prisoner transport on February 19, 2015 and recalled the incident involving a prisoner falling out of his transport van. Deputy Kearsch said after he opened the back doors to the van a couple of prisoners exited prior to the one that fell. Deputy Kearsch was unsure how the prisoner fell only stating that he may have stepped on his ankle restraints exiting the door.

When the prisoner was on the ground, Deputy Kearsch said he saw no visible signs of an injury nor did the prisoner complain of any injuries. According to Deputy Kearsch, the prisoner denied medical attention and said he was not injured. When Deputy Kearsch was asked if he looked for any signs of an injury he replied, "*I didn't actively look under his clothes or anything like that.*"

According to Deputy Kearsch, Deputy Anthony Lovechio, whom was present at the time of the incident, never told him of the abrasion he observed on the prisoner's left elbow. It should be noted that the prisoner was wearing the standard issued orange jump suite which has short to three quarter length sleeves.

Once the prisoner and Deputy Kearsch were inside the booking area of the jail, the prisoner made mention of pain in his ankle but again refused medical intervention. When asked why he never photographed the prisoners possible injuries. Deputy Kearsch responded, *"Well because he wasn't hurt at that time plus we were inside the jail. I wasn't sure if we were allowed to [photograph], which I found out later we're not, so."* According to Deputy Kearsch, he believed the taking of photographs in the jail was prohibited. When he later called out to the jail, he said he was advised that he was not permitted to photograph the prisoner. Deputy Kearsch was questioned why he called the jail to see if he could take photographs and he replied, *"Well after meeting with Sergeant Richard, he mentioned that he needed 'em."*

While at the jail, Deputy Kearsch did not notify his sergeant of the incident. Deputy Kearsch estimated it was approximately thirty minutes from the time the incident occurred to when he was back at the Annex and Sergeant Richard was notified.

Upon learning of the incident, Sergeant Richard directed Deputy Kearsch to write a report documenting the incident. Deputy Kearsch said he was going to write the report and added that he obtained the prisoner's information while at the jail in order to write the report upon his return to the Annex. The first report Deputy Kearsch drafted was not approved by the sergeant; furthermore, he had to write it four or five times due to the lack of content. Deputy Kearsch explained his reasoning for not writing an accurate report the first time, *"...I knew he [sergeant] was on the phone with somebody of a higher authority, I'm not sure who it was but I did, like, you know, a basic report because I knew there was changes gonna be coming."*

Deputy Kearsch was questioned about a similar incident that occurred a month prior on January 26, 2015 when a female prisoner sustained a minor abrasion to her elbow while in his custody. The prisoner refused medical attention, the injury was photographed but according to Sergeant Odgers, a supervisor was not immediately notified. Deputy Kearsch explained that he called the control room at the courthouse and requested a supervisor but neither one could be located. As a result of the delayed notification to the sergeant, Deputy Kearsch received an undocumented verbal counseling on proper procedures. Deputy Kearsch stated, *"Yeah, my stand on it was because he was unavailable at the time and he couldn't be reached."*

Deputy Kearsch was questioned if he followed Sergeant Odgers instructions after the verbal counseling in reference to his handling of the incident on February 26th and he replied, *"Well yes, because I didn't have an injury [to the male prisoner] at the time."* It should be noted that the prisoner did complain of ankle pain while Deputy Kearsch was present in the booking area of the jail.

Deputy Kearsch was asked if he felt he violated the following policies:

26.2.35 Submission of Reports and Documents - Employees shall originate, **No** complete, and submit all reports and documents required in the execution of their duties prior to concluding a tour of duty except as authorized by a supervisor.

26.2.41 Negligence Associated with Safety of Persons or Property - Employees **No** 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.

26.2.133 General Proficiency Repeated failure to maintain necessary skills, **No** knowledge and abilities after counseling and instruction shall result in increasing the severity of disciplinary actions.

(See Tab – E for Official Transcript)

CONCLUSION:

On May 12, 2015, this investigation was presented to the Sheriff. After review, the Sheriff determined the violations of the below listed Department Standards Directive to be:

26.2.35 Submission of Reports and Documents - Employees shall originate, **Unfounded** complete, and submit all reports and documents required in the execution of their duties prior to concluding a tour of duty except as authorized by a supervisor.

26.2.41 Negligence Associated with Safety of Persons or Property - **Unfounded** 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.

26.2.133 General Proficiency Repeated failure to maintain necessary skills, **Sustained** knowledge and abilities after counseling and instruction shall result in increasing the severity of disciplinary actions.

The Sheriff determined that Deputy Kearsch would receive a letter of reprimand as result of his actions documented in this report.

EXHIBITS:

- A. Report of Investigation
- B. Official Correspondence
- C. Supervisors Inquiry
- D. Advisement Administration of Oath/Perjury Warning/Garrity Warning
- E. Official Transcript of Sergeant Michael Odgers
- F. Official Transcript of Deputy Joseph Kearsch
- G. Miscellaneous Documents
- H. Digital Media

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

INVESTIGATOR:  DATE: 5/14/15

**Investigator Glen Bennett
Internal Affairs Investigator**

APPROVED BY:  DATE: 5/27/15

**Chief Deputy Robert L. Jones, III
SHERIFF BEN F. JOHNSON
VOLUSIA COUNTY FLORIDA**