

# OFFICE OF THE STATE ATTORNEY

SEVENTH JUDICIAL CIRCUIT OF FLORIDA  
VOLUSIA, FLAGLER, PUTNAM & ST. JOHNS COUNTIES

STATE ATTORNEY



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May 20, 2019

Re: Captain Kimberly Kilpatrick, SR19000025A01

## MEMORANDUM TO FILE

On March 26, 2019, the Office of the State Attorney for the 7<sup>th</sup> Judicial Circuit received a case file for an investigation conducted by the Florida Department of Law Enforcement. The investigation was in regards to a complaint that Captain Kimberly Kilpatrick of the Port Orange Police Department had committed Perjury and Forgery.

The complaint alleged that Captain Kilpatrick fraudulently changed the life insurance policy of David Fouts while he was in a coma. Captain Kilpatrick was interviewed during this investigation and Officer White alleged that Captain Kilpatrick perjured herself three times during this interview.

Assistant State Attorney Robin L. Hutcherson was assigned to review the investigation conducted by Special Agent Chris Deardoff of FDLE.

On April 23, 2016 Port Orange Police Department Detective David Fouts and his wife Jennifer Fouts were involved in a traffic accident that resulted in the death of Jennifer Fouts and left David Fouts in a coma. Captain Kimberly Kilpatrick was assigned as his liaison with fundraisers and other charitable donations to help pay medical bills. David Fouts was not expected to survive the accident and it was learned during this time that the life insurance policy of David Fouts still listed an ex-wife as beneficiary. The life insurance policy was amended to list the children of David Fouts as beneficiaries. Fortunately, David Fouts survived and no money was paid to anyone from the insurance policy.

The following interviews were reviewed:

1. Officer Justin White - POPD
2. Deborah Lannic - POPD Evidence Technician
3. Carmen Miller - former POPD victim advocate
4. Lt. Joseph Swetz - POPD
5. Michael Maples - insurance representative from Police and Firemen's Insurance Association
6. Alexa Fouts - daughter of David Fouts
7. Captain Kimberly Kilpatrick - POPD
8. David Fouts
9. Attorney Steve Guardiano - prepared Power of Attorney for Alexa Fouts
10. Cathleen White - wife of Officer Justin White
11. Darrell Richey - Halifax Health Safety and Security Chief

incorrect  
STATEMENT  
A payment was  
made due to

Jennifer  
Fouts  
death

The following documents were reviewed:

1. Official complaint filed by Officer Justin White
2. Original life insurance policy of David Fouts
3. Amended life insurance policy of David Fouts
4. Power of Attorney for David Fouts
5. Medical records of David Fouts
6. Florida Statute 837.02 for Perjury in an Official Proceeding

Florida Statute 831.01 defines forgery as "Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such ..., *policy of insurance*, ..., with intent to injure or defraud any person..."

As far as the forgery charge, per the interview of Alexa Fouts, Captain Kilpatrick helped her obtain the paperwork for the Power of Attorney and the life insurance beneficiary change, but had no further involvement with completing the forms. Alexa Fouts advised that she completed the life insurance form herself, presented them to her father, who agreed and signed. The form was signed by her father in the hospital. Alexa advised that her father was not able to speak at the time, but communicated through writing what he could. Alexa also advised that Captain Kilpatrick was not at the hospital with her when the life insurance form was signed. Alexa Fouts was also not able to remember who signed as a witness on the form, but did know it was not Captain Kilpatrick.

Medical Records  
Support that DAVID FOUTS  
WAS IN A COMA  
During this time frame

Halifax Health Safety and Security Chief Darrell Richey reviewed the visitor logs for May 6, 2016, when the policy was changed, and Captain Kilpatrick was not listed on the logs for visiting David Fouts that day. There is insufficient evidence to show Captain Kilpatrick signed or forged any life insurance policy. There is evidence to show she was not present when the document was filed, and therefore insufficient evidence to go forward on such charge.

Florida Statute 837.02(1) provides: whoever makes a false statement, which he or she *does not believe to be true* [emphasis added], under oath in an official proceeding in regard to any *material matter* [emphasis added], commits a felony of the third degree.

The complaint from Officer Justin White alleges the following false statements were made by Captain Kimberly Kilpatrick:

1. The life insurance policy of David Fouts lists his ex-wife Jennifer Lynn Fouts, Alexa Fouts and Kevin Fouts and beneficiaries.
2. The Power of Attorney completed by Attorney Guardiano was "pretty immediate" after the accident.
3. At the time the policy was changed David Fouts could not talk, but could "use his hands to signal."

Officer Justin White alleges the statements to be false because:

1. The life insurance policy listed ex-wife Leslie Fouts as sole beneficiary not ex-wife Jennifer Lynn Fouts, Alexa Fouts, and Kevin Fouts.
2. The Power of Attorney was not executed until June 28, 2016 which is not "pretty immediate."

3. The medical records of David Fouts showed he was still unresponsive at the time the life insurance policy was changed.

A second interview was conducted with Captain Kimberly Kilpatrick to discuss the alleged false statements. Captain Kilpatrick explained that she did not recall reviewing the original life insurance policy, but received the information third hand from a representative with the life insurance agency as who the policy listed as a beneficiary.

Captain Kilpatrick further explained that she went with Alexa Fouts to meet with Attorney Steve Guardiano two to three weeks after the accident to start the Power of Attorney process. The paperwork was not completed on that date, but the process had begun and that is what she meant when she stated pretty immediate.

Captain Kilpatrick clarified that on multiple occasions, she witnessed David Fouts move his hands or squeeze the hand of his daughter to communicate. The communication was primarily limited to yes or no type answers. She was unable to recall the time she witnessed the hand communication in relation to the time the life insurance policy was changed.

For a perjury charge under Florida Statute 837.02(1) requires the speaker to make statements they do not believe to be true and those statements must also be regarding a material matter.

Captain Kilpatrick made three statements that Officer White alleges to be false:

The first statement was in regards to which ex-wife of David Fouts was listed on the original life insurance policy. Captain Kilpatrick testified that she never saw the policy and that her knowledge of who was listed as beneficiary was received third hand. There is no evidence to support that she believed this statement to be false when she spoke it.

The second statement was in regards to the Power of Attorney meeting "pretty immediate" after the accident. Captain Kilpatrick testified that she met with Alexa Fouts and Attorney Steve Gaurdiano two to three weeks after the accident to get the process started for the Power of Attorney, however it was not executed on that date. There is no evidence to support that the statement of the meeting being "pretty immediate" was not something Captain Kilpatrick did not believe to be true. The statement also does not appear to be in regards to a material matter. The phrase "pretty immediate" is open to interpretation as to time and cannot be said to be a false statement.

The third statement was in regards to Captain Kilpatrick stating that David Fouts was able to move his hands to signal during the time the insurance policy was changed. Captain Kilpatrick stated that she witnessed David Fouts squeeze hands or move his hands in order to communicate. Officer White alleges this to be false due to the way he and his wife interpret David Fouts's medical records. Alexa Fouts stated that while her father could not speak at the time of the policy change, he was able to use his hands and write to communicate. There is no evidence to support Captain Kilpatrick did not believe her statement to be true.

After reviewing the interviews, documents, and Florida Statute 837.01(2), there is insufficient evidence to show that Captain Kimberly Kilpatrick committed Perjury. The State

would not be able to show that the statements spoken by Captain Kilpatrick were related to material matters and that she believed them to be false when she spoke them.

As to the allegation that Captain Kilpatrick committed Forgery in changing the life insurance policy of David Fouts, there is no evidence to support this claim. In her interview, Alexa Fouts stated that Captain Kilpatrick helped her obtain the paperwork to change the insurance policy. Alexa Fouts stated that Captain Kilpatrick did not assist her in any way with filling out the insurance policy paperwork, nor was she with her when she went to the hospital to have David Fouts sign the paperwork. Alexa does not recall who the witness was that signed the paperwork, but is certain it was not Captain Kilpatrick. Security at Halifax Hospital also confirmed that Captain Kilpatrick was not a visitor on the day the insurance policy was changed.

Based on the foregoing, it is the conclusion of the undersigned Assistant State Attorney that there is insufficient evidence to support charges of Perjury or Forgery against Captain Kimberly Kilpatrick.

~~Sincerely,~~  
  
ROBIN L HUTCHESON  
ASSISTANT STATE ATTORNEY