

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

REPORT OF INVESTIGATION

REPORT NUMBER: FN2017-0010

PERIOD COVERED: September 28, 2016
DATE REPORTED: November 14, 2017
SUBJECT(S) NAME: Deputy Andrew Jenkins #8430
INVESTIGATING OFFICERS: Detective Glen Bennett #1452

BASIS FOR INVESTIGATION:

On September 28, 2016, Deputy Andrew Jenkins responded to a disturbance in the 1200 block of Deltona Boulevard in Deltona, FL. Upon arrival, Deputy Jenkins made contact with Pablo Juarez who was standing on the sidewalk next to two people at a public bus stop. Deputy Jenkins asked Mr. Juarez to speak to him away from the bus stop; however, he refused and became verbally defiant. Based on Mr. Juarez's demeanor and actions, Deputy Jenkins placed Mr. Juarez in handcuffs and escorted him away from the bus stop. As they walked, Mr. Juarez continued with the verbal insults and according to Deputy Jenkins, attempted to pull away from him. At one point when Mr. Juarez pulled away, he turned his body towards Deputy Jenkins and shouted, "Fuck You." In response to his actions, Deputy Jenkins executed a leg sweep on Mr. Juarez, taking him to the ground. While on the ground, Mr. Juarez complained of a leg injury and was taken to Florida Hospital Fish Memorial where he was diagnosed with a plateau fracture to his left leg.

This incident was reported to Deputy Jenkins' supervisor who conducted an investigation and documented his findings in a Response to Resistance Report (RTR). The RTR contained Deputy Jenkins' Body Worn Camera (BWC) footage, a summary of events, photographs of Mr. Juarez and his alleged injury, as well as all reports related to the incident. Based on the evidence, former Sheriff Ben Johnson, deemed Deputy Jenkins use of force as justified.

On November 14, 2017, the County of Volusia legal department provided a witness video to the Sheriff's Office, which offered a different vantage point of the incident in question. This video was captured by one of the two females present at the time Mr. Juarez was taken into custody. The new video evidence prompted a second review of Deputy Jenkins use of force on Mr. Juarez.

OFFENSES:

This investigation is relevant to an alleged violation of Department Standards Directives and Volusia County Merit Rules and Regulations:

26.2.102 Excessive Force Resulting in Injury - Deputies shall not use excessive force resulting in injury to another. *(Violation subject up to dismissal.)*

26.2.135 Knowledge of Official Directives – Frequent or repeated violation of these policies, procedures and Directives shall be deemed as indicative of careless disregard by the employee. *(Violation subject up to five-day suspension)*

Volusia County Merit System Rules and Regulations 86-453. *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.*

- RE:**
- (1) Willful neglect in the performance of the duties of the position to which the employee is assigned.
 - (2) Disregard for or frequent violations of Federal Laws, State laws, County ordinances, Departmental Standard Directives, and safety rules.
 - (8) Criminal, dishonest or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of the county service.
 - (10) Incompetent or unsatisfactory performance of duties.
 - (13) Any conduct, on or off duty, that reflects unfavorably on the County as an Employer.
 - (21) Any other conduct or action of such seriousness that discipline action is considered warranted.

INVESTIGATIVE SUMMARY:

On December 26, 2017, Deputy Chief John Creamer assigned the above incident to the Internal Affairs Unit. Deputy Jenkins was served with a Notification of Internal Investigation along with a copy of his Officer Bill of Rights at the Volusia County Fairgrounds. This report details the internal investigation conducted by Detective Glen Bennett. *(See Tab – C for Official Correspondence)*

On September 28, 2016, a 911 call was received from employees at the Academy of Career Training located at 1260 Deltona Boulevard in Deltona, FL in reference to an individual threatening employees. The 911 caller described the subject as a Hispanic male, wearing a blue and white striped shirt that was presently standing at a public bus stop located in front of the business. The subject, later identified as Pablo Juarez, had reportedly been harassing some students before entering the school and being told to leave.

An employee at the Academy of Career Training wrote a sworn witness statement documenting what he observed,

“I received a complaint from 2 students that they were being harassed and followed by a man [Mr. Juarez]. When I came to the front of the school to find out what was going on the guy was by the front desk yelling at our receptionist. I started to question the man to find out what the problem was and he immediately started screaming and cursing me out, he also threatened to shoot me and shoot up the school. We asked him to leave the property several times and he refused. We call the police immediately and when they arrived the man was very uncooperative pulling away and resisting the officer. I would like to press charges. [sic]”

(See Tab – C for Supervisors Inquiry)

According to police reports, when Deputy Jenkins arrived on scene he observed an individual, matching the physical description given by Central Communications, standing next to the bus stop. Deputy Jenkins approached Mr. Juarez and asked him to come and speak to him. Mr. Juarez refused to comply with Deputy Jenkins requests and began verbally assaulting him. After an

exchange of words, Deputy Jenkins approached Mr. Juarez and placed him in handcuffs. Mr. Juarez was then escorted away from the bus stop towards a shaded area a short distance away.

As they walked, Mr. Juarez began pulling away from Deputy Jenkins grip, prompting several warnings to comply. Mr. Juarez continued his verbal defiance as he attempted to pull away another time resulting in Deputy Jenkins having to take him to the ground using a leg sweep. As a result, of being taken to the ground, Mr. Juarez immediately told deputies that his leg was broken. Deputies assisted Mr. Juarez to his feet and walked him to a patrol car where he was secured in the back seat. Upon seeing that Mr. Juarez had possibly suffered a leg injury, Deputy Jenkins drove him to Florida Hospital Fish Memorial for medical treatment.

Sergeant Sean Gowen, Deputy Jenkins supervisor, responded to Florida Hospital Fish Memorial and began his inquiry into the use of force. Deputy Jenkins BWC recording was reviewed and it coincided with Deputy Jenkins account of what occurred. While at the hospital, it was learned that Mr. Juarez suffered a “plateau fracture” of his left tibia bone just below the knee.

While at the hospital, Sergeant Gowen interviewed Mr. Jaurez, who stated he had gone to the Academy of Career Training in an effort to get a key from his daughter who attends classes there. Upon learning his daughter was not in class that day, he walked out and engaged some female students in conversation. This led to a verbal altercation with academy staff.

According to Mr. Juarez, he suffers from bi-polar disorder and has trouble controlling his emotions and anger when he gets “spun up.” This disorder may have led to his defiant behavior. Mr. Juarez also admitted to resisting Deputy Jenkins efforts, which he apologized and stated he was wrong for the way he acted. Mr. Juarez was released from custody and received a Notice to Appear for Resisting Arrest Without Violence. When Sergeant Gowen completed the RTR, he sent the completed document up his chain of command who deemed the force used by Deputy Jenkins was justified.

Detective Bennett reviewed Deputy Jenkins BWC video, which was activated prior to arriving on scene. As he pulls up, Mr. Juarez is standing at the bus stop along with two females. Deputy Jenkins exited his patrol car and approached Mr. Juarez asking him, “*Can I talk to you over here sir (pointing to an area under some trees), I need to talk to you over here.*” Mr. Juarez explained he was not moving from his location as Deputy Jenkins walked up and said, “*Put your hands*

behind your back,” Mr. Juarez replied, “OK,” as he turned around to be handcuffed. Although Mr. Juarez complies with the instructions to be placed in handcuffs, he continued to verbally insult Deputy Jenkins. *(See Tab – G for BWC Recordings)*

After being placed in custody, Deputy Jenkins escorted Mr. Juarez towards some trees a short walk from the bus stop. As they walked, Deputy Jenkins was speaking to some bystanders in the parking lot, which were off to his left, all the while holding onto Mr. Juarez with his right arm. Deputy Jenkins then tells Mr. Juarez, “*Quit pulling against me,*” Mr. Juarez replied he had witnesses, possibly referencing the two females recording the incident on their cell phone. Deputy Jenkins continued speaking to bystanders in the parking lot before telling Mr. Juarez, “*Pull against me one more time.*” Mr. Juarez responded by telling him, “*Fuck you.*” At that point, Mr. Juarez is taken to the ground and is heard telling Deputy Jenkins something was broken.

Deputy Jenkins BWC was affixed on the right side of a head piece providing a vantage point from the right side of his head. Based on the positioning of his BWC, you can only see from the shoulders up on Mr. Juarez as he was escorted away from the bus stop. Furthermore, since Deputy Jenkins was speaking and looking at witnesses to his left, the video only provided portions of the type, and level of resistance he claimed to have been encountering from Mr. Juarez.

On November 14, 2017, the County of Volusia legal department provided the Sheriff’s Office an amateur video of the incident involving Deputy Jenkins and Mr. Juarez. The video provided a different angle than that of Deputy Jenkins BWC video recording. This video showed Deputy Jenkins placing Mr. Juarez in handcuffs and walking him towards a set of trees a short distance from the bus stop. As they walk, Mr. Juarez is handcuffed behind his back and Deputy Jenkins is holding his left arm. The conversation between the two cannot be clearly heard until they both come to a stop and you hear Mr. Juarez say “*Fuck You*” as he turns his body. At that point, Deputy Jenkins executes a leg sweep on Mr. Juarez’s left leg, taking him to the ground face first. *(See Tab - G for Amateur Video Recording)*

Detective Bennett conducted a search of any prior involvement with law enforcement within the County of Volusia that involved Mr. Juarez. He had multiple contacts with the Sheriff’s Office as well as the Daytona Police Department of which he was either arrested or taken into custody under Baker Act. In each report, it documented erratic, sometimes violent behavior, which led to a law

enforcement action. However, the records check did not reveal any prior involvement between Deputy Jenkins and Mr. Juarez, therefore it is unknown if Deputy Jenkins was aware of Mr. Juarez's mental state or behavioral issues.

Deputy Edward Hart

On December 27, 2017, Detective Bennett conducted a sworn recorded interview with Deputy Edward Hart at the Sheriff's Office training facility in Daytona Beach, FL. The following is a summary of that interview:

Deputy Hart has been in law enforcement for approximately twenty-six years with fourteen of those years with the Sheriff's Office. Deputy Hart has been assigned to the Sheriff's Office Training Section as a full time instructor for the last ten years. He is also on staff at Daytona Beach College School of Emergency Services as a part-time instructor. Deputy Hart holds numerous Florida Department of Law Enforcement (FDLE) certificates as a law enforcement instructor, one of which is defensive tactics.

According to Deputy Hart, the "leg sweep" is a technique that is taught at the Sheriff's Office and throughout the law enforcement community. A leg sweep can be executed when "*...an officer felt as if the suspect was actively engaged in some sort of resisting the officers' actions based on the resistant level, the deputy may choose such a thing as a leg sweep or another modification of a take down to guide the suspect to the ground...*" This type of maneuver is performed when the suspect is "*...active or actively, physically resistive...*"

Deputy Hart was shown the amateur video which was captured by one of the two female bystanders at the bus stop. After reviewing the video, Deputy Hart was asked if Mr. Jaurez was actively resisting, and he replied, "*No.*"

Detective Bennett reviewed Sheriff's Office policy 1.1.5 Subject Resistance, which outline the four levels of resistance, Passive Resistance, Active Resistance, Aggressive Resistance and Deadly Force Resistance. Verbiage documented in the Active Resistance category states: *A subject's use of physically evasive movements directed toward the Deputy such as bracing, tensing, pushing, or pulling to prevent the Deputy from establishing control over the subject.* In Deputy Jenkins arrest report, he described Mr. Jaurez's actions as, *tensing his muscles and pulling away, continued to*

tense his muscles and pull away, as well as, repeated attempts to pull away. This documentation of what Deputy Jenkins experienced coincides with the definition of Active Resistance; however, this behavior did not appear to correspond with the events documented in the amateur video. Furthermore, Mr. Jaurez was in custody, handcuffed behind his back at the time Deputy Jenkins performed the leg sweep. As a result of the “leg sweep,” Mr. Juarez sustained a “plateau fracture” of his left tibia bone just below the knee. *(See Tab – D for Official Transcript)*

On January 11, 2018, Deputy Jenkins was summoned for an interview with internal affairs; however, at the advice of his counsel, Nancye Jones, he refused to answer any questions. Detective Bennett elected to terminate the interview. *(See Tab – E for Official Transcript)*

On January 17, 2018, Detective Bennett delivered a copy of the amateur witness video to the Sheriff’s Office Digital Forensics Unit for analysis. Detective Keith Earney provided internal affairs a copy of the video, which was slowed down and magnified. *(See Tab –G for Amateur Video)*

On January 18, 2018, the case was tolled pending a criminal investigation by the State Attorney’s Office.

On February 26, 2018, Detective Bennett was advised the State Attorney’s Office was not filing criminal charges on Deputy Jenkins.

Conclusion:

On March 26, 2018, this investigation was presented to the Sheriff. After review, the Sheriff determined the violation of the below listed department policies to be:

26.2.102 Excessive Force Resulting in Injury **Sustained**

26.2.135 Knowledge of Official Directives **Sustained**

Volusia County Merit System Rules and Regulations 86-453

(1) Willful neglect in the performance of the duties of the position to which the employee is assigned. **Sustained**

(2) Disregard for or frequent violations of Federal Laws, State laws, County ordinances, Departmental Standard Directives, and safety rules. **Sustained**

(8) Criminal, dishonest or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of the county service. **Sustained**

(10) Incompetent or unsatisfactory performance of duties. **Sustained**

(13) Any conduct, on or off duty, that reflects unfavorably on the County as an Employer. **Sustained**

(21) Any other conduct or action of such seriousness that discipline action is considered warranted. **Sustained**

On March 9, 2018, Deputy Jenkins was served with an Intent to Terminate letter placing him on administrative leave immediately. *(See Tab – C for Official Correspondence)*

On March 21, 2018, Deputy Jenkins met with the Sheriff to offer any mitigating circumstances related to his intended discipline.

On April 2, 2018, Deputy Jenkins was served with a Final Termination letter, terminating his employment from the Volusia County Sheriff’s Office. *(See Tab – C for Official Correspondence)*

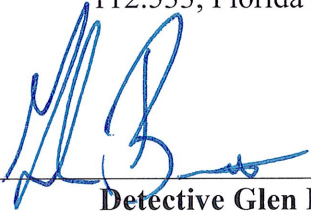
EXHIBITS:

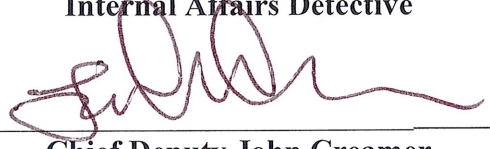
- A. Report of Investigation
- B. Advisement Administration of Oath/Perjury Warning/Garrity Warning
- C. Official Correspondence/Supervisors Inquiry
- D. Official Transcripts of
- E. Miscellaneous Documents
- F. Digital Media

WITNESSES:

Deputy Edward Hart
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: 4/3/18
Detective Glen Bennett
Internal Affairs Detective

APPROVED BY:  DATE: 4/5/18
Chief Deputy John Creamer
SHERIFF MICHAEL J. CHITWOOD
VOLUSIA COUNTY FLORIDA