



CHIEF FINANCIAL OFFICER
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STATE OF FLORIDA

DIVISION OF INVESTIGATIVE AND FORENSIC SERVICES

OIG Report of Investigation Number 18038 IA

It is alleged that Law Enforcement Investigator II Diego Saenz Duarte violated Division of Investigative and Forensic Services (DIFS) policies 1.4.2, Firearms, 1.8.1, Use, Maintenance and Care of State Issued Equipment, Agency Policies and Procedures (AP&P) 5-26, Standards and Procedures of Discipline – Career Service Employees, Section IX, Standards for Disciplinary Action, paragraph B, Negligence, and paragraph F, Conduct Unbecoming a Public Employee by failing to properly store and secure his Department issued Glock model 43 handgun, contributing to the subsequent theft of this weapon. It is additionally alleged that Duarte violated DIFS policies 1.2.2, Secondary Employment, and 1.8.4, Radio Communications, by not informing the nearest Regional Communications Center of his status while working a secondary employment detail and not advising the Regional Communications Center when he was either in service or out of service while utilizing his Department issued vehicle.

A handwritten signature in black ink, appearing to read "David T. Harper".

David T. Harper, Inspector General
Office of Inspector General
Department of Financial Services

January 7, 2019



INVESTIGATIVE PREDICATE

On September 19, 2018, the Florida Department of Financial Services (DFS) Office of Inspector General (OIG) received an email message from DIFS Director Simon Blank, (Exhibit #1) regarding alleged misconduct on the part of Law Enforcement Investigator II Diego Saenz Duarte. At the request of Blank this matter was initially reviewed by DIFS as a Management Referral. On September 26, 2018, Blank referred the matter back to the OIG for investigation. On September 28, 2018, OIG Director of Investigations Mike Shoaf assigned this complaint to OIG Investigator Charles Brock for investigation.

ALLEGATIONS

It is alleged that Detective Duarte violated DIFS policy 1.4.2, Firearms, by storing his Department issued Glock 43 handgun, serial #BCFV948, in his personally owned vehicle (POV) overnight (Exhibit #1).

During the course of the investigation the OIG discovered information which appeared to indicate that Duarte violated additional elements of the DIFS Firearms policy (Exhibit #3) by not keeping his Glock 43 handgun in its authorized holster, by not rendering his Glock 43 handgun safe when it was removed from its holster, by not reporting the loss or theft of his Glock 43 handgun immediately to his supervisor [*this is also a violation of 1.8.1, Use, Maintenance and Care of State Issued Equipment (Exhibit #20)*], and by not reporting the loss or theft of his Glock 43 handgun immediately to the local law enforcement jurisdiction. The OIG discovered additional information indicating that Duarte violated DIFS policy 1.2.2, Secondary Employment (Exhibit #4), and DIFS policy 1.8.4, Radio Communications (Exhibit #5), by not informing the nearest Regional Communications Center (RCC) of his duty status when working a secondary employment detail on September 15, 2018. Additionally, the OIG discovered information indicating that Duarte violated DIFS policy 1.8.4, Radio Communications (Exhibit #5), by not advising the RCC when he was either in service or out of service while utilizing his Department issued vehicle. The OIG also discovered information indicating that Duarte violated Agency Policy and Procedures (AP&P) 5-26, Negligence, and Conduct Unbecoming a Public Employee (Exhibit #6), by failing to use appropriate care in the handling, use, and storage of his Glock 43 handgun, and by placing his Glock 43 handgun in such a position as to increase the likelihood that it would be stolen.

EXECUTIVE SUMMARY

From September 28, 2018, to December 19, 2018, OIG staff conducted interviews and reviewed pertinent documentation/records as it relates to the allegations. [*Investigator's Note: During this period of time one witness was deployed for relief efforts related to Hurricane Michael and another witness was on extended medical leave. This caused an unavoidable delay in the completion of this investigation.*] As a result of the investigation, OIG staff determined that Duarte violated DIFS policy 1.4.2, Firearms, by improperly storing his Department issued Glock 43 handgun in his POV overnight. OIG staff further determined that Duarte violated additional elements of the DIFS Firearms policy by not keeping his Glock 43 handgun in its authorized holster, by not rendering his Glock 43 handgun safe when it was removed from its holster, by not reporting the loss or theft of his Glock 43 handgun immediately to his supervisor [*this is also a violation of 1.8.1, Use, Maintenance and Care of State Issued Equipment*], and by not reporting the loss or theft of his Glock 43 handgun immediately to the local law enforcement jurisdiction. The OIG also determined that Duarte violated DIFS policy 1.2.2, Secondary Employment, and DIFS policy 1.8.4, Radio Communications, by not informing the nearest

Regional Communications Center of his status at any time when working a secondary employment detail on September 15, 2018. It was also determined that Duarte violated DIFS policy 1.8.4, Radio Communications by not advising the RCC when he was either in service or out of service while utilizing his Department issued vehicle. Additionally, the OIG determined that Duarte violated Agency Policy and Procedures (AP&P) 5-26, Negligence, and Conduct Unbecoming a Public Employee, by failing to use appropriate care in the handling, use, and storage of his Glock 43 handgun, and by placing his Glock 43 handgun in such a position as to increase the likelihood that it would be stolen.

DOCUMENTATION/RECORDS ANALYSIS

Exhibit #1: Email Messages Informing the OIG of the Theft of Duarte's Weapon, Assignment as a Management Referral, and Subsequent Assignment as an OIG Investigation.

These messages show the following:

- On September 19, 2018, Blank notified Inspector General David Harper that a Division firearm was stolen from a DIFS Detective's personally owned vehicle. Blank wrote, "At this point it appears we may have a division policy violation dealing with the overnight secure storage of a firearm (DIFS SOP# 1.4.2 – Firearms)." Attached to this message was a Memorandum prepared by Duarte to the DIFS chain-of-command concerning the circumstances surrounding the theft of the firearm (Exhibit #2).
- On September 26, 2018, DIFS Inspector Bill Bierbaum sent an email message to Shoaf informing the OIG that Duarte had been notified of a Management Inquiry being conducted by Bierbaum concerning the theft of Duarte's Department issued firearm. Bierbaum wrote to Duarte: "**Alleged Violation(s):** DIFS SOP 1.4.2 **Firearms** – Sworn members are, at all times, responsible for the proper storage and overall security of all authorized firearms assigned to him or her and likewise shall adhere to the requirements of Section 790.174, Florida Statutes."
- On September 28, 2018, Shoaf sent an email to Brock, assigning this incident as an OIG investigation.

Exhibit #2: Memorandum from Duarte to the DIFS Chain-Of-Command, dated September 18, 2018.

This document shows that Duarte wrote the following:

- On Saturday, September 15, 2018, Duarte was preparing to work a secondary employment detail. He intended to use his secondary weapon, a Glock model 43 handgun during the detail. He attempted to secure the Glock 43 in its ankle holster around his ankle but it would not fit properly due to the boots he was wearing. Duarte then placed the Glock 43 into the center console of his personally owned vehicle (POV). He drove his POV to the parking lot of a Hilton Hotel in West Palm Beach, FL. He was picked up from the hotel parking lot by Detective Anthony Merva and transported to the detail location. The Glock 43 remained in the center console of his POV while Duarte worked the detail.
- On Sunday, September 16, 2018, Duarte used his POV to run several personal errands. He wrote, "I was still under the impression the Glock 43 was still secure in my center console."

- On Monday, September 17, 2018, Duarte drove his DIFS assigned vehicle to a Dodge dealership for maintenance. Duarte wrote, "I noticed the ankle holster for my Glock 43 was empty, I then recalled the Glock 43 was still secure in my POV center console. I thought when I get home, I would check for it, and removed [sic] it from my POV."
- After work on September 17, 2018, Duarte searched his POV, his home and the DIFS assigned vehicle of Merva for the Glock 43. The weapon was not found. Duarte wrote, "After paying close attention to the car [his POV], I noticed there were some damages to the weather stripping of my vehicle, in the front driver door. I did not notice anything else missing at the time, but I do not keep any valuables inside of the vehicle in open sight to notice an immediate difference." Duarte subsequently notified his supervisor, Lieutenant Stacey Spirn of his missing firearm, and reported the incident to the Palm Beach County Sheriff Office (PBSO).

Exhibit #3: DIFS Policy 1.4.2, Firearms.

Section IV, Procedures, Sub-section S, Method of Carry, Paragraph 3, Concealed Carry, states, in part:

- "a. Sworn members are permitted to carry authorized handguns while on duty in a concealed manner under the following conditions: 1) The handgun is carried in an authorized holster;..."

Sub-section U, Storage and Security, states in part:

- "1. Sworn members are, at all times, responsible for the proper storage and overall security of all authorized firearms assigned to him or her and likewise shall adhere to the requirements of Section 790.174, Florida Statutes.
- 2. Overnight storage of firearms in a vehicle is prohibited unless stored with a secondary locking device authorized for that purpose. Authorized locking devices shall be securely fastened to the vehicle (i.e. lock box, trunk chain, long gun rack, etc.).
- 5. Anytime the administrative removal of the firearm is required (i.e., detention facility, home, etc.), the sworn member should do so by removing the firearm and holster *en masse* or as one unit, when possible.
- 6. When not engaged in a law enforcement capacity or training, anytime a firearm is removed from its holster, it shall immediately be rendered safe by pointing the firearm in a safe direction, removing the magazine (or rounds in the cylinder or chamber), ejecting the chambered round (if applicable) and locking the slide to the rear (or leaving the cylinder open)."

Sub-section Y, Lost or Stolen Firearms, states in part:

- "1. Any lost or stolen authorized firearms shall be reported immediately to the appropriate local law enforcement jurisdiction, by the sworn member, for entry into the Florida Crime Information Center (FCIC) system.

- 2. The sworn member will report the loss or theft of the firearm(s) immediately to the sworn member's supervisor regardless of time of day or day of week. The supervisor will provide immediate notification to the Director, via chain of command, and the Quartermaster."

Exhibit #4: DIFS Policy 1.2.2, Secondary Employment

Section IV, Procedures, Sub-section C, Sworn Members, paragraph 16, states: "Sworn members shall inform the nearest regional communications center (RCC) when they begin periods of off-duty police employment, the location at which such services are provided and a telephone number where they can be reached. At the conclusion of the off-duty police employment, the sworn member shall advise the RCC of its completion."

Exhibit #5: DIFS Policy 1.8.4, Radio Communications

Section III, Procedures, Sub-section F, Radio Use and Maintenance, states, in part:

- "5. Unless excluded, sworn members shall advise the RCC that they are in service ("10-8") anytime they are utilizing a state vehicle equipped with a Division radio.
- 11. Sworn members performing off-duty police employment shall notify the appropriate communications center as specified by SOP# 1.2.2, *Secondary Employment*.
- 12. Sworn members shall advise the RCC when they are out of service at home ("10-42")."

Exhibit #6: AP&P 5-26, Standards and Procedures of Discipline – Career Service Employees.

Section IX, Standards for Disciplinary Action, sub-section B, Negligence, states in part, "Employees shall exercise due care and reasonable diligence in the performance of job duties." As an example of conduct that may be considered negligent, it states, "Failure to use appropriate care in the handling, use, or storage of Department property which results in loss, damage or destruction."

Sub-section F, Conduct Unbecoming a Public Employee, states in part, "Employees shall: ... protect state property from loss or abuse...." As an example of conduct that may be considered conduct unbecoming a public employee, it states, "Improper or careless use of State property or equipment which results in damage or destruction to State property or equipment or which results in State property or equipment being placed in such a position as to increase the likelihood that it will be damaged, destroyed or stolen, including failure to observe the established speed limit when operating a State vehicle."

Exhibit #7: Email Messages from Bierbaum to Shoaf, containing a copy of PBSO Offense Report Number 18123107.

A review of these documents shows the following:

- In an email message to DIFS Major Brian McCoy, Duarte wrote: "Please see the police report attached. I am currently trying to get a hold of the Deputy to correct a couple discrepancies. The vehicle was not unlocked contrary to the method of entry entered on the report (I also told him this when I reported the incident), also contrary to his findings on the weather

stripping, it is my belief the weather stripping was tampered with instead of weathering, like he indicates."

A review of PBSO Offense Report, Case #18123107, shows the following:

- PBSO Deputy Colon was dispatched to Duarte's residence at 7:27 PM on September 17, 2018. The "Occurred Between Date" is listed as from 2:15 PM on September 15, 2018, and 5:10 PM on September 17, 2018.
- The Nature of Larceny is listed as "THEFT FROM VEHICLE," with the Method of Entry listed as "LEFT UNLOCKED."
- The only item listed as stolen is a 9mm Glock 43 handgun, serial #BCFV948.
- Duarte told Deputy Colon that he left his Glock 43 in the center console of his POV while he worked a secondary employment detail on September 17, 2018. On September 19, 2018, Duarte saw the empty ankle holster in the driver's door pocket of his Department vehicle and subsequently searched his POV. After not being able to find the firearm, Duarte notified his supervisor and then the PBSO.
- Deputy Colon wrote, "I EXAMINED THE EXTERIOR OF THE VEHICLE, WHERE DIEGO DREW MY ATTENTION TO THE BLACK RUBBER WEATHER STRIPPING AROUND THE DRIVER DOOR WINDOW. SOME OF THE RUBBER STRIPPING AROUND THE WINDOW APPEARED TO BE RIPPED, HOWEVER, THE LOCATION AND APPEARANCE OF THE RIPPING SEEMED TO BE FROM WEATHERING, AND NOT FROM FORCED ENTRY. A CHECK OF THE OTHER DOORS AND WINDOWS HAD SIMILAR WEATHERING TO THE RUBBER SEALING."

Exhibit #8: Sworn Victim Statement of Duarte to PBSO.

In his statement, Duarte wrote, in part, "On Saturday, September 15, 2018, I drove my private vehicle...to the parking lot of the Hilton Hotel...inside my vehicle, at the center console, I placed my department issued Glock 43. I worked a detail at the FAU university on that day. After returning from my detail, I drive [sic] my car back to my house. On September 17, at approximately 1700 hours, I inspected my POV, searching for my gun. I couldn't find it. I also noticed signs of vandalism in the from driver door, specifically the weather stripping."

Exhibit #9: PBSO Supplemental Report for Case Number 18123107.

A review of this document shows that PBSO Deputy Colon was dispatched to Duarte's residence on September 25, 2018, at 7:27 PM. Deputy Colon wrote, "DUARTE HAD QUESTIONS RELATING TO THE BURGLARY INVESTIGATION, AND WANTED TO UPDATE INFORMATION TO THE CASE. DUARTE REQUESTED A THAT A SUPPLEMENT TO THE ORIGINAL CASE, TO REITERATE THE FACT THAT HE DID NOT LEAVE HIS DOORS TO HIS VEHICLE UNLOCKED AT ANYTIME BETWEEN THE OCCURRENCE DATES. DUARTE ALSO DEMONSTRATED THAT HIS VEHICLE HAS AN AUTO LOCK FEATURE ONCE HE LEAVES THE CAR, WHICH ENSURES IT IS LOCKED WHEN HE IS AWAY."

Exhibit #10: Email Confirming Regional Communications Center History for Duarte.

On September 28, 2018, Lake Worth Regional Communications Center (RCC) Manager Aerica Ramos responded to a request from Shoaf for the Lake Worth RCC history of Duarte for September 15, 2018. Ramos wrote, "Detective Sanez Duarte has only logged on with the Lake Worth RCC twice in 2018, which were in March and July. If we had any contact with him, he would have been logged on duty and his activity would have been documented. I checked our radio recordings and found nothing for that day."

Exhibit #11: Photographs of Duarte's POV Taken by PBSO Deputy Colon.

This document contains six photographs of Duarte's 2010 Toyota Corolla taken on the evening of September 17, 2018, by PBSO Deputy Colon.

Exhibit #12: A Google Earth satellite photograph of Duarte's residence.

A satellite photograph showing Duarte's residence obtained from Google Earth.

Exhibit #13: Photographs of the Airport Hilton, West Palm Beach, and surrounding area.

This document contains a Google Earth satellite photograph of the Airport Hilton and seven ground level photographs of the parking lot and adjacent areas.

Exhibit #14: Photographs of the CVS visited by Duarte on September 16, 2018.

This document contains one Google Earth satellite photograph and two ground level photographs of the CVS and parking lot located at 5044 Forest Hill Boulevard, West Palm Beach, Florida.

[Investigator's Note: During physical visits to the locations Duarte traveled to on September 16, 2018, the OIG determined that no security surveillance video of the areas where Duarte parked his POV exists.]

Exhibit #15: A Google Earth satellite photograph of The Mall at Wellington Green, located at 10300 Forest Hill Boulevard, Wellington, Florida.

Exhibit #16: Email Message from Bierbaum with Duarte's Secondary Employment Request.

This document shows that on July 12, 2018, Duarte requested to work secondary employment at FAU to provide "Police presence at special events" for various days and various hours per week. This request was approved on July 20, 2018.

Exhibit #17: Performance Improvement Plan for Duarte.

This document shows that on September 25, 2018, Duarte was placed into a Performance Improvement Plan (PIP) by Lieutenant Stacey Spirn due to concerns she had regarding Duarte's job performance in the following three areas: Problem Analysis/Decision Making, Self-Direction, and Communication.

Exhibit #18: Email Messages Between Shoaf, Brock, Captain Burt Himmer, and Lieutenant Timothy Hartley.

These messages show that DIFS issued Duarte a Galco brand "Ankle Glove" model holster for his Glock 43 handgun. This was the only holster issued to Duarte for use with his Glock 43 handgun.

Exhibit #19: Email from DIFS Accreditation Manager Kimberly Wachter Containing an Excel Spreadsheet Showing Duarte's Acknowledgements for Division Policies and Procedures.

This document shows that Duarte electronically signed as having read DIFS policy 1.4.2, Firearms, on March 13, 2017. Duarte electronically signed as having read DIFS policy 1.8.4, Radio Communications, on March 5, 2018. Duarte electronically signed as having read DIFS policy 1.2.2, Secondary Employment, on March 7, 2018. Duarte electronically signed as having read DIFS policy 1.8.1 Use, Maintenance and Care of State Issued Equipment on September 4, 2018.

Exhibit #20: DIFS Policy 1.8.1, Use, Maintenance and Care of State Issued Equipment.

In Section III, Procedures, Sub-section D, Care of Equipment, paragraph 1 states, "It shall be the individual responsibility of the member to ensure the proper use and care of state issued equipment. Likewise, he or she shall be held accountable for all issued items."

Sub-section E, Reporting of Lost, Damaged or Stolen Equipment, paragraph 4 states, "In the event of lost or stolen weapons, badges or credentials the member shall immediately notify his or her supervisor who shall notify the Director and Quartermaster via the chain of command."

Exhibit #21: September 2018 Monthly Vehicle Log for Duarte's Department Issued Vehicle.

This document shows that Duarte's Department issued vehicle, a 2008 Dodge Charger, was listed as "IDLE" on September 18 and 19. An attached invoice from Arrigo Dodge in West Palm Beach shows that a Repair Order was opened for this vehicle at 8:59 AM, on September 17, 2018, and the vehicle was ready after service was completed at 1:51 PM on September 20, 2018.

WITNESS INTERVIEWS

On November 13, 2018, a sworn recorded interview of Division of Investigative and Forensic Services, Bureau of Insurance Fraud Lieutenant Stacey Spirn was conducted at the DIFS office in West Palm Beach, FL. The following represents actual and paraphrased statements made by Spirn:

Spirn has been a Lieutenant for DIFS for six years. Her direct supervisor is Captain Derrick Wilson. Spirn has been Detective Diego Duarte's supervisor since May of 2018. Duarte previously worked for former Lieutenant Lisa Vallerio.

Spirn said she learned of Duarte's missing weapon when she received a phone call from him on the evening of September 17, 2018. Duarte told her that his Department issued Glock 43 handgun had been stolen from his personal vehicle (POV). Duarte believed the theft occurred on Saturday, the 15th, but did not discover the theft until Monday, the 17th.

Spirn said Duarte worked a secondary employment detail on Saturday, the 15th. Duarte had previously told her about the detail. She stated, "I was aware he was working the detail, because he was working it with several people in the office." Spirn said Duarte had an approved Secondary Employment Request to work details for Florida Atlantic University (FAU), and had informed her of the detail a few days prior to the 15th. Members of Spirn's squad can inform her of working secondary

details either in writing or word of mouth. Duarte informed Spirn verbally that he would be working a secondary detail at the FAU football game on the 15th.

According to Spirn, the detail was to provide a law enforcement presence at the football stadium. The standard uniform for such a detail is BDU pants, DIFS polo shirt, tactical vest and gun belt. Spirn said Duarte has worked previous off-duty details, but believes this is the first one he worked for FAU.

Duarte did not tell Spirn he was planning on using his back-up weapon during the detail. She said when members of her squad desire to work a secondary detail she requires them to inform her of the nature of the secondary detail and when and where they are working. She then checks her files to ensure that the Detective has an approved secondary employment form for the vendor of that detail.

Spirn said that she has observed Duarte wearing his back-up weapon in its ankle holster on several occasions in the office.

Spirn said when Duarte called her on the 17th to inform her about his missing handgun, Duarte told her he believed it was stolen from inside his POV sometime Saturday, the 15th. Duarte told her he was working the detail on Saturday with Detective Anthony Merva, Detective Ronnie Cheeks, and Detective Scott Miller. He made arrangements for Merva to meet him at the parking lot of the Hilton near the airport. Duarte drove his POV to the hotel parking lot where he met Merva, who was driving his DIFS duty vehicle. Duarte explained to Spirn that he transferred all of his equipment that he needed for the game from his POV to Merva's duty vehicle. She stated Duarte told her, "In the process of doing that I went to put my off-duty weapon on and realized the holster would not fit over my boot." When Duarte realized he could not use the ankle holster, he secured his Glock 43 in the center console of his POV. Duarte said he locked his POV and got into Merva's duty vehicle to be transported to FAU for the detail.

Duarte told Spirn that after the detail Merva drove him back to the hotel, where Duarte transferred his equipment back into his POV. Duarte drove home and thought he had transferred all his equipment inside his house. Duarte told Spirn he had forgotten that his Glock 43 was in the console of his POV. Duarte told Spirn that on Sunday, the 16th, he drove his POV to church and the mall, not remembering that his back-up weapon was still in his POV. On Monday, the 17th, when Duarte came back to work he had to pick up his duty vehicle at a Dodge dealership where it was receiving some repair work. When he got into his duty vehicle he told Spirn that he noticed his empty ankle holster in the driver door pocket. Duarte then realized that he left his Glock 43 in the center console of his POV on Saturday night and had never removed it. As soon as he got home Duarte searched his POV but the weapon was not found. Spirn stated, "At which point he [Duarte] stated, 'Now I'm calling you [Spirn].'" Spirn asked Duarte what he thought happened and Duarte told her he thought someone broke into his POV and stole the weapon. Spirn instructed Duarte to contact the Palm Beach County Sheriff Office (PBSO) to report the theft, and she would notify the DIFS chain-of-command. She also told Duarte that he would need to write a memo about what happened when he returned to the office the following day (the 18th). As Spirn was scheduled to be off on the 18th, she instructed Duarte to submit his memo to Lieutenant Johnathan Lent. When Spirn subsequently read Duarte's memo, she said it was essentially what he had told her over the phone about the loss of his back-up weapon.

Spirn was asked if she inquired, or if Duarte told her, how the ankle holster for Duarte's Glock 43 ended up in his duty vehicle. She stated, "That was my first question that I asked him, and he said that - I didn't understand his answer. He said that when - I really didn't understand it. I asked him to explain it, but when he - that he had taken the off-duty weapon and was going to carry it in his vest." According to Spirn, Duarte gave no reason for him not carrying the weapon in the pocket of his

tactical vest and for leaving it in his POV. Duarte did not give Spirn a clear reason for his ankle holster being in his duty vehicle without his weapon.

Spirn said she has had no concerns over Duarte's care of his DIFS equipment in the past. Spirn said Duarte is on a Performance Improvement Plan (PIP) due to his inability to prepare law enforcement paperwork to DIFS standards. Spirn said she has had no concerns over Duarte being untruthful in her experience with him.

Spirn was asked to describe any concerns she had based on what she knows of the circumstances surrounding Duarte's missing firearm. She stated, "The explanation about the ankle holster, and the ankle holster being in the other car caught me off-guard."

Spirn said she asked Duarte if it is possible that he left his POV unlocked. Duarte told her he was sure he locked his car and even if he did not, his car is equipped with an after-market alarm system that automatically locks his car fifteen minutes after him leaving his vehicle.

Spirn said Duarte sent her pictures he had taken of the weather stripping around his doors. She stated, "You know, it [the alleged damage to the weather stripping] looked like weather-related." She understands how the PBSO Deputy checked the "unlocked" box on the incident report, as there were no apparent signs of forced entry into Duarte's POV.

Duarte gave Spirn a copy of the initial PBSO incident report concerning the theft of his firearm. According to Spirn, Duarte was not satisfied with the report indicating his car was unlocked, nor did he agree with the deputy's conclusion that the weather stripping did not show any signs of forced entry. Spirn advised Duarte that while the PBSO Deputy could not change his original report, it might be possible for Duarte to ask for a supplemental report to be taken.

Spirn was asked if based on everything she knows concerning the circumstances surrounding the alleged theft of Duarte's Glock 43, did she believe any Department of Division policies were violated. She said that the DIFS firearms policy allows for temporary storage of a handgun inside a vehicle. Duarte stated that he stored his weapon in the center console of his vehicle temporarily would be allowed. She stated, "You know forgetting it in there for so many days, that - I mean that's a mistake, it's an accident it happens. But are mistakes and accidents violation of policy? Yes. You know, you could have that."

On November 13, 2018, a sworn recorded interview of Division of Investigative and Forensic Services, Bureau of Insurance Fraud Detective Anthony Merva was conducted at the DIFS offices in West Palm Beach, FL. The following represents actual and paraphrased statements made by Merva:

Merva has been a Detective in the West Palm Beach office for almost two years. He previously worked as an Investigator for the Florida Highway Patrol for 25 years. His immediate supervisor is Lieutenant Frank Briganti.

Merva said that he and Detective Duarte worked a secondary detail for a Florida Atlantic University football game the evening of September 15, 2018. Merva said that two other DIFS Detectives from the West Palm Beach office also accompanied him to the detail that evening. He identified these Detectives as Ronnie Cheeks and Scott Miller. Merva said he was the only person that had the proper secondary insurance for his duty vehicle, so he offered to pick up the other Detectives and transport them to and from the detail in his duty vehicle.

Merva said he used to schedule secondary details for himself and coworkers while he was a Highway Patrol officer, and still gets notified of secondary details from his former FHP colleagues. He was contacted by a friend at FHP who told him of the FAU detail and told Merva that he could use as many officers as wanted to work this detail. Merva went around to the Detectives in the WPB office and asked if anyone wanted to work as security for the FAU football game. Duarte, Cheeks, and Miller agreed to work the detail and they decided to carpool with Merva.

Merva said the detail consisted of providing on-field security for the football game. Merva could not remember exactly when the detail started that evening but said the details usually last five to six hours. Merva said he has worked numerous secondary details for FAU football games during his law enforcement career and estimates he has worked "five or six" details since he began working for DIFS. This was the first detail he had worked with Duarte. Merva said all participants in the detail were required to be in their agencies' uniform, and the use of a ballistic vest was suggested but not required. Merva said he suggested that the DIFS participants wear their BDU pants, grey DIFS polo shirt, vest and gun belt.

Merva said he drove his DIFS Chevrolet Impala for the detail. He left his house and picked up Detectives Cheeks and Miller at the Home Depot at Northlake and I-95. He then went to the Hilton off Southern Boulevard and picked up Duarte. Merva believes he picked up Duarte shortly after 4:00 PM. He is unsure of the exact time but said there was ample daylight when he arrived at the Hilton to pick up Duarte. Merva observed that Duarte was wearing BDU pants, a DIFS hat, and was carrying his tactical vest over his shoulder. Duarte was wearing his gun belt. Duarte was not carrying a bag or backpack. Duarte placed his vest in the trunk of Merva's duty vehicle. Merva did not observe Duarte with a back-up weapon and said Duarte never spoke of having a back-up weapon during the detail. Duarte never mentioned wanting to take his back-up weapon for the detail or of any difficulties he had with his back-up weapon.

After the detail was over Merva drove Duarte to the Hilton, and the other detectives back to the locations where they left their personal vehicles. Merva said he does not remember the exact location where Duarte had parked his personal vehicle in the Hilton parking lot. (Investigator's note: at this point in the interview Merva was shown an aerial photograph of the Hilton parking lot and asked if he could recall an approximate location of Duarte's vehicle.) Merva stated, "He wasn't that far from the building. I remember he was-I thought he was near a light, and he was in like this general area." (Merva pointed to an area in the photograph in the approximate center of the northernmost section of parking spots.) Merva stated, "We've used that parking lot in the past. I mean we used to park FHP cars in there, too. So it's - we've never had a problem there." Merva was asked if in his experience, even when using the parking lot while he was with FHP, was there a history of cars being broken into at that location. He stated, "No, not that I'm aware of. And that's even why I suggested that spot." Merva recommended that Duarte park his personal vehicle in the Hilton lot because it was convenient to the interstate and not too far from Duarte's residence.

After the detail, when they arrived at the Hilton parking lot, Merva got out of the car and observed Duarte get his tactical vest out of the trunk and go over to his personal vehicle. Duarte waited until he watched Duarte start his car and then drove off to take Cheeks and Miller to their vehicles.

After work on Monday evening [September 17, 2018] Merva received a text message from Duarte asking if Duarte could talk to Merva in person. Merva said Duarte then drove to Merva's residence. Merva stated that when Duarte arrived at his house. "I sensed something was wrong, I just didn't know what was wrong. He was white as a ghost." Duarte told Merva that "he couldn't find his gun."

Merva asked Duarte what gun he was talking about, as he had seen Duarte with his gun at work. Duarte told him, "No, my little gun." Merva said he knew that Duarte did not want his back-up weapon, and had requested to give it back to Merva the past couple of times they were at the range. Merva explained that he was the DIFS firearms instructor for the Region. He stated, "So he's wanted to give that gun back. He says, 'I don't use it, I don't want it.'" At the time, Merva told Duarte that the weapon was issued to him for a reason, so he should keep it.

After Duarte told Merva he could not find his back-up weapon, both he and Duarte searched the trunk of Merva's duty vehicle. The weapon was not there. Merva asked Duarte what Lieutenant Spirn, Duarte's Supervisor, had said when Duarte had informed her about the missing weapon. According to Merva, Duarte stated, "I haven't called her yet." Merva told Duarte he needed to call Spirn immediately. Merva witnessed Duarte call Spirn and inform her of the missing firearm. Merva then witnessed Duarte call the Palm Beach County Sheriff Office (PBSO) to report his missing firearm. Duarte then left Merva's residence to meet the responding PBSO Deputy at Duarte's residence.

On Tuesday, September 18, 2018, while at work, Merva asked Duarte to retrace his steps to try and find out what had happened to Duarte's back-up weapon. Duarte told Merva prior to the FAU detail he had tried to put his back-up weapon in its ankle holster on his boot, but his pant leg would not go over the gun and holster. He told Merva he then didn't know what to do with his back-up weapon and considered putting it in his tactical vest. Duarte told Merva he put the gun in the center console of his personal vehicle and locked the car when he went to Duarte's duty vehicle on the evening of the FAU detail. Duarte did not tell Merva if his back-up weapon was in its holster or if a magazine was inserted at the time he left it in his POV.

Duarte told Merva he believed that the weapon was stolen from inside his POV. Merva then examined Duarte's POV. Merva stated, "There was no broken windows. The weather stripping – you know I went right to the driver's door and I looked at it. I said, 'Diego, why is this weather stripping missing here?' There was a piece of weather stripping that was broken on the window. We looked at the other windows. We went around and there was also some of the weather stripping looked like some kind of tool or something had been rubbed against it." Merva said he has previous experience working as a locksmith and knows that there would be some form of damage when a wedge of some kind is used to force open a car door. Merva told Duarte to make sure he showed the weather stripping damage to the PBSO and to take pictures.

Duarte informed Merva that his car had some type of automatic locking feature that locks the doors when he is not present. Merva told Duarte to find some documentation on this feature to provide to PBSO. Merva stated, "I don't remember if he locked his car or not [the night of the FAU detail]. I don't remember hearing a horn chirp, I don't remember lights flashing, I wasn't paying attention."

Merva asked Duarte if anything other than his back-up weapon was missing from his car. Duarte told him he keeps nothing in the car. Merva said when he examined the interior of Duarte's POV he saw no items kept inside. He stated, "There was nothing inside the car. Nothing."

Merva was asked if in his opinion, based on what he knows of the circumstances surrounding the loss of Duarte's back-up weapon, were any Department or Division policies violated. He stated, "I think he made a decision to temporarily store the weapon in the car. I'm thinking because it was his first detail, I get the impression for his first detail he doesn't know what to do with it [the back-up weapon]." Merva said he believes that the detail for the FAU football game was Duarte's first secondary employment detail for DIFS.

Merva was asked why Duarte wanted to return his back-up firearm. Duarte told Merva "I never use it. I don't carry it on my ankle. It's just another gun I have to worry about somewhere."

On November 27, 2018, a sworn recorded interview of Division of Investigative and Forensic Services (DIFS), Captain Burt Himmer was conducted at the DIFS Headquarters in Tallahassee, FL. The following represents actual and paraphrased statements made by Himmer:

Captain Himmer is in charge of the DIFS Office of Professional Development and Operational Support Section. He oversees accreditation, policy development, public records, evidence, training, equipment and fleet operations, hiring, and recruitment for the Division. His immediate supervisor is Major Michael Wood.

Himmer said that DIFS policy 1.4.2, Firearms, and 1.8.1, Use, Maintenance and Care of State Issued Equipment cover the care and use of DIFS personnel who are issued firearms as part of their duties. He said each of these policies are issued electronically to every Law Enforcement Officer (LEO) through the DIFS Power DMS system, and each employee is required to read and review each policy and subsequently electronically sign showing they have read and understand each policy. The Firearms policy is additionally reviewed at each firearms training session. Firearms proficiency training is required bi-annually for each DIFS LEO.

Himmer said if a LEO wishes to carry a back-up or secondary weapon, it can either be a Department issued firearm, or a privately-owned firearm as long as the privately-owned firearm meets the requirements set forth in policy, and the LEO has received approval from headquarters to do so. Himmer said about four years ago the Division purchased Glock model 43 handguns to issue to LEOs as secondary weapons for undercover operations. Himmer confirmed that Detective Diego Duarte was issued a Department Glock 43 as a secondary weapon, and an ankle holster for use with the Glock 43. Duarte was not issued any other holster for use with the Glock 43.

Himmer said policy requires a DIFS LEO to carry a secondary weapon in a concealed manner, unless an exemption is issued from the Director approving the LEO to carry the secondary weapon in an exposed manner. In such an instance, the secondary weapon would in effect be acting as the LEO's primary weapon. Any weapon carried exposed must be placed in a Division approved Level II holster (containing two weapon retention devices).

Himmer said Duarte was issued his Glock 43 on March 23, 2017, and an ankle holster for his Glock 43 on July 19, 2017. On March 23, 2017, Duarte qualified as proficient with the Glock 43 and was approved to carry it as his secondary weapon. According to Himmer's records, Duarte was also approved to carry a personally owned Glock model 27 handgun.

Himmer was asked when a Department issued firearm is allowed to be out of its holster. He said a loaded handgun is only allowed to be out of its holster during training or in a use of force situation when the possible use of a firearm is anticipated. Himmer said that if a firearm is to be out of its holster for storage, DIFS policy requires the firearm to be unloaded. Himmer was asked if a Department handgun is allowed to be stored out of its holster. He stated, "As long as it's in a secured lockbox, or something like that, absolutely. And if it's secured out of its holster, it has to be unloaded."

Himmer said that he had read the memo Duarte submitted to Headquarters concerning the loss of his Glock 43, and had also read the initial PBSO incident report concerning the loss of Duarte's Glock 43. Himmer said according to policy, overnight storage of a Department firearm in a vehicle is prohibited unless the firearm is placed inside a secondary locking device. The trunk of a car would

be considered a secondary locking device. Himmer was asked if the interior cabin of a car would be considered a secondary locking device. He stated, "The policy doesn't really specifically state that in the policy, it doesn't really go in depth with it." Himmer said the DIFS firearms policies do not specify how or where to store a DIFS firearm in a privately-owned vehicle. He stated, "Ideally you do not want to store firearms anywhere in the passenger compartment of a car, especially nowadays, because of all the car burglaries that we have had."

Himmer said DIFS polies require an LEO to notify their supervisor immediately upon noticing that their issued firearm is missing. DIFS LEOs are also required to notify the proper law enforcement agency as well, so that details of the weapon can be entered into NCIC/FCIC. The LEO's supervisor is required to forward this information to DIFS headquarters and the Quartermaster. Himmer said he learned of Duarte reporting his firearm being stolen from a September 18, 2018, email message from DIFS Major Brian McCoy.

Himmer was asked, in his opinion, did Duarte storing his Glock 43 in the center console of his personal car, violate any DIFS or Department policies. He stated, "I go back to, per the policy, the employee is responsible for the safekeeping of the Department issued equipment. So, it's unfortunate that his car – personal vehicle – was broken into, it's unfortunate that our weapon was stolen, but he had the responsibility of making sure that weapon was secured."

Himmer was asked if the temporary storage of Duarte's Glock 43 in the center console of his personal vehicle, with a magazine inserted and a round in the chamber, and not in its holster, as described by Duarte, be a violation of DIFS policy. He stated, "Yes. You can keep it in the holster loaded. But as soon as it's removed from the holster, you can't sit that gun down loaded. You have to render it safe." Himmer described the method of rendering a handgun safe as removing the magazine, locking the slide to the rear, and removing any round stored in the chamber.

Himmer was advised that according to Lieutenant Stacey Spirn, Duarte was working a secondary detail to provide law enforcement presence at an FAU football game on September 15, 2018. Duarte told Spirn that when he realized his pant leg would not fit over his Glock 43 in its ankle holster while wearing boots, he initially decided to place his Glock 43 in a pocket of his tactical vest. Himmer said that DIFS issues their LEOs tactical body armor vests with MOLLE style webbing for the attachment of various pouches and weapon holsters. While the vests themselves do not contain integral pockets, each officer is issued utility pouches to attach to the vest as they see fit. Any personally owned pouches or other devices an LEO would like to attach to the vest must be approved by the LEO's supervisor. Himmer said that if Duarte did store his Glock 43 inside a utility pouch on his vest, it would not be an approved method of carry for the handgun.

On December 4, 2018, a sworn recorded interview of Division of Investigative and Forensic Services (DIFS), Bureau of Insurance Fraud Detective Ronnie Cheeks was conducted at the DIFS office in West Palm Beach, FL. The following represents actual and paraphrased statements made by Cheeks:

Cheeks has been a Detective with the Bureau of Insurance Fraud since April of 2017. Prior to that he was a Deputy with the Bay County Sheriff Office and an officer for the Panama City Police Department. Cheeks' supervisor is Lieutenant Stacey Spirn.

Cheeks said he learned of a secondary detail for an FAU football game on September 15, 2018, from Detective Anthony Merva. Cheeks agreed to work the detail. The detail consisted of acting as law enforcement presence and security on the sidelines during the football game.

Prior to the detail Cheeks drove his personal car to a Home Depot parking lot in West Palm Beach, where he was picked up by Merva, who was driving his DIFS duty vehicle. Detective Scott Miller had also driven his personal vehicle to the Home Depot lot, and was picked up by Merva at the same time. Merva, with Cheeks and Miller as passengers, then drove south to pick up Detective Diego Duarte in the parking lot of a hotel. Cheeks does not remember the name of the hotel.

Cheeks said Merva picked he and Miller up some time in the afternoon. When they arrived in the parking lot, Cheeks observed that Merva had driven his personally owned vehicle (POV). Duarte was already outside his POV when Merva pulled up to Duarte's location. According to Cheeks, the detail required the detectives to wear black BDU pants, grey polo shirts, gun belts and tactical vests. Cheeks said during transport to and from FAU he and Miller had stored their tactical vests in the trunk of Merva's duty vehicle, but he could not remember where Duarte had stored his vest. Cheeks was riding in the front passenger seat, with Miller and Duarte in the rear passenger seats.

Cheeks was unsure of the time they picked up Duarte, but knows it was still daylight. [Cheeks was shown an aerial view of the hotel parking lot.] Cheeks said that Duarte was parked "somewhere in the middle" of the parking lot.

Cheeks said he had never worked a secondary detail with Duarte prior to this occasion.

Cheeks said Duarte was standing outside his vehicle when they pulled up to his location in the parking lot. Cheeks does not recall if he observed Duarte lock his vehicle or if he heard an audible sound indicating the vehicle was locked.

Cheeks said that Duarte never mentioned having a back-up weapon with him at any time during the detail for the FAU football game. Cheeks never observed Duarte with a back-up weapon.

After the detail, Merva drove Duarte, Miller and Cheeks back to their personal cars, with Duarte being dropped off first. Cheeks did not observe Duarte getting back into his car or turning an alarm off.

Cheeks learned of Duarte reporting his gun stolen "maybe 3 to 5 days later" after the detail. He believes it was Merva who told him about Duarte's gun being stolen from Duarte's car. Duarte has not spoken with Cheeks about his weapon being stolen.

On December 4, 2018, a sworn recorded interview of Division of Investigative and Forensic Services (DIFS), Bureau of Insurance Fraud Detective Scott Miller was conducted at the DIFS office in West Palm Beach, FL. The following represents actual and paraphrased statements made by Miller:

Miller is a Detective in the Bureau of Insurance Fraud assigned to the DIFS West Palm Beach office. His supervisor is Lieutenant Stacey Spirn. He has worked for DIFS since October of 2017, having previously worked for the New York City Police Department for 21 years.

Miller said he, along with Detectives Anthony Merva, Ronnie Cheeks and Diego Duarte, worked a secondary detail on September 15, 2018. The detail consisted of providing on-field security during a football game at FAU.

Miller said that Merva met both himself and Cheeks at a Home Depot on Northlake Boulevard in West Palm Beach. Merva drove his duty vehicle and Miller and Cheeks had parked their personal vehicles

in the Home Depot lot. Miller said Merva picked he and Cheeks up about 1:00 PM. After picking up Miller and Cheeks, Merva drove south on I-95 to a hotel parking lot off Southern Boulevard to pick up Duarte. Miller believes they picked up Duarte about 25 minutes after Merva picked up himself and Cheeks.

Miller said the uniform for the detail was BDU pants, gun belt and tactical vest. Miller said when they pulled up to Duarte's location he observed Duarte get out of his personal vehicle. Miller could not remember if Duarte placed his tactical vest in the trunk of Merva's duty vehicle. Miller was asked if he recalled the lights of Duarte's vehicle flashing or hear the beep of a horn indicating that Duarte had locked his car. He stated, "I believe so."

Miller said that during the ride to FAU, Cheeks was sitting in the front passenger seat, Miller was sitting behind Cheeks, and Duarte was sitting behind Merva, who was driving.

Miller said that at no time during the detail, including the rides to and from the hotel parking lot, did Duarte mention having a back-up weapon. He did not observe Duarte with a back-up weapon.

Miller believes that Duarte had parked his car in the middle area of the hotel parking lot. After the detail, Merva dropped Duarte off at his car first. It was night time when Duarte was dropped off. Miller believes that everyone had taken their vests off and placed them into the trunk of Merva's duty vehicle for the ride back to their cars.

Miller said he learned about Duarte having his gun stolen several days after the incident but he cannot remember who told him this information. Duarte has not spoken with Miller about having his gun stolen.

On December 7, 2018, a sworn recorded interview of Palm Beach County Sheriff Office (PBSO) Deputy Justin Colon was conducted via telephone. The following represents actual and paraphrased statements made by Colon:

Colon has been a Deputy for PBSO since July 27, 2018. He was previously a Deputy with the Broward County Sheriff Office for five years.

Colon said he was working road patrol on September 17, 2018, and was dispatched to the residence of Duarte in reference to a stolen firearm. Colon said he was with his Field Training Officer at the time, but that the FTO had no interactions with Duarte nor did he take any investigative efforts during the incident. Colon met with Duarte who told him that he was going to work an off-duty detail on September 15, 2018, and was getting picked up by another person who was working the detail. Duarte told Colon that he put all of his law enforcement gear in his personal vehicle when he was getting ready for the detail.

Duarte told Colon that when he got to the airport Hilton parking lot he parked his car and put all of his law enforcement gear into a co-worker's vehicle who was giving Duarte a ride to the detail. Colon stated, "At that point he's not sure if he left his firearm in the center console, but he believes that's where he left it." After the detail, Duarte said he came back to his vehicle, drove home, and put all of his gear back into his work vehicle.

Colon said Duarte told him that when he went to work and got back in his duty vehicle he saw his ankle holster and realized that he had left his secondary weapon in his personal vehicle. Duarte looked through his personal vehicle but could not find the gun.

Colon said that Duarte showed him the center console of his car and Colon took DNA samples from the area. Colon took pictures of the vehicle as well. Colon entered the weapon information into the PBSO teletype system to show it as stolen.

Colon does not remember if Duarte told him he placed his gun in the center console of his car before or after arriving at the Hilton parking lot.

Colon said that when he examined Duarte's car he did not observe any signs of forced entry. Colon examined the weather stripping around the doors of Duarte's vehicle and any damage seen appeared to be from natural weathering rather than any sign of tampering. He stated, "I wouldn't be able to completely like rule it out, but it didn't appear to be from, for me at least, it didn't appear to be like somebody had put like a Slim-Jim in the window, or something like that."

Colon said Duarte told him his gun was not in its holster when he placed it into the center console of his vehicle. He stated, "He told me it wasn't."

Colon said he had Duarte write a victim statement while he was at Duarte's residence. In his victim statement Duarte said he noticed signs of vandalism to the weather stripping of the driver's door of his vehicle. Colon said the damage pointed out by Duarte appeared to be from weathering rather than vandalism.

Colon said he checked the "Left Unlocked" section of the incident report, because that was the only valid option. The only options for the Method of Entry section on the incident report system are "forced, prying tool, slipped lock, picked lock, drilled lock, used key, left open, left unlocked, or skylight entry". Colon said he was instructed that if there was no obvious evidence for some type of force entry, he was to use the "left unlocked" designation and make any additional notations in the narrative section of the incident report.

Colon said that on September 25, 2018, he was dispatched to Duarte's residence for a supplemental report. Colon said that Duarte wanted to know why the initial report showed that his vehicle was left unlocked. Colon explained the reasoning. Duarte demonstrated a feature on his car that automatically locks the vehicle doors when Duarte walks away from his car. Colon said that Duarte left his car unlocked and left the vehicle, and Colon witnessed the door locks engage automatically after 15 to 30 seconds. Colon said this feature seemed to only lock the doors and not activate any type of alarm.

Colon does not know if there is a history of vehicle burglaries at the parking lot of the Hilton used by Duarte.

Colon said the incident report was forwarded to the PBSO investigations section, but he is unaware of any follow-up activity being conducted.

SUBJECT INTERVIEW[S]

On December 21, 2018, a sworn recorded interview of Division of Investigative and Forensic Services, Bureau of Insurance Fraud Detective Diego Duarte was conducted at the OIG offices in Tallahassee, FL. The following represents actual and paraphrased statements made by Duarte:

Duarte is a Law Enforcement Investigator II (Detective) assigned to the Division of Investigative and Forensics Services (DIFS), Bureau of Insurance Fraud's West Palm Beach office. He has worked for the Department for two years. His current supervisor is Lieutenant Stacey Spirn. Duarte was previously an officer for the Lauderhill Police Department.

Duarte said he learned of the secondary employment detail that took place on September 15, 2018, from Detective Anthony Merva. Merva asked Duarte if he wished to work the detail and Duarte was granted permission by Spirn. The detail was to provide law enforcement security for a Florida Atlantic (FAU) football game. Duarte said he was assigned to a gate near the command post for the event, and that officers from several area agencies were also working the event. In addition to Duarte and Merva, Detectives Ronnie Cheeks and Scott Miller from the DIFS West Palm Beach office also worked as security for the FAU football game.

Duarte said the uniform requirements for all secondary employment details are BDU pants, DIFS polo shirt or long-sleeved shirt, tactical vest, and gun belt with issued equipment.

Duarte made plans for Merva to pick him up at the parking lot of the Airport Hilton around 2:30 PM on September 15, 2018. Duarte drove his personal car to the parking lot. Merva had arranged to pick up Cheeks, Miller and Duarte in Merva's Department vehicle and transport them to the detail. As explained by Duarte, Merva had the required insurance coverage to use his Department vehicle for secondary employment details.

Duarte said that prior to leaving his residence to go to the Hilton parking lot, he had his law enforcement gear in his Department vehicle, which was parked at his residence. He took his tactical vest and gun belt from his Department vehicle and placed them into his POV. He sat down in his Department vehicle and attempted to place his ankle holster containing his Glock 43 on his ankle. The ankle holster would not fit around the boots he was wearing for the detail. Duarte stated, "I had the boot, and I couldn't fit the holster, then I took off the gun and put it in the center console of my POV." Duarte put the empty ankle holster in the driver's door pocket of his Department vehicle.

Duarte drove to the Hilton parking lot with his Glock 43 in the center console of his POV. He stated, "My intent was to take it with me to the detail, but I forgot it there." Duarte said he planned on putting the Glock 43 in a pouch attached to his tactical vest while working the secondary employment detail. *[Investigator's note: At this point in the interview, Duarte said the DIFS firearms policy requires a firearm being carried in a concealed manner to be placed in a holster with "one locking device". He asked of a zipper would be considered a "locking device." Brock informed Duarte that according to DIFS policy, a zippered pouch is not an approved holster, and a zipper is not considered a mechanical weapon retention device.]* Duarte said he did not place his Glock 43 in the pouch on his vest, and left the handgun in the center console of his POV.

While Duarte was waiting in the Hilton parking lot he received a phone call from Merva telling him he was nearby. Duarte put on his gun belt. When Merva arrived, Duarte got out of his POV and carried his vest to Merva's Department vehicle. Duarte kept his vest at his feet during the ride to FAU.

Duarte believes they arrived at FAU between 3:00 PM and 4:00 PM. When the detail was over Duarte put his tactical vest in the trunk of Merva's Department vehicle. Merva drove Duarte back to the Hilton parking lot. Duarte does not remember the time they arrived at the Hilton lot, but said it was "dark" and "late." Duarte believes he parked his car in the center portion of the parking lot. He noticed other cars parked near his when he was dropped off in the parking lot. Duarte placed his tactical vest

on the back of his passenger seat and drove back to his residence. Duarte did not notice anything out of the ordinary in his POV.

When Duarte returned to his residence he placed all of his law enforcement gear into his house, forgetting that his Glock 43 was in the center console of his POV as far as he knew at the time. Duarte said normally he would store both his full-size handgun and his Glock 43 in a nightstand drawer in his bedroom while at his residence. He did not realize his Glock 43 was missing at the time he placed his full-size handgun in the nightstand drawer, stating, "I forgot it there, sir."

On Sunday, September 16, 2018, Duarte ran some personal errands. He went to CVS to withdraw some cash from an ATM, he went to the Mall at Wellington Green to pick up a tailored suit, and went to church. He was at the CVS for about 20 minutes, the mall for about an hour, and at church for about an hour. Duarte did not notice anything suspicious or out of the ordinary with his car at either location. After church, Duarte returned to his residence and stayed there for the rest of the day.

On Monday, September 17, 2018, Duarte drove his Department vehicle to Arrico Dodge to have some repair work done. Detective Kenny Henry picked Duarte up from Arrico Dodge and subsequently assisted Henry with an interview. Duarte said while at Arrico Dodge he checked his Department vehicle to make sure there was no law enforcement gear left inside. He stated, "At that time I did notice the ankle holster in the pocket. So that was what triggered my mind immediately, the gun was still in my POV."

Duarte assisted Henry with an investigative interview and then returned to the DIFS West Palm Beach office where he was given a pool car to use while his Department vehicle was getting repaired. Duarte said he left the office to return to his residence between 4:45 PM and 5:00 PM.

When Duarte returned to his residence he looked in the center console of his POV and his Glock 43 was not there. He stated, "In my mind it was like 'crap', I wanted to make sure. And when I went into the center console I find that it wasn't there, that's when the panic starts." Duarte thoroughly searched the interior of his POV and his house, but could not find the Glock 43. He stated, "My hope was maybe I did put it in the pocket [of his tactical vest] and then somehow, somehow, it slipped [out of the pocket] into Merva's trunk."

Duarte texted Merva and asked if he could come to Merva's residence. He did not tell Merva via text that he could not find his Glock 43 or the reason he wanted to come to Merva's home. Duarte did not tell Merva about his missing weapon at the time because Duarte felt "embarrassed." Duarte then drove to Merva's residence and asked to look through the trunk of Merva's Department vehicle. He told Merva that his Glock 43 was missing, and then called Lieutenant Spirn and informed her of the missing handgun. Spirn told Duarte to call local law enforcement and report the weapon stolen.

Duarte was asked if he noticed his empty ankle holster in his Department vehicle in the morning when dropping his car off at Arrico Dodge, and then realized that he left his Glock 43 handgun in the center console of his POV, why didn't he have Detective Henry immediately take him to his home to retrieve the weapon? Duarte stated, "In hindsight, I should have done that. And that's something I cannot give you an explanation for. What I can tell you though, as you are aware, I'm on a PIP [Performance Improvement Plan]. Before this whole thing, I've been dealing with the stress of showing I can do my job. In a way, I was afraid to ask permission to go home or to let my Lieutenant know. Then again, in my mind, when I saw it I thought it's locked, it's in the car, I can get to it when I get home."

Duarte said when he placed his Glock 43 in the center console of his POV, a full magazine was inserted and there was a live round in the chamber of the handgun. He confirmed that the weapon was not in its holster when he placed the weapon in the center console.

Duarte said he keeps the interior of his POV very clean and nothing of any value could be seen by anyone looking into the interior of his car. The only personal property that would be visible would be a phone charger cable.

Duarte was asked about the comment he wrote in his PBSO victim statement concerning "signs of vandalism" to his POV. He said that when he drove his POV to Merva's residence he and Merva began looking over his POV to see how anyone could have gained entry into the vehicle to steal his handgun. Duarte said Merva pointed out some damage to the weather stripping around one of the doors. Duarte had not noticed this damage until Merva pointed it out to him. Duarte stated, "To me, it's my opinion that maybe some artifact or something was used to prop the door open. Now that's my opinion, and I also told that to the Deputy."

Duarte said his POV is equipped with a system that automatically locks the doors when he leaves the vehicle and does not lock the doors himself. Duarte believes this automatic locking feature engages the locks after about three to five minutes. This automatic locking feature was already equipped when Duarte purchased his POV. Duarte could not remember if he manually locked his car doors when he parked his car at the Hilton lot on September 15, 2018, but said due to the automatic locking feature there was no doubt in his mind that his POV was locked after he left it.

Merva was asked if he contacted the Regional Communications Center (RCC) when he began and finished his detail on September 15, 2018. He stated, "I didn't. But I believe either Tony [Merva] or Ronnie [Cheeks], one of those guys, called for all of us. I'm not a hundred percent sure."

Duarte was asked if he was positive he did not leave his Glock 43 in its ankle holster in the door of his Department vehicle when he dropped the vehicle off at Arrico Dodge. He stated, "I was positive. Because of the memory I have of opening the center console [of his POV] and placing it there."

Duarte was asked if he thought he complied with the DIFS firearms policy requirement of at all times being responsible for the proper storage and overall security of assigned firearms. He stated, "No, sir."

Duarte was asked if he thought he had complied with the DIFS firearms policy requirement of using a secondary locking device when storing a firearm in a vehicle overnight. He stated, "No, sir."

Duarte was asked if he thought he had complied with the DIFS firearms policy requirement of administratively removing his firearm and holster "en masse" as one unit. He stated, "No, sir."

Duarte was asked if he thought he had complied with the DIFS firearms policy requirement of rendering his firearm safe by removing the magazine, ejecting any round in the chamber and locking the slide to the rear after removing his Glock 43 from its holster. He stated, "No, sir."

Duarte was asked if he thought he had complied with the DIFS secondary employment policy by notifying the RCC of his status while working the secondary employment detail on September 15, 2018. He stated, "On that, I personally did not do it." He reiterated that it was his belief that someone else had notified the RCC about the DIFS employees working the detail.

Duarte was asked if he believed he used appropriate care in the handling, use, and storage of his Glock 43 handgun from September 15, 2018, through September 17, 2018. He stated, "No, sir."

Duarte was asked if he believed he adequately protected his Glock 43 handgun from theft or loss from September 15, 2018 through September 17, 2018. He stated, "No, sir."

Duarte was asked if he believed his actions relating to his Glock 43 handgun from September 15, 2018, through September 17, 2018, were improper, careless, and placed the weapon in a position as to increase the likelihood that it would be stolen. He stated, "Obviously, I don't want it – I just forgot it there. I forgot it in my car, yes. Would I willingly do something like that? No."

Duarte was asked if any of the statements he had made or given to anyone in relation to the theft of his Glock 43 handgun were either incomplete or misleading. He stated, "No."

FINDINGS/CONCLUSION

It is alleged that Detective Duarte violated DIFS policy 1.4.2, Firearms, by storing his Department issued Glock 43 handgun in his personally owned vehicle overnight (Exhibit #1). Duarte admitted to leaving his Glock 43 handgun in his POV overnight. **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated DIFS policy 1.4.2, Firearms, by not keeping his Glock 43 handgun in its authorized holster (Exhibit #3). Duarte admitted to removing his Glock 43 handgun from its holster before placing it in the center console of his POV. **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated DIFS policy 1.4.2, Firearms, by not rendering his Glock 43 handgun safe when it was removed from its holster. Duarte admitted to not removing the magazine, a live round from the chamber, or locking the slide of the handgun to the rear when he placed the weapon in the center console of his POV. **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated DIFS policy 1.4.2, Firearms, by not immediately reporting the loss or theft of his Glock 43 handgun to his supervisor. Duarte became aware that he was not certain of the location of his Glock 43 handgun around 9:00 AM on September 17, 2018, when he noticed his empty ankle holster in the driver door pocket of his Department vehicle at Arrico Dodge. He did not search his POV for the weapon until after work that day, stating, "In a way, I was afraid to ask permission to go home or to let my Lieutenant know." Duarte's failure to immediately notify his supervisor of the theft of his Glock 43 handgun is also a violation of DIFS policy 1.8.1, Use, Maintenance and Care of State Issued Equipment. **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated DIFS policy 1.4.2, Firearms, by not immediately reporting the loss or theft of his Glock 43 handgun to the appropriate law enforcement jurisdiction. Duarte became aware that he was not certain of the location of his Glock 43 handgun around 9:00 AM on September 17, 2018, when he noticed his empty ankle holster in the driver door pocket of his Department vehicle at Arrico Dodge. Duarte did not notify PBSO of the theft of his weapon until 7:27 PM on September 17, 2018, and only after being instructed to do so by Lieutenant Spirn. **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated DIFS policies 1.2.2, Secondary Employment, and 1.8.4, Radio Communications, by not informing the nearest Regional Communications Center of his status at any time when working a secondary employment detail on September 15, 2018. The Lake Worth RCC confirmed that there is no record of Duarte contacting the RCC at any time on September 15, 2018. Duarte admitted to not contacting the RCC, believing that another officer had done so on his behalf. **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated DIFS policy 1.8.4, Radio Communications, by not advising the nearest Regional Communications Center when he was either in service or out of service while utilizing his Department vehicle. Lake Worth RCC Manager Aerica Ramos stated, "Detective Sanez Duarte has only logged on with the Lake Worth RCC twice in 2018, which were in March and July. If we had any contact with him, he would have been logged on duty and his activity would have been documented." **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated AP&P 5-26, Negligence, by failing to use appropriate care in the handling, use, or storage of his Glock 43 handgun. Duarte admitted that he was negligent in this regard. **SUSTAINED.**

During the course of the investigation the OIG discovered information that appeared to indicate Duarte violated AP&P 5-26, Conduct Unbecoming a Public Employee, by placing his Glock 43 handgun in such a position as to increase the likelihood that it would be stolen. DIFS policies provide detailed instructions for the proper security and storage of Department issued firearms in an effort to prevent the likelihood of a weapon being lost or stolen. By not following these policies, and by leaving his Glock 43 handgun improperly stored in his POV for over 48 hours, Duarte increased the likelihood that this weapon would be stolen. **SUSTAINED.**

ADDITIONAL ISSUES

During the course of the investigation the following management issues were discovered and are referred to DIFS Director Simon Blank for review and consideration.

On September 28, 2018, Lake Worth RCC Manager Aerica Ramos confirmed that there were no records of Duarte communicating with the RCC on September 15, 2018. Ramos also stated to the OIG that DIFS officers rarely check in with the RCC concerning their status while conducting investigative activities in the field or while working secondary employment details. It is reasonable to believe that this lack of communication with the RCC is not limited to the DIFS West Palm Beach office. As this is an officer safety issue, it is recommended that the Division of Investigative and Forensic Services reinforce to all law enforcement personnel the importance of complying with the requirements of communicating with the nearest RCC as required in policies 1.8.4, Radio Communications, and 1.2.2, Secondary Employment.

ATTESTATION

I, the undersigned, do hereby swear, under penalty of perjury, to the best of my personal knowledge, information, and belief, the contents of this report are true and accurate; and I have not knowingly or willfully deprived or allowed another to deprive, the subject of the investigation of any rights contained in Sections 112.532 and 112.533, Florida Statutes. This investigation was conducted pursuant to Section 20.055, Florida Statutes, in accordance with applicable Principles and Standards for Offices of Inspectors General as published by the Association of Inspectors General.

Charles A. Brock

Charles Brock, Investigator

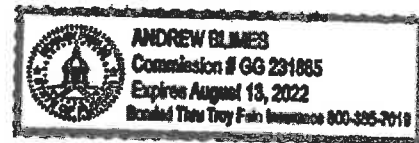
**STATE OF FLORIDA
COUNTY OF LEON**

Sworn to (or affirmed) and subscribed before me this 7th day of January, 2019, by Charles Brock, Investigator for the Department of Financial Services, Office of Inspector General, who is personally known by me.

Andrew Blimes

Signature of Notary Public

☒ Notary Public or ☐ Law Enforcement Officer



This investigation was conducted by Investigator Charles Brock, supervised by Director of Investigations Mike Shoaf and approved by Inspector General David Harper. The investigation was conducted in accordance with guidance from the Association of Inspectors General handbook.

Reviewed by: _____

Mike Shoaf
Mike Shoaf, Director

Date: _____

1/7/19

Approved by: _____

David T. Harper
David T. Harper, Inspector General

Date: _____

1-7-19

EXHIBIT LIST

| | |
|---|-------------|
| Email Messages Informing the OIG of the Theft of Duarte's Weapon | Exhibit #1 |
| Memorandum from Duarte to the DIFS Chain-Of-Command | Exhibit #2 |
| DIFS Policy 1.4.2, Firearms | Exhibit #3 |
| DIFS Policy 1.2.2, Secondary Employment..... | Exhibit #4 |
| DIFS Policy 1.8.4, Radio Communications | Exhibit #5 |
| AP&P 5-26, Standards and Procedures of Discipline | Exhibit #6 |
| Email Messages containing PBSO Offense Report Number 18123107..... | Exhibit #7 |
| Sworn Victim Statement of Duarte to PBSO..... | Exhibit #8 |
| PBSO Supplemental Report for Case Number 18123107 | Exhibit #9 |
| Email Confirming RCC History for Duarte | Exhibit #10 |
| Photographs of Duarte's POV taken by PBSO Deputy Colon..... | Exhibit #11 |
| Satellite photograph of Duarte's residence | Exhibit #12 |
| Photographs of the Airport Hilton and surrounding area..... | Exhibit #13 |
| Photographs of the CVS visited by Duarte on September 16, 2018 | Exhibit #14 |
| Google Earth photograph of The Mall at Wellington Green | Exhibit #15 |
| Email Message with Duarte's Secondary Employment Request | Exhibit #16 |
| Performance Improvement Plan for Duarte | Exhibit #17 |
| Email Messages Concerning Duarte's Issued Holster | Exhibit #18 |
| Email Containing Duarte's Acknowledgments for DIFS Policies..... | Exhibit #19 |
| DIFS Policy 1.8.1, Use, Maintenance and Care of State Issued Equipment..... | Exhibit #20 |
| September 2018 Vehicle Log for Duarte | Exhibit #21 |

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CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

Office of Inspector General
Report of Investigation #18041 IA

Division: Investigative and Forensic Services

Subject: Law Enforcement Investigator II Shane Gaghan
Law Enforcement Investigator II Christopher Precious

Allegation: Detectives Gaghan and Precious were in an officer-involved shooting.

Violation: DIFS SOP 1.4.1, Use of Force

Findings: None

Conclusion: Exonerated

A handwritten signature in cursive script, appearing to read "David T. Harper".

David T. Harper, Inspector General
Office of Inspector General
Department of Financial Services

June 4, 2019

THIS REPORT MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL OR EXEMPT
FROM DISCLOSURE UNDER APPLICABLE LAW. DO NOT RELEASE WITHOUT
PRIOR COORDINATION WITH THE OFFICE OF INSPECTOR GENERAL.



EXECUTIVE SUMMARY

From October 11, 2018, to May 22, 2019, OIG staff reviewed pertinent documentation and records as they related to the officer-involved shooting that occurred in Bay County, Florida on October 11, 2018. As a result of the investigation and the finding of the Use-of-Force Review Board, OIG staff determined that the use of deadly force by Detectives Shane Gaghan and Christopher Precious occurred within the guidelines of policy and state statute.

INVESTIGATIVE PREDICATE

On October 11, 2018, Florida Department of Financial Services (DFS) Inspector General David Harper received a telephone call from Deputy Chief Financial Officer (DCFO) Jay Etheridge regarding two Division of Investigative and Forensic Services (DIFS) detectives that had been involved in a shooting in Panama City, Florida, during Hurricane Michael deployment. On October 15, 2018, the Office of Inspector General (OIG) initiated an administrative investigation to ensure that applicable policies, procedures, rules, and statutes were followed during the shooting. Director of Investigations Mike Shoaf assigned this investigation to himself and immediately placed the administrative investigation on hold pending the results of a criminal investigation being conducted by the Florida Department of Law Enforcement (FDLE).

BACKGROUND

Hurricane Michael made landfall in the Florida Panhandle on October 10, 2018. As a result, DIFS employees throughout the state were deployed to the Panhandle to assist with recovery efforts. Law Enforcement Investigator II Shane Gaghan and Law Enforcement Investigator II Christopher Precious were among the DIFS employees deployed to Panama City. In the evening of October 11, 2018, as Gaghan and Precious were providing medical assistance inside a home, they were notified by witnesses that a white male was outside looting vehicles and that he was currently in one of their patrol vehicles. Gaghan and Precious exited the home and found a man, later identified as Dakota Brooks, inside Gaghan's vehicle. While attempting to extract and restrain Brooks, Brooks began to resist arrest and an altercation ensued that resulted in the fatal shooting of Brooks after Brooks attempted to gain control of Gaghan's firearm. EMS was notified but did not respond due to the ongoing circumstances related to the hurricane. The Bay County Sheriff's Office processed the crime scene and provided evidence to FDLE. Gaghan and Precious were placed on administrative leave following these events.

On October 11, 2018, notification of the events was made to DCFO Etheridge, DIFS Director Simon Blank, Harper, and Shoaf. Over the following days, the OIG continued to gather preliminary information regarding the shooting and initiated an administrative investigation on October 15. This investigation was immediately placed on hold pending the results of the criminal investigation being conducted by FDLE. FDLE Special Agent Geoffrey Anderson signed the completed FDLE investigative report on January 8, 2019 (Exhibit #1), and the report was forwarded to the 14th Judicial Circuit State Attorney's Office (SAO). On January 18, 2019, the SAO responded to FDLE that "the actions of both detectives were lawful and authorized under the circumstances and under Sections 776.012, 776.05 and 782.02 Florida Statutes. Therefore, no prosecution is warranted" (Exhibit #2).

On January 23, 2019, the OIG received notification that the criminal investigation had been concluded, so the OIG resumed its administrative investigation. On January 24, 2019, Shoaf requested a copy of the case file from FDLE. On this same day, Director Blank requested to know if reinstating Gaghan and Precious from administrative leave would create any issues for the OIG investigation. Shoaf communicated that the OIG investigation would not be hindered by Gaghan and Precious returning to work. The detectives were subsequently returned to work. On January 31, 2019, the Use-of-Force Review Board (Board) met to determine if the use of force was within

the scope of Florida State Statute and DIFS policy, and the Board voted that the use of force during the incident did not violate statute or policy (Exhibit #3). On February 6, 2019, Shoaf learned that the Board had not reviewed all of the evidence and statements collected at the time of the shooting, including a video or the FDLE report. On February 28, 2019, Shoaf informed Blank that the OIG would conduct an analysis of the video and send it, along with the FDLE report and all evidence, to the Board for review. On March 27, 2019, Shoaf submitted a memorandum to Blank requesting that the Board reconvene in order to review all of the evidence and documents associated to the use of force and make a determination as to whether or not each use of force was performed within the guidelines of applicable Department and Division policies and procedures (Exhibit #4). On April 22, 2019, the Board reconvened and maintained their original conclusion that there were no violations of agency policy or Florida State Statute related to the shooting that occurred on October 11, 2018. This decision was conveyed from the Board to Director Blank via memorandum dated May 15, 2019. Director Blank forwarded the memorandum to the OIG on May 17, 2019, along with a statement that he, DCFO Etheridge, and DIFS Lt. Col. Ernie Stoll had reviewed the material and concurred with the Board's findings (Exhibit #5).

ALLEGATIONS

On October 11, 2018, Law Enforcement Investigator IIs Shane Gaghan and Christopher Precious were in an officer-involved shooting.

DOCUMENTATION/RECORDS ANALYSIS

Exhibit #1: FDLE Case PE-27-0114

On February 4, 2019, OIG staff began reviewing the investigative report completed by FDLE Special Agent Geoffrey Anderson. (NOTE: According to People First records, Anderson was employed as a Law Enforcement Investigator II within the DFS Division of State Fire Marshal,¹ Bureau of Fire and Arson Investigations, from September 16, 2011, through July 1, 2013. Gaghan began working in the Bureau of Fire and Arson Investigations, which was later renamed to the Bureau of Fire, Arson, and Explosives Investigations, on September 5, 2014, and Precious began working in the Bureau of Fire, Arson, and Explosives Investigations on December 1, 2017.) The review disclosed that the report is divided into two sections: Investigative Summary and Investigative Reports/Related Items. The Investigative Summary contains a description of the events that occurred on October 11, 2018, as well as interview summaries with Gaghan, Precious, and numerous civilian witnesses. The Investigative Summary also contains the following sections: Autopsy of Dakota Brooks, Video Footage Review, Radio Transmissions/911 Call, Crime Scene Activities, Evidence Summary, FDLE Laboratory Analysis Summary, Witness List, Conclusions, and Notarizations. The Investigative Reports/Related Items section contains more detailed accounts of the information provided in the Investigative Summary.

¹ Due to an organizational restructuring effective July 1, 2016, the Division of State Fire Marshal, Bureau of Fire and Arson Investigations, merged with all law enforcement offices within DFS and became the Division of Investigative and Forensic Services.

Exhibit #2: Letter from the 14th Judicial Circuit Office of the State Attorney dated January 18, 2019

On January 23, 2019, OIG staff reviewed a letter sent from Chief Assistant State Attorney Larry Basford to Special Agent Anderson. The review disclosed that the SAO reviewed the FDLE PE-27-0114 Investigative Summary. The letter stated that the “statements of the detectives and the civilian witnesses clearly establish that Brooks attacked the detectives” and “a video of the incident corroborates the testimony of the detectives and the eye witnesses.” The SAO made the decision to “close this case with a finding that the actions of both detectives were lawful and authorized under the circumstances and under Sections 776.012, 776.05 and 782.02 Florida Statutes. Therefore, no prosecution is warranted.”

Exhibit #3: Memorandum from Major Burt Himmer to Director Blank dated January 31, 2019

On February 12, 2019, OIG staff reviewed a memorandum regarding the Board’s findings as they related to the use of force displayed by Gaghan and Precious. The memorandum stated that the Board met to discuss the incident on January 31, 2019, after receiving the Use-of-Force Report completed by Captain Chris Welch and the summary letter from the 14th Circuit Office of the State Attorney. The Board determined that no violations of statute or policy had occurred as it related to the detectives’ use of force. However, the Board did recommend a policy update concerning documenting use-of-force incidents, the development of a training bulletin for situational awareness and the effects of OC spray, and the consideration of the use of tasers.

Exhibit #4: Memorandum from Shoaf to Blank dated March 27, 2019

On March 27, 2019, Shoaf authored a memorandum to Blank regarding the Use of Force Review Board. In the memorandum, Shoaf requested that the Board reconvene, citing DIFS Standard Operating Procedure (SOP) 1.4.1, which requires the Board to review “all documentation and evidence available.” Shoaf went on to write that the Board’s initial decision was based only on the Use-of-Force Report completed by Captain Welch and the SAO’s letter; however, the OIG had also obtained the FDLE investigative summary and a document titled “PE-27-0114 eBook,” which contained the entire FDLE report, investigative writeups for each interview, and the taped audio statement for each interview. The OIG had also received copies of crime scene and autopsy photos from the Bay County Sheriff’s Office. Shoaf wrote that the Board’s review “should include all of the evidence and documents associated to the use of force and make a determination as to whether or not each use of force was performed within the guidelines of applicable Department and Division policies and procedures.”

Exhibit #5: Memorandum from Captain Thomas Bosco to Blank dated May 15, 2019

On May 17, 2019, OIG staff reviewed a second memorandum regarding the Board’s findings as they related to the use of force utilized by Gaghan and Precious. The review disclosed that the Board reconvened on April 22, 2019, and “considered the original evidence along with the additional evidence.” As a result of the Board’s review, the Board “determined and maintained the original findings that there were no violations of agency policy, nor were there any violations of Florida State Statutes related to this incident.” This memorandum was forwarded to the OIG via

email by Director Blank on May 17, 2019. In the body of the email, Blank wrote, "DCFO Etheridge, Lt. Col. Stoll and I have reviewed the material provided and concur with their findings."

Exhibit #6: DIFS SOP 1.4.1, Use of Force

On February 5, 2019, OIG staff reviewed the DIFS SOP regarding use of force. The review disclosed that sworn members "will use only the force that is reasonably necessary to affect lawful objectives and in accordance with the provision of Chapter 776, Florida Statutes." Section IV.E.3 requires sworn members to contact their immediate supervisor "as soon as possible" after the use of deadly force. The supervisor is required to respond to the scene immediately and inform the chain-of-command. Section IV.F.5 requires the supervisor to complete a Use of Force Form within 24 hours, and Section IV.F.6 requires the sworn member be afforded a minimum of 48 hours before completing and submitting a Use of Force Form. Section IV.G.2 states:

Whenever a sworn member's action, whether deliberate or accidental, results in death or serious bodily injury, he or she shall be removed from the line of duty and assigned administrative duties or placed on administrative leave until a documented preliminary administrative review is conducted by the Use of Force Review Board.

FINDINGS

The OIG had no investigative findings.

CONCLUSION

On October 11, 2018, Law Enforcement Investigator IIs Shane Gaghan and Christopher Precious were in an officer-involved shooting. Subsequently, the DFS OIG initiated an administrative investigation to independently determine whether all applicable policies, procedures, rules, and statutes were followed. Based upon the review of the statements and evidence in this case, along with the findings of the FDLE and the 14th Judicial Circuit SAO, the use of deadly force by Detectives Gaghan and Precious was within policy and state statutes. – **EXONERATED**

TRAINING OPPORTUNITIES

During the course of the investigation, the following training opportunities were identified and are referred to Director Blank for review and action deemed appropriate.

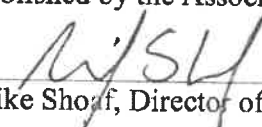
Based upon witness testimony and crime scene photos, Gaghan's vehicle was left unsecured when he and Precious were providing medical assistance inside of a residence. It is important that all members of DFS appropriately secure their vehicles whenever they are not immediately present with the vehicle.

The Office of Inspector General agrees with the recommendation from the Use of Force Review Board which was convened on January 31, 2019. The Division should consider the acquisition of

tasers and a training program that will meet the needs of DIFS to accompany it. It is important to ensure that members of DIFS who are called upon to act as local law enforcement officers during a time of natural disaster or civil disturbance are equipped with the same tools that are standard issue in other agencies and the industry.

ATTESTATION

I, the undersigned, do hereby swear, under penalty of perjury, to the best of my personal knowledge, information, and belief, the contents of this report are true and accurate; and I have not knowingly or willfully deprived or allowed another to deprive, the subject of the investigation of any rights contained in Sections 112.532 and 112.533, Florida Statutes. This investigation was conducted pursuant to Section 20.055, Florida Statutes, in accordance with applicable Principles and Standards for Offices of Inspectors General as published by the Association of Inspectors General.


Mike Shoaf, Director of Investigations

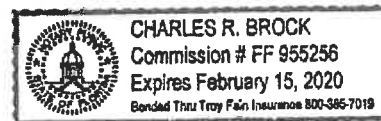
**STATE OF FLORIDA
COUNTY OF LEON**

Sworn to (or affirmed) and subscribed before me this 4th day of June, 2019, by Mike Shoaf, Director of Investigations for the Department of Financial Services, Office of Inspector General, who is personally known by me.



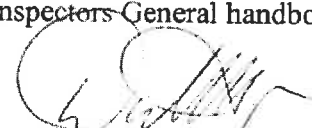
Signature of Notary Public

☒ Notary Public or ☐ Law Enforcement Officer



This investigation was conducted by Director of Investigations Mike Shoaf and approved by Inspector General David T. Harper. The investigation was conducted in accordance with guidance from the Association of Inspectors General handbook.

Approved by:


David T. Harper, Inspector General

Date:

6-4-19

EXHIBIT LIST

| | |
|--|------------|
| FDLE Case PE-27-0114 | Exhibit #1 |
| Letter from the 14th Judicial Circuit Office of the State Attorney dated January 18, 2019 | Exhibit #2 |
| Memorandum from Major Burt Himmer to Blank dated January 31, 2019 | Exhibit #3 |
| Memorandum from Shoaf to Blank dated March 27, 2019 | Exhibit #4 |
| Memorandum from Captain Thomas Bosco to Blank dated May 15, 2019 | Exhibit #5 |
| DIFS SOP 1.4.1, Use of Force | Exhibit #6 |

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CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

TO: David T. Harper, Inspector General *[Signature]*
THROUGH: Mike Shoaf, Director of Investigations *MS*
FROM: Charles Brock, Investigator *CB*
DATE: November 1, 2018
RE: 18031 PI Closure Memorandum

BACKGROUND

On August 13, 2018, the Florida Department of Financial Services (DFS) Office of the Inspector General (OIG) received a phone call from Mr. Charles Foster. Foster stated he was a licensed insurance agent in numerous states, including Florida. He stated he believes an insurance brokerage firm he used to work for was committing fraud by allowing other persons to utilize the insurance license assigned to Foster. This matter was referred to the Division of Agents & Agency Services (A&AS) (**Exhibit #1**). In a meeting with A&AS investigators on August 20, 2018, Foster alleged that he had been told by the owner of the brokerage firm that "DFS investigators" had been paid off with cash to leave the company alone, and that Foster had witnessed the investigators visit the company office when they were allegedly bribed (**Exhibit #2**). On August 27, 2018, OIG Director of Investigations Mike Shoaf assigned the allegation concerning the alleged bribery to OIG Investigator Charles Brock as a Preliminary Inquiry to obtain additional information (**Exhibit #3**).

INVESTIGATIVE ACTIVITY

At the request of Brock, Regional Administrator for the A&AS Bureau of Investigations Patricia Commander, provided a summary of her meeting with Foster on August 20, 2018. She provided the following information:

- In addition to Commander and Foster, the meeting was attended by A&AS Special Investigator Dania Darbouze and Division of Investigative and Forensic Services Detective Kenny Henry.
- Foster mentioned several times that the Broward DFS Investigators are "taking bribes" and are corrupt.
- Foster described two "investigators"- a male who was very tall, and a woman who was short and quiet.

- When the investigators left his supervisor's office, Foster said his supervisor "said to all employees present that they did not have to worry about anything as he handed the DFS investigators an envelope full of money."
- Foster did not see any badges or other identification for the investigators, and did not see them accept an envelope.
- Foster said he would be able to identify the investigators if he saw them again.

On August 21, 2018, Shoaf spoke with Foster on the phone. Foster provided the following information:

- He was not sure if the owner of the brokerage firm, Scott Shapiro, was serious or joking about providing a bribe to the unknown individuals.
- He did not witness any money exchange hands.
- He had taken his complaint to both federal and local law enforcement, and no one would assist as it was believed there was insufficient information to warrant an investigation.
- He could not identify the individuals he stated were "investigators" in a photographic line up.
- He did not know if anyone else in the office knew anything about the alleged bribe.

On August 22, 2018, Foster sent Shoaf an email message outlining his complaint (**Exhibit #4**). Foster wrote:

- "It [the visit of the investigators] was June/July of 2017."
- "The inspector who stopped by was 6'3 or taller and 225- 300 pounds. I can not [sic] imagine you have to [sic] many investigators in the Broward Office of those dimensions. I believe the gentleman had greyish hair."
- "There was a woman with him of medium height and weighed about 160."

On August 27, 2018, Brock communicated with A&AS Director Greg Thomas, and requested his office determine if there are any investigative records indicating that A&AS investigators visited the offices of Health Advisors in June or July of 2017. On August 29, 2018, Thomas responded to Brock that A&AS records show that both Investigator Eneida Jaen and Investigator Glen Chapter from the Fort Lauderdale office went to Health Advisors on October 3, 2017 (**Exhibit #5**).

On October 17, 2018, Brock spoke with Commander via telephone and was informed that A&AS investigators in the Fort Lauderdale and West Palm Beach areas utilize an A&AS Outlook Calendar to record locations they will be visiting for inspections and other investigative activity. On October 29, 2018, the Office of Information Technology granted Brock access to the A&AS West Palm Beach office Outlook calendar. A search of these Outlook records showed no recorded or planned visit to Health Advisors by any A&AS investigator for the months of June, July or August of 2017.

Interview of Complainant

On September 27, 2018, a sworn recorded interview of Foster was conducted at the Division of Insurance Agents & Agency Services in Fort Lauderdale, FL. The following represents actual and paraphrased statements made by Foster:

Foster said he was working for Health Advisors in 2017, a company owned by Mike Smith, Marcia Griffin, and Scott Shapiro. Foster said sometime in July of 2017, two people who he was told were investigators came into the Health Advisors offices and went into a closed room. Foster heard "a lot of shouting" from inside the room for about three to five minutes. After a total of about six to ten minutes the investigators left the room. He stated, "Everybody was happy, smiling, shaking hands and laughing." Foster said that after the investigators left, Scott Shapiro, one of the owners of Health Advisors, made an announcement that he (Shapiro) had paid off "state investigators" by handing them a large envelope of cash, and no one had to worry about any investigation from them again.

Foster said that he is a licensed insurance agent in 46 states. While working for Health Advisors he and other agents would sell insurance products to individuals. The sales were all conducted via telephone. All of the agents sat at computers and wore headsets to talk with clients. Foster said when he would take off his headset he would hear questionable things coming from the offices around him. Health Advisors had from eight to twenty agents working at a time. Health Advisors was located on Cypress Creek Road in Fort Lauderdale, but Foster is not sure of the exact address. It was on the third floor of the BB&T building. Foster said that Health Advisors would relocate about every few months.

Foster said he and the agents were arranged around a long table with computer stations for each of them. The Verification and Processing Department was in a separate room. Smith, Griffin and Shapiro each had separate offices.

Foster said he believes the interaction between Shapiro and the state investigators took place in July of 2017, but it is possible it took place in June or August of 2017. The visit by the investigators was "around lunchtime, either right before or right after." Foster said he saw the investigators come into the office area. He said there was a male investigator and a female investigator. The male was "about six foot four or taller," and weighed "about 265 or maybe 300 pounds." Foster described the female investigator as "about five-five and I guess she was like 190 or within 20 to 30 pounds of that." Foster said that both investigators were Caucasian and both appeared to be over 40 years of age. The male had "greyish" hair. The female had "brownish hair that was turning grey."

Foster described the male investigator as wearing dress pants with a long sleeve shirt and perhaps a necktie. He did not remember what the female was wearing. Foster did not notice any logo or patch on the shirts of either the male or female investigator. When asked if he noticed if either investigator was wearing a badge around their neck or on their belt, foster stated, "I didn't notice that either. I wasn't really paying attention." He did not see a gun on either investigators' belt. He believes the female was carrying a purse, but the male investigator was not carrying anything when they came into the office, except possibly a notebook.

Foster said the investigators came into the front door and went into Shapiro's office. The door was closed after they entered. Foster said there was a lot of loud shouting from the office after the investigators went inside. He could not understand what was being said inside the office. The investigators were the only persons shouting; Shapiro and the other owners did not raise their voices. Most of the shouting was done by the male investigator. The investigators were inside Shapiro's office for about ten minutes. Foster stated, "When they came out everybody's laughing and shaking hands, and as friendly as you could get."

As soon as the investigators left, Shapiro called the employees together for a meeting and told everyone that those people that just left were state investigators and not to worry because he gave the investigators a large envelope of cash. Shapiro said that no one would have to worry about a state investigator again. Foster was asked if he remembered the specific wording Shapiro used when speaking about the investigators. Foster stated, "He might have said DOI. Department of Insurance." Foster specifically remembers Shapiro saying he gave the investigators "an envelope of cash." Shapiro never mentioned how much money was given to the investigators.

Foster said all of the agents who were working that day heard Shapiro make the statement about giving the investigators money. Foster only knew the name of one of the agents, and identified this person as Victor Washington. He only knew Washington from having previously worked together at a different firm and does not know any contact information for Washington. He stated, "I'm not a friendly guy, I don't hang around with people at work."

According to Foster, Shapiro never mentioned "paying off" or providing bribes to any other entities while Foster worked for him.

Foster said he has reported Health Advisors and the alleged bribe to the FBI, the Hollywood Police Department and the Fort Lauderdale Police Department. Foster stated, "None of them are doing anything about it."

Foster said that the day the two investigators came to the office was the only day he had seen them while working at Health Advisors. He did not see them visit the office before that day, or since the day of the alleged bribe.

Foster was asked if he were to be shown photographs of the investigators that visited the Health Advisors office, if he would recognize the individuals. He stated, "Probably not. If I saw them standing I might." Foster said he was told that the Division of Agents & Agency Services can track the investigators because the Division vehicles are equipped with GPS trackers. *[Investigator's Note: On October 17, 2018, Brock spoke with Commander via telephone and asked if A&AS vehicles are equipped with GPS or other location tracking devices. Commander stated that A&AS vehicles have no GPS or other location tracking technology. She also stated that in her communications with Foster she did not tell him that A&AS vehicles were equipped with such devices and does not know where he would have obtained that belief.]*

CONCLUSION

Foster alleged that he witnessed two unknown "investigators" visit the offices of Health Advisors sometime between June and August of 2017. He also alleged that Shapiro, one of the owners of Health Advisors, told him that the investigators were from the "Department of Insurance" and that he had given them "an envelope of cash." On August 20, 2018, Foster told Commander that he would be able to identify the investigators if he saw them again, but when asked by Brock on

September 27, 2018, if he would be able to recognize the investigators through photographs, Foster stated, "Probably not." Foster told Shoaf on August 21, 2018, he could not pick out the investigators in a photographic line up. While Foster is certain the visit by the investigators occurred between June to August of 2017, there are no records that indicated A&AS went to Health Advisors during the time identified by Foster.

As there is no evidence to indicate that any Department employee visited the offices of Health Advisors during the time identified by Foster, nor any evidence to identify the alleged "investigators" as working for the Department, it is requested that this inquiry be closed unfounded. Should additional information be developed, the OIG will consider reopening the case.

EXHIBIT LIST

1. Referral to A&AS, dated August 13, 2018.
2. Email from Commander to Brock, dated September 12, 2018.
3. Email to Foster from Shoaf, dated August 27, 2018.
4. Email from Foster to Shoaf, dated August 22, 2018.
5. Email from Thomas to Brock, dated August 29, 2018.

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