

# Volusia Sheriff Office

## Citizen Complaint Report

### Incident Details

### Incident Location

Date Received 07/03/2024

Entered By Sergeant Eric Cheek - 8208

Date/Time of Occurrence 04/02/2023 12:40

Date/Time Entered 07/08/2024 18:20

Record ID Number 32127

Agency Case # 230006323

File # CC 24-023

Volusia SO BlueTeam Lieutenant Ryan Mills - 1574

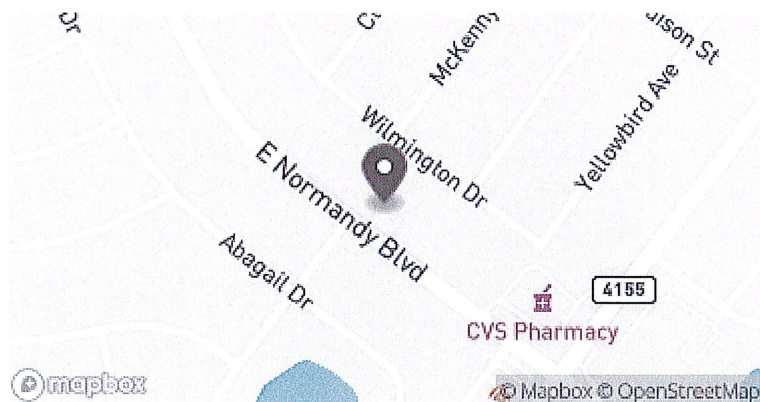
Assigned Investigator

IAPro Assigned Internal Affairs

Investigator Specialist Shelley Hattaway

Location of Occurrence District 4

1166 East Normandy Boulevard  
Deltona, FL, 32725  
-81.24170, 28.88542



### Incident Summary

#### Background:

On 6/4/2024, Sergeant Eric Cheek was assigned a citizen complaint authored by Robert Flaherty. Mr. Flaherty made a complaint against Deputy Nicholas Maletto (#9031) for failure to produce identity-related evidence in a civil citation trial. A non-criminal citation for Careless Driving was issued to the driver who struck Robert Flaherty and his sister, and the Judge ruled the final verdict as Not Guilty. This accident resulted in the passing of Eileen Flaherty, and the citation resulted from a THI investigation.

#### Inquiry Details:

The crash occurred on 04/02/2023 at approximately 1240 hours. THI Investigators responded along with THI Supervisor Sergeant Jeff Wingard. The case was assigned to THI Investigator Maletto as the lead investigator. A red two-door BMW ran off the roadway and struck two pedestrians on the sidewalk. The vehicle then came to a final rest after striking a large boulder in front of a

residence. One of the pedestrians, Eileen Flaherty, passed away at the scene.

A thorough investigation was conducted, including weighing the boulder and calculating the minimum speed required to move it the distance it did. Speed was determined not to be a factor in this crash. Additionally, due to the vehicle's model and year, it was not equipped with an "Event Data Recorder," so a reading could not be collected.

During the investigation, it was determined that the driver, Ralph Aquilar, dropped a bag from his lap onto the floorboard next to his right foot, distracting him from driving the vehicle safely. This action caused him to lose control of the car and strike the pedestrians. This investigation was found to be a non-criminal case, as the elements of vehicular homicide were not met. A civil infraction citation was issued (A16F6LE).

During my review, I found positive areas and points of concern.

Sergeant Cheek reviewed Deputy Maletto's body-worn camera, which included the proper 90-second buffer. Deputy Maletto treated the driver, Mr. Aquilar, fairly and equally, not showing any favoritism. As such, Deputy Maletto read the Miranda warnings to Mr. Aquilar (Maletto BWC 4:58), and Mr. Aquilar admitted to driving the vehicle at the time of the crash. Deputy Maletto also acquired consent for a blood draw (Maletto BWC 9:45).

Deputy Maletto did not interview the passenger, Victor Hernandez, while on scene or on the day of the crash. It was not until the surviving victim, Robert Flaherty, discovered that a witness statement from Mr. Hernandez was missing that Deputy Maletto was instructed to follow up, and he contacted him by phone on 07/19/2023 for a statement.

Surveillance footage of the crash was obtained. The video only showed the vehicle striking the boulder in the distance. However, though the image is blurry, you can see the passenger exit the vehicle wearing a red shirt. BWC from another responding deputy clearly showed the passenger wearing a red shirt and the driver wearing a black shirt. These facts were not argued during the court proceedings.

During a previous case review, long before this complaint was filed, Deputy Maletto stated he brought his case file and notes to the court hearing and tried to show a surveillance video. However, he was unable to get the video to play. He does not remember if he tried to email the video to the Judge. No other digital evidence was offered.

In the same previous conversation, I asked Deputy Maletto about his statement to the Judge, and he confirmed that he had told Judge Dempsey that a continuance in the case would not be necessary. Deputy Maletto told me he thought it would be a waste of the court's time since the video did not show the driver's face, he had no other identity-related evidence to present, and the video would not satisfy the identity requirement set by Judge Dempsey.

During the hearing, none of the witnesses showed up to testify. Court files were checked, and three witnesses were subpoenaed to appear. All of which were discovered to live outside the state or county.

The clerk's digital recording unit was contacted to see if the hearing was archived. Unfortunately, they do not audio record traffic hearings.

### Conclusion:

Sergeant Cheek concluded specific evidence was being requested to positively identify the driver listed on the citation as the driver of the vehicle. This was not an option in person, as the driver did not attend court. It is common practice for Judges to dismiss citations when the deputy does not observe the driver behind the wheel in constructive possession of the vehicle. Had the surveillance worked and played that Deputy Maletto brought to court, it would not have positively identified the driver as it did not clearly show his face. Thus, the video would not have met identification requirement. Sergeant Cheek found, under the circumstances, that Deputy Maletto was prepared for court and understood that a continuance would not have made a difference based on what the video revealed in contrast to what the Judge was requesting. Sergeant Cheek has determined this complaint is unfounded as the employee acted appropriately under the circumstances.

### Reporting/Involved Citizen

Robert Flaherty

Date of Birth	01/17/1968	Gender	Male
Race	White	Ethnicity	Not Hispanic or Latino
Role	Complainant		
Address	1423 Birwood Street Deltona, FL, 32725	Phone Numbers	(484) 620-4974

Email

Charges Against Citizen      NONE

Injuries Sustained By Citizen

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## Involved Employees

Deputy Nicholas Maletto - 9031

(Data at the time of incident)

Assignment      Deputy LESD4SH3

Video Footage      Issued - Activated

Role      Primary

Height      —

Weight      —

Additional Snapshot Data	Officer was off-duty	No
	Officer was employed off-duty	No
	Officer was in uniform	Yes

Linked Allegations      ( Unfounded - 08/12/2024 )  
Job Performance

Injuries Sustained By Employee

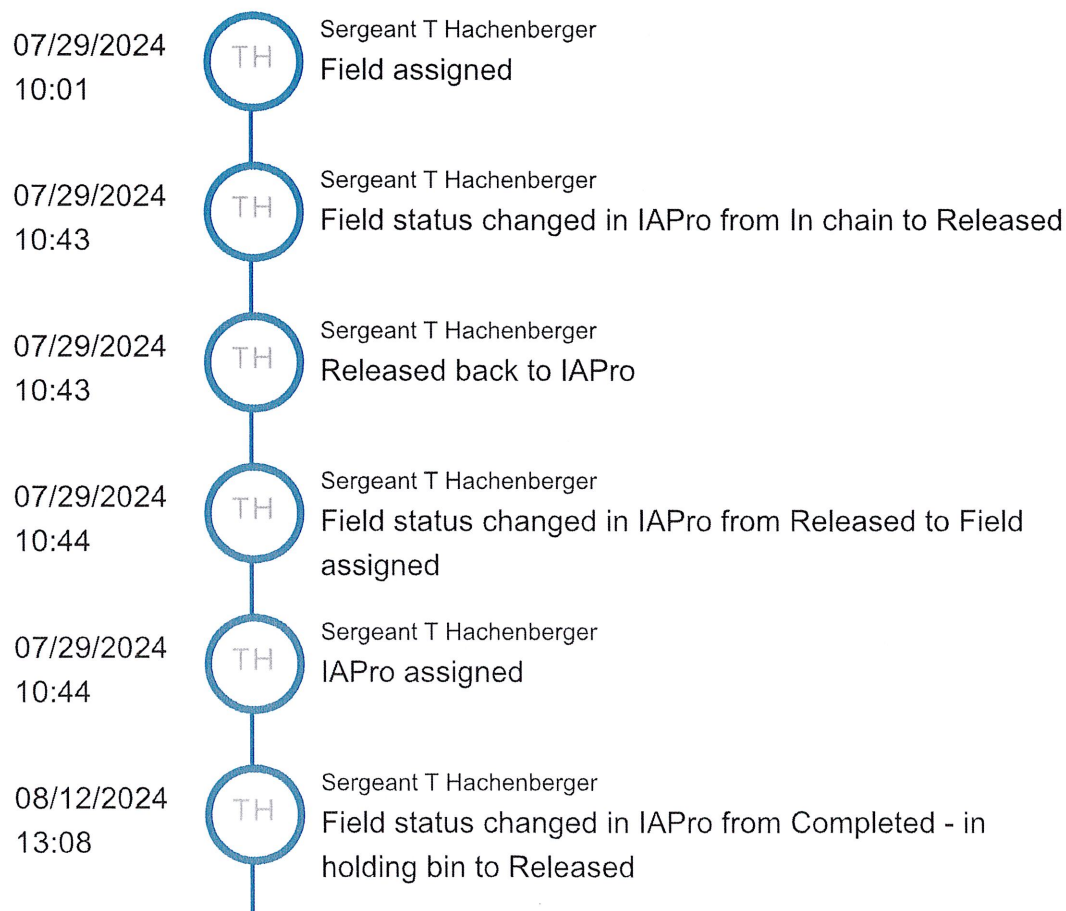
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## Attachments

Date Attached	Attachment Description	Attachment Type
07/08/2024	Maletto BWC (4:58)	—
07/08/2024	Supplement Report	pdf
07/08/2024	Primary Report	pdf
07/08/2024	Maletto BWC (9:45)	—
07/08/2024	Initial Crash Report	pdf

Date Attached	Attachment Description	Attachment Type
07/08/2024	Crash Supplement	pdf
07/08/2024	Citizen's Complaint	pdf
07/10/2024	CAD 23-6323	pdf

## Assignment History



## Chain of Command History

