



**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On August 1, 2018, Special Agent (SA) Christopher Deardoff of the Florida Department of Law Enforcement (FDLE) was contacted by Assistant Chief William Proctor of the Port Orange Police Department (POPD). Assistant Chief Proctor wanted to discuss allegations that POPD Captain Kimberly Kilpatrick had forged the signature on former POPD Officer David Fouts life insurance policy.

On February 27, 2019, SA Deardoff obtained a voluntary, sworn, recorded statement from attorney Steve Guardiano. The statement was obtained at Guardiano's office, located at 412 N. Wild Olive Avenue, Daytona Beach, Florida 32118. The following is a summary of Guardiano's statement.

Guardiano was the attorney who completed the Power of Attorney for Fouts following his traffic accident. The Power of Attorney document listed Fouts' daughter as his agent. Guardiano was originally contacted by Fouts' daughter, Alexa Nicole Fouts, about obtaining guardianship for Fouts due to the condition he was in from the traffic accident. Guardiano met with Alexa Fouts, who had brought Captain Kilpatrick to the meeting. During the meeting, which took place sometime in May of 2016, Guardiano advised Alexa Fouts on the process for obtaining guardianship over Fouts. It was then discussed that a Power of Attorney would be a better alternative for the situation.

During the meeting, Guardiano did not recall Captain Kilpatrick saying or interjecting anything he would have viewed as inappropriate or nefarious in relation to the Power of Attorney. Guardiano viewed Captain Kilpatrick's presence at the meeting as an associate of Fouts and a family friend to Alexa Fouts. Guardiano believed Captain Kilpatrick was there to assist Alexa Fouts during the process.

Guardiano was shown a copy of the Power of Attorney, which was included in the memorandum provided by POPD Officer Justin Eugene White. Guardiano confirmed that it was an accurate copy of the original Power of Attorney. The documents were signed by Fouts on June 29, 2016, in the presence of Guardiano and two additional witnesses. Guardiano advised that the documents were signed at either Halifax Hospital or Ormand Rehab. Guardiano did not recall if Captain Kilpatrick was present at the time the Power of Attorney was signed.

It should be noted that Guardiano attempted to meet with Fouts approximately a month prior to have him sign the Power of Attorney. However, at the time, Guardiano did not feel comfortable

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Author: Deardoff, Christopher Michael	Office: Brevard
Activity Start Date: 03/19/2019	Activity End Date:03/19/2019
Approved By: Kriegsman, Jason David	

Description: Interview of Steve Guardiano

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having Fouts sign the documents due to his condition. Guardiano delayed the completion of the Power of Attorney until he felt Fouts would have been able to understand the documents and sign them.

When asked about the Police and Firemen's Insurance policy paperwork, Guardiano advised that he had no dealings with those documents.

A copy of the audio recorded interview will be electronically maintained in the related items section this case file under INV-13.



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On August 1, 2018, Special Agent (SA) Christopher Deardoff of the Florida Department of Law Enforcement (FDLE) was contacted by Assistant Chief William Proctor of the Port Orange Police Department (POPD). Assistant Chief Proctor wanted to discuss allegations that POPD Captain Kimberly Kilpatrick had forged the signature on former POPD Officer David Fouts life insurance policy.

On March 1, 2019, SA Deardoff and SA Mark Mynheir obtained a voluntary, sworn, recorded statement from Cathleen White. The statement was obtained at the office of attorney Michael H Lambert, who was also present, located at 428 N Halifax Avenue, Daytona Beach, FL 32114. The following is a summary of White's statement.

White is the wife of POPD Officer Justin Eugene White and friends with Fouts. Around February of 2018, White was working as the president of a support group for the POPD officers. She was contacted by an officer with the POPD in regards to the wellbeing of Fouts. White then made an effort to visit Fouts at his residence and met with him for the first time. While at his residence, White observed that Fouts' living conditions were bad. The house was unclean and needed attention. White scheduled a cleanup day for Fouts' residence, which was attended by volunteers. While assisting Fouts with the care of his residence, Officer White and White became friends with him. They began to help Fouts with day to day activities as well as incorporating him into social gatherings.

As their friendship grew, White began to hear things from Fouts that made her feel concerned for his wellbeing. Fouts mentioned to White how Captain Kilpatrick and his daughter, Alexa Nicole Fouts, had taken his money and belongings. However, the house he was living in was left in his name. White was able to locate documents pertaining to a Revocation of a Power of Attorney that Fouts believed was the paperwork he said which put his house in his name. The revocation removed his daughter, Alexa Fouts, has his Power of Attorney. White was able to assist Fouts in discovering that his house was not in his name.

Additional concerns that White had for Fouts was that Fouts' son, Kevin Fouts, was not providing adequate care for his father. Kevin Fouts was living with Fouts but was not attending to the care and wellbeing of the residence or to the personal hygiene of Fouts. Kevin Fouts was receiving Fouts' pension and social security payouts directly. White was able to review some of Fouts' bank account records and did not believe that Fouts was benefiting from his pension payout or his social security funds. White explained to Fouts that it would be a good idea for him

Case Number: OR-14-0156	Serial #: 14
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Description: Interview of Cathleen White

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to acquire a guardianship of some kind to assist with his finances.

Around June or July of 2018, White accompanied Fouts to the POPD to meet with a Victim Advocate to inquire about guardianship for Fouts. Several days after the meeting, White and Officer White received an email from Lorelei Henderson, who was a Victim Advocate for the POPD. The email stated the following: "Hi Justin, Captain Kilpatrick just came into see me concerning Dave Fouts. She has been involved with assisting Dave from the time of the accident and told me today that she is still involved. She said that if you have any questions concerning Dave's situation, to please contact her." Officer White then met with Lieutenant Joseph Keith Swetz of the POPD to discuss the initial allegations of forgery that were brought to the attention of FDLE in August of 2018. White provided a copy of the email.

White then went into concerns about the original Power of Attorney which placed Alexa Fouts as Fouts' agent. White obtained a copy of the Power of Attorney and noticed that it was signed on June 29, 2016, but notarized on June 28, 2016. White found this concerning because Fouts was still under medical treatment at the time and that the document was notarized prior to being signed by Fouts. White showed Fouts the documents and Fouts advised it was not his signature on them. White also mentioned that per F.S.S. 709.2202 the Power of Attorney Alexa Fouts had did not grant her permission to change or alter beneficiary designations. White provided a copy of the Power of Attorney as well as F.S.S. 709.2202.

Another concern White had was the statements provided to SA Deardoff by Captain Kilpatrick and Alexa Fouts in the initial investigation regarding the Police and Firemen's life insurance policy Fouts had. White was concerned that Captain Kilpatrick and Alexa Fouts had similar statements about the policy originally being in Alexa Fouts, Kevin Fouts, and Jennifer Lynn Fouts name. The original policy was in Leslie A Fouts name. White obtained copies of the original policy change form and the new policy change form and showed them to Fouts. Fouts advised it was not his signature on the new policy change form which listed Kevin Fouts and Alexa Fouts as the beneficiaries. White also mentioned that the person who signed as the witness to the policy change form wrote the numbers "274" next to their signature. White believed this to be of note because Captain Kilpatrick's POPD identification number is "2794". White stated she was not making any allegations against Captain Kilpatrick because of this, but felt it she be noted. White provided copies of both policy change forms.

White then provided medical documentation related to Fouts while he was in the hospital recovering from his injuries sustained during the traffic accident. The first sets of documents were listed as the Inpatient Consultation from Halifax Health. These documents advised that on May 3, 2016, Fouts had zero chance of a meaningful recovery due to the injuries sustained from the traffic accident. The second set of documents was the discharge summary from Halifax Medical Center. These documents advised that on May 6, 2016, Fouts received 4 points on the Glasgow Coma Scale. White advised she conducted an internet-based search on the criteria and learned that receiving 4 points on the Glasgow Coma Scale meant Foust was in a coma and his ability to communicate would have been limited. White believed the information learned from the medical documentation was relevant because the time Fouts was listed as being in a coma was also the time the Police and Firemen's Insurance Association policy change form was signed by him. White provided copies of both sets of medical documents.

Another concern of White's was a letter addressed to Fouts from the Police and Firemen's

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Insurance Association. The letter outlined the payout Fouts would be receiving from the life insurance policy of his wife who passed away in the traffic accident. Enclosed with the letter was a check made out to Fouts in the amount of \$14,993.50. The check was the payout amount from the policy. Also included in the letter was the Life-Accident & Sickness Death Claim form which listed details about the policy and the traffic accident. White had concerns about the documents because they were stamped as being received by the claims department of May 5, 2016. This is the same time frame that White outlined earlier that Fouts would have been in a coma. Furthermore, the Life-Accident & Sickness Death Claim form had what appeared to be Fouts' signature on it. This meant that Fouts would have had to have signed the form prior to May 5, 2016, which White advised was unlikely due to the condition he was in. White provided a copy of the letter from the Police and Firemen's Insurance Association.

White then advised that she obtained a copy of the deposited check address to Fouts from the Police and Firemen's Insurance Association. The check was deposited on June 28, 2016, which was the same day the Power of Attorney for Fouts was completed. White also stated that Fouts could not recall receiving the funds from the check. White provided a copy of the deposited check.

A copy of the audio recorded interview as well as the documents provided by White will be electronically maintained in the related items section this case file under INV-14 through INV-23.

Dave Fouts

From: Henderson, Lorelei (lhenderson@port-orange.org)

To: jcloves4@yahoo.com; jwhite@port-orange.org

Cc: kkilpatrick@port-orange.org

Date: Thursday, July 5, 2018, 3:55 PM EDT

Hi Justin,

Captain Kilpatrick just came in to see me concerning Dave Fouts. She has been involved with assisting Dave from the time of the accident and told me today that she is still involved. She said that if you have any questions concerning Dave's situation, to please contact her.



Lorelei Henderson

Victim Advocate Coordinator

Port Orange Police Dept

4545 Clyde Morris Blvd

Port Orange FL 32129

386-506-5821

lhenderson@port-orange.org

Your e-mail communications may be subject to public disclosure. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. The views expressed in this message may not necessarily reflect those of the City of Port Orange. If you have received this message in error, please notify us immediately by replying to this message, and please delete it from your computer.

**FLORIDA DURABLE POWER OF ATTORNEY
FOR DAVID CHRISTIAN FOUTS**

KNOW ALL MEN BY THESE PRESENTS

THAT I, David Christian Fouts of 458 Greenleaf Square, Port Orange, FL 32127, referred to herein as "Principal", designate my daughter, Alexa Nicole Fouts, to be my attorney-in-fact and agent (hereinafter called "Agent"). In the event that my daughter, Alexa Nicole Fouts, is unable or unwilling to act as my agent, then I designate my son, Kevin Tyler Fouts to be my agent.

1. General Grant of Power. I hereby grant to my agent full power and authority to exercise or perform any act, power, duty, right or obligation whatsoever that I now have or may hereafter acquire, relating to any person, matter, transaction or any interest in property owned by me, including, without limitation, my interest in all real property, including homestead real property; all personal property, tangible or intangible, all property held in any type of joint tenancy, including a tenancy in common, joint tenancy with right of survivorship, or a tenancy by the entirety; all property over which I hold a general, limited or special power of appointment; choses in action; and all other contractual or statutory rights or elections, including, but not limited to, any rights or elections in any probate or similar proceeding to which I am or may become entitled; all as to such property now owned or hereafter acquired by me.

Except as otherwise limited by applicable law, or by this durable power of attorney, my agent has full power and authority to perform, without prior court approval, everything necessary in exercising any of the powers herein granted as fully as I might or could do if personally present, with full power of substitution or revocation, and even though my attorney-in-fact may also be acting individually or on behalf of any other person or entity interested in the same matters. I hereby ratify and confirm that my agent shall lawfully have, by virtue of this durable power of attorney, the powers herein granted, including, but not limited to, the following:

a. To forgive, request, demand, sue for, recover, collect, receive, hold all such sums of money, debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pensions, profit sharing, retirement, social security, insurance and other contractual benefits and proceeds, all intangible and tangible

property and property rights, and demands whatsoever, liquidated or unliquidated, now or hereafter owned by me, or due, owing, payable or belonging to me or in which I have or may hereafter acquire an interest.

b. To have, use, and take all lawful means and equitable and legal remedies and proceedings in my name for the collection and recovery of any property now or hereafter owned by me, and to adjust, sell, compromise, and agree for the same, and to execute and deliver for me, on my behalf, and in my name, all endorsements, releases, receipts, or other sufficient discharges for the same.

c. To acquire, purchase, invest, reinvest, exchange, grant options to sell, and sell and convey personal property, tangible or intangible, or interests therein, for such price and on such terms and conditions as my agent shall deem proper including, without limitation, stocks, bonds, warrants, debentures, commodities, precious metals, futures, currencies, and in domestic and foreign markets or investment funds, including common trust funds.

d. To execute stock powers or similar documents and to delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities either into or out of my name or nominee's name.

e. To redeem bonds issued by the United States Government or any of its agencies or any other bonds; and to purchase bonds issued by the United States Government that can be redeemed at par in payment of federal estate taxes.

f. To acquire, purchase, exchange, grant options to sell, and sell and convey any and all of my real estate, lands, tenements, leases, leaseholds or other property partaking of the nature of real estate or any part or parcel thereof, which I now own or may hereafter acquire, or interests therein, including my homestead real property, at public or private sale, for such price and on such terms and conditions as my agent shall deem proper; to execute any and all documents necessary to effectuate same including, but not limited to, contracts, deeds, affidavits, bills of sale, assignments and closing statements; provided, however, that if I am married, my agent may not convey or dispose of my homestead property without joinder of my spouse or my spouse's legal guardian. Joinder by my spouse may be accomplished by the exercise of authority in a durable power of attorney executed by my joining agent, and either my spouse or I may appoint the other as attorney-in-fact and agent.

g. To maintain, repair, improve, invest, manage, partition, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interest therein, that I now own or may hereafter acquire, in my name and for my benefit, upon such terms and conditions as my agent shall deem proper; and to execute, acknowledge and deliver all instruments necessary to effectuate the foregoing.

h. To open and maintain savings, checking, money market and other accounts in my name or otherwise in any bank or financial institution or with any insurance or brokerage firm; to make, receive and endorse checks, drafts, or other commercial or mercantile instruments, deposit and withdraw funds, specifically including withdrawals from any savings account or savings and loan deposits; to acquire and redeem certificates of deposit and to utilize and manage such accounts; to deal generally in my behalf with any instrument for the payment of money in which I may have an interest; and to execute or release such deeds of trust or other security agreements as may be necessary or proper in the exercise of the rights and powers herein granted.

i. To borrow from time to time such sums of money upon such terms as my agent shall deem appropriate for, or in relation to, any of the purposes or objects described herein, upon the security of any of my property whether real or personal, or otherwise, and for such purposes to give, execute, deliver and acknowledge mortgages with such powers and provisions as my agent may think proper, and also such notes, bonds, or other instruments as may be necessary or proper in connection therewith; provided, however, that if I am married, my agent may not mortgage my homestead property without joinder of my spouse or my spouse's legal Guardian. Joinder by my agent may be accomplished by the exercise of authority in a durable power of attorney executed by my joining spouse, and either my spouse or I may appoint the other as attorney-in-fact and agent.

j. To apply for a Certificate of Title upon, and endorse and transfer title thereto, for any automobile, truck, pickup, van, motorcycle or other motor vehicle, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment.

k. To conduct or participate in any lawful business of whatever nature for me

and in my name; execute partnership agreements and amendments thereto; incorporate, reorganize, merge, consolidate, recapitalize, sell, liquidate or dissolve any business; enter into voting trusts and other agreements or subscriptions; elect or employ officers, directors and agents; carry out the provisions of any agreement for the sale of any business interest or stock therein; and exercise voting rights with respect to stock, either in person or by proxy, and exercise stock options.

l. To make gifts to charitable organizations or to or in trust for my spouse or any descendant of mine in connection with estate, gift, generation-skipping transfer, income or other tax planning for me or to qualify me for any government assistance program, provided that no gift may be made (i) to my agent, other than for my agent's health and maintenance, or (ii) to discharge my agent's legal obligations.

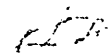
m. To consent to any gift and to utilize any gift-splitting provision or tax election; and to pay gift taxes, but only if in furtherance of my estate plan or of my desire to minimize taxes.

n. To transfer any or all assets of mine to any revocable trust created by me as to which trust I am, during my lifetime, a primary income or principal beneficiary.

o. To withdraw from any trust, whether revocable or irrevocable, in which I have a current beneficial interest, such amounts of the principal or accrued or collected but undistributed income of such trusts as I would be permitted to receive or withdraw, pursuant to any right of receipt or withdrawal contained in such trusts.

p. To make, execute and file any and all declarations, joint or separate returns, waivers, consents, claims and other instruments or forms (including, without limitation, IRS Form 2848 Power of Attorney and Petition of Appeal to the United States Tax Court) relating to Federal, State, municipal and other taxes or assessments, including income, transfer, property, excise and other taxes of whatever nature and whether imposed or required by any domestic or by any foreign authority, and in connection with any such taxes or assessments due or claimed or believed to be due from me or in respect of any property or rights which I may own or in which I may have any interest.

q. To represent me before any office of the Internal Revenue Service, state agency, or any other governmental or municipal body or authority of whatever nature, domestic or foreign, and to conduct and transact any case, claim or matter whatsoever



in connection therewith; to receive confidential information regarding tax matters for all periods, whether before or after the execution of this instrument; and to make tax elections.


r. To have access at any time or times to any safe deposit box rented by me, wheresoever located, and to remove all or any part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which any such safe deposit box may be located shall not incur any liability to me or my estate as a result of permitting my agent to exercise this power.

s. To exercise any statutory rights or elections, including, but not limited to, any rights or elections in any probate or similar proceeding to which I am or may become entitled; to renounce or disclaim any interest otherwise passing to me by testate or intestate succession or by inter vivos transfer.

t. To employ as investment counsel, custodians, brokers, accountants, appraisers, attorneys at law or other agents, such persons, firms or organizations, including my said agent and any firm of which my said agent may be a member or employee, as deemed necessary or desirable; to pay such persons, firms or organizations such compensation as is deemed reasonable; and to determine whether or not to act upon the advice of any such agent without liability for acting or failing to act thereon.

2. Interpretation and Governing Law. This instrument is to be construed and interpreted as a general durable power of attorney. The enumeration of specific powers herein is not intended to, nor does it, limit or restrict the general powers herein granted to my agent. This instrument is executed and delivered in the State of Florida, and the laws of the State of Florida shall govern all questions as to the validity of this power and the construction of its provisions. However, it is my intention that this power of attorney shall be exercisable in any other state or jurisdiction where I may have any property or interests in property.

3. Third Party Reliance. Third parties may rely upon the representations of my agent as to all matters relating to any power granted to my agent, and no person who may act in reliance upon the representations of my agent shall incur any liability to me or to my estate, beneficiaries, or joint owners as a result of permitting my agent to exercise any power prior to receipt of written notice of revocation, suspension, notice of a petition to determine incapacity, partial or complete termination, or my death. Any



Initials

third party may rely on a duly executed counterpart of this instrument, or a copy certified by my agent to be a true copy of the original hereof, as fully and completely as if such third party had received the original of this instrument.

4. Disability of Principal. This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in Chapter 709, Florida Statutes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on June ^{29th} 2016.

[Handwritten signature]

DAVID CHRISTIAN FOUTS

SEALED AND DELIVERED
IN THE PRESENCE OF:

[Handwritten signature]

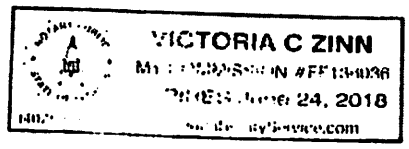
Steven J. Guardiano
412 N. Wild Olive Avenue
Daytona Beach, Florida 32118

[Handwritten signature]

Dana C. Jacobsen
6221 Yosemite Dr.
Port Orange, FL 32127

STATE OF FLORIDA)
) ss.
COUNTY OF VOLUSIA)

The foregoing Durable Power of Attorney was acknowledged before me on June 28, 2016, by **DAVID CHRISTIAN FOUTS**, who has produced his Florida Driver's License number 1E20 1109-10-3020 as identification.



[Handwritten signature]

Notary Public
My Commission expires: June 24, 2018

Initials

The 2018 Florida Statutes

Title XI
REAL AND PERSONAL
PROPERTY

Chapter 709
POWERS OF ATTORNEY AND SIMILAR
INSTRUMENTS

[View Entire
Chapter](#)

709.2202 Authority that requires separate signed enumeration.—

(1) Notwithstanding s. 709.2201, an agent may exercise the following authority only if the principal signed or initialed next to each specific enumeration of the authority, the exercise of the authority is consistent with the agent's duties under s. 709.2114, and the exercise is not otherwise prohibited by another agreement or instrument:

- (a) Create an inter vivos trust;
- (b) With respect to a trust created by or on behalf of the principal, amend, modify, revoke, or terminate the trust, but only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by the settlor's agent;
- (c) Make a gift, subject to subsection (4);
- (d) Create or change rights of survivorship;
- (e) Create or change a beneficiary designation;
- (f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- (g) Disclaim property and powers of appointment.

(2) In addition to signing the power of attorney on behalf of the principal pursuant to s. 709.2105(3), if the principal is physically unable to sign or initial next to any enumerated authority for which subsection (1) requires the principal to sign or initial, the notary public before whom the principal's oath or acknowledgment is made may sign the principal's name or initials if:

- (a) The principal directs the notary to sign the principal's name or initials on the power of attorney next to any enumerated authority for which subsection (1) requires the principal to sign or initial;
- (b) The signing or initialing by the notary is done in the presence of the principal and witnessed by two disinterested subscribing witnesses; and
- (c) The notary writes the statement "Signature or initials affixed by the notary pursuant to s. 709.2202(2), Florida Statutes," below each signature or initial that the notary writes on behalf of the principal.

Only one notarial certificate in substantially the same form as those described in s. 117.05(14), which states the circumstances of all signatures and initials written by the notary public, is required to be completed by the notary public.

(3) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent who is not an ancestor, spouse, or descendant of the principal may not exercise

authority to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(4) Unless the power of attorney otherwise provides, a provision in a power of attorney granting general authority with respect to gifts authorizes the agent to only:

(a) Make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee per calendar year not to exceed the annual dollar limits of the federal gift tax exclusion under 26 U.S.C. s. 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to 26 U.S.C. s. 2513, as amended, in an amount per donee per calendar year not to exceed twice the annual federal gift tax exclusion limit; and

(b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee per calendar year not to exceed the aggregate annual gift tax exclusions for both spouses.

(5) Notwithstanding subsection (1), if a power of attorney is otherwise sufficient to grant an agent authority to conduct banking transactions, as provided in s. 709.2208(1), conduct investment transactions as provided in s. 709.2208(2), or otherwise make additions to or withdrawals from an account of the principal, making a deposit to or withdrawal from an insurance policy, retirement account, individual retirement account, benefit plan, bank account, or any other account held jointly or otherwise held in survivorship or payable on death, is not considered to be a change to the survivorship feature or beneficiary designation, and no further specific authority is required for the agent to exercise such authority. A financial institution or broker-dealer does not have a duty to inquire as to the appropriateness of the agent's exercise of that authority and is not liable to the principal or any other person for actions taken in good faith reliance on the appropriateness of the agent's actions. This subsection does not eliminate the agent's fiduciary duties to the principal with respect to any exercise of the power of attorney.

(6) This section does not apply to a power of attorney executed before October 1, 2011.

History.—s. 25, ch. 2011-210; s. 10, ch. 2013-90.



POLICE AND FIREMEN'S INSURANCE ASSOCIATION

101 East 116th Street • Carmel, IN 46032 • 800-221-7342 • www.pfia1913.org

POLICY CHANGE FORM

Do not send the policy with any of the following changes. Please, use black ink only.

All of the information within this box is required for processing.

Policy Number 650162 Insured DAVID C FORTS Phone (786) 631 6086

Social Secur MMNNN SSN 758 GREENLEAF SQ PORT LARRY FL 32127
City/State/Zip

Effective date for ALL changes 10/09

Change of Beneficiary

Change beneficiary to: Kestie A FORTS Relationship wife

Relationship _____

Change contingent beneficiary to: _____ Relationship _____

Relationship _____

Said above change to become effective upon filing notice at the Home Office. Please attach the acknowledged copy of this endorsement to your policy. The right to change the beneficiary is reserved unto the Insured without the beneficiary's consent.

Change of Billing

Reason for change _____

Name Deborah PE

Address _____

Change of Name

Reason for change* _____

The correct name of the _____
Insured/Beneficiary/Owner

is: (please print) _____

*Substantiate all changes, except those by marriage or divorce, by submitting attached hereto a copy of the court order or some other authentic record.

Change in Mode of Premium Payment

Change mode of premium payment to: Annual Semi-Annual Quarterly Monthly ACII

Signed at _____ this _____ day of _____, 20____

Witness _____ Signature of Owner _____

Social Security No. _____

Owner Address _____

City/State/Zip _____

Owner Phone _____

Signature of Witness _____

I hereby consent to the change above.

Signature of Beneficiary or Assignee
(only necessary if beneficiary is irrevocable or there is an assignment)

Miscellaneous Changes

I hereby request the Association to change Policy No. _____ submitted herewith on the life of _____ (hereinafter referred to as the original policy) by reissue or endorsement as follows:

Plan to _____ Amount to _____
 Rating to _____

Add Premium Waiver Disability Benefit*
**Must be accompanied by a "Good Health Statement"*
 Cancel Premium Waiver Disability Benefit

Date of birth to _____
**Must be substantiated by an authentic record, a birth certificate or baptismal record submitted attached herewith.*

Increase Disability Rider to \$400-800 or \$600-1,200
 Increase Accidental Death Benefit to \$50,000

Other changes _____

It is understood and agreed as follows:

1. That I am to pay to or receive from the Association the net amount required to effectuate the change.
2. That the application on which the original policy was issued, together with this application, shall form the basis of the changed policy hereby applied for.
3. If the change applied for requires the cancellation and reissue of the original policy, then -
 - (a) I hereby offer to surrender the original policy with the understanding that the net cash value thereof (if any) is to be applied toward the payment of any amount due from me to effectuate such change. Any balance over and above such amount shall be paid to me.
 - (b) The Association will be liable on the changed policy from and after the approval of this application at its Home Office, but not prior to payment by me of such net amount as may be required to effectuate such change.
 - (c) All liability on the original policy shall cease at the same time that the Association's liability on the changed policy commences, unless the original policy cancels or expires before that time, in which event the Association's liability thereon shall not be extended nor shall liability on the changed policy be accelerated.
4. Any outstanding assignments of the original policy are to continue in effect as assignments of the changed policy.
5. The changed policy shall be payable to the same person or persons and in the same manner on record as of this date, unless change of beneficiary is requested on the reverse side hereof.

Signed at Port Orange, FL this 31 day of Aug, 2007

Signature of Witness
Neil Myle
Signature of Witness

Signature of Owner
John F. Smith

Signature of Beneficiary or Assignee
(only necessary if beneficiary is irrevocable or there is an assignment)



POLICE AND FIREMEN'S INSURANCE ASSOCIATION

101 East 116th Street • Carmel, IN 46032 • 800-221-7342 • www.pfia1913.org

POLICY CHANGE FORM

* PLEASE USE BLACK INK *

Do not return policy unless you are surrendering the policy. Form must be completed and signed by the owner.

All of the information within this box is required for processing.

Policy Number 650142 Insured DAVID Fouts Phone 386-631
Address 458 Greenleaf St City Port Orange State FL Zip 32127
Social Security No NNNN Effective date for ALL changes 5/6/16
Email Address _____

Change of Beneficiary

Change primary beneficiary to: Lexa Fouts Relationship Daughter
Relationship _____
Change contingent beneficiary to: Kevin Fouts Relationship Son
Relationship _____
Change irrevocable beneficiary to: _____ Relationship _____
Relationship _____

Said above change to become effective upon filing notice at the Home Office. Please attach the acknowledged copy of this endorsement to your policy. The right to change the beneficiary is reserved to the Owner without the beneficiary's consent.

Change of Billing

Reason for change _____
Name _____
Address _____

Change of Name

Reason for change* _____
Correct name of the Insured Beneficiary Owner (please print) _____
*Substantiate all changes, except those by marriage or divorce, by submitting attached hereto a copy of the court order or some other authentic record.

Change in Mode of Premium Payment

Change mode of premium payment to: Annual Semi-Annual Quarterly Monthly ACH

Surrender of Policy

- I surrender the policy for the net cash value in accordance with the provisions and conditions of the policy. I understand that all insurance ceases and I release the Association from any and all claims and demands which arise under this policy. In accordance with the terms of the policy, it is hereby agreed that any indebtedness thereon to the Association will be deducted from the cash value. policy enclosed unable to locate/policy lost

Request for Duplicate Policy

- I certify that the policy identified above has been lost or destroyed and I have no knowledge of its whereabouts. Please issue a duplicate policy. If at any time the original policy is found, the duplicate policy will be returned to the Association. I hereby release the Association from all liability under the original policy.

PHS-1

ACKNOWLEDGED

5/17/16

PHS-1 File/Forms/PUS/0815

Miscellaneous Changes

I hereby request the Association to change Policy No. _____ submitted herewith on the life of _____
(hereinafter referred to as the original policy) by reissue or endorsement as follows:

Cancel Premium Waiver Disability Benefit

Date of birth to _____ (Must be substantiated by an authentic record, birth certificate or baptismal record, submitted herewith)

Increase Disability Rider to \$400-800 \$600-1,200

Increase Accidental Death Benefit to \$50,000 \$100,000

Change Dividend Option to Cash Purchase Paid-Up Additions (if available)

Apply dividends to premiums (if available) Accumulate at Interest (if available)

Other changes _____

It is Understood and Agreed as Follows:

1. That I am to pay to or receive from the Association the net amount required to affect the change.
2. That the application on which the original policy was issued, together with this application, shall form the basis of the changed policy hereby applied for.
3. If the change applied for requires the cancellation and reissue of the original policy, then -
 - (a) I hereby offer to surrender the original policy with the understanding that the net cash value thereof (if any) is to be applied toward the payment of any amount due from me to affect such change. Any balance over and above such amount shall be paid to me.
 - (b) The Association will be liable on the changed policy from and after the approval of this application at its Home Office, but not prior to payment by me of such net amount as may be required to affect such change.
 - (c) All liability on the original policy shall cease at the same time that the Association's liability on the changed policy commences, unless the original policy cancels or expires before that time, in which event the Association's liability thereon shall not be extended nor shall liability on the changed policy be accelerated.
4. Any outstanding assignments of the original policy are to continue in effect as assignments of the changed policy
5. The changed policy shall be payable to the same person or persons and in the same manner on record as of this date, unless change of beneficiary is requested on the reverse side hereof.
6. It is expressly represented and warranted that no other person, firm or corporation has any interest in said policy except the undersigned, and that no proceedings in insolvency or bankruptcy have been instituted or are pending against the undersigned.

Signed at Daytona, FL this 6th day of May, 2016

[Handwritten Signature]

Signature of Owner 1

Signature of Owner 2

[Handwritten Signature]

Signature of Witness

Signature of Irrevocable Beneficiary

Must Complete Owner Information if DIFFERENT from the Insured

Owner Name _____ SSN _____

Owner Address _____

Owner Phone _____

May 25, 2016

David Fouts
458 Greenleaf Square
Port Orange, FL 32127

Re: Jennifer Fouts
Policy # 650162
Check # 545315
Amount \$14,993.50

Dear Mr. Fouts:

Enclosed is the check due from Police and Firemen's Insurance Association as final payment on this claim. Following is the breakdown.

\$ 15,000.00	Accidental Death Policy Amount
<u>-\$ 6.50</u>	Premium Owed
\$ 14,993.50	Total paid to you

Please cash the check as soon as possible to complete the handling of this claim.

Please accept our condolences.

Sincerely,

Amanda Phillabaum
Claims Department



Police and Fireman's Insurance Association
 101 East 13th Street
 P.O. Box 1011
 Orange, Florida 32127

PNC Bank, N.A. 070
 Ashland OH

66-389/412

Check Number- 545315
 Date 5/24/2016

PAY EXACTLY \$****14,993*DOLLARS AND *50*CENTS

*****14,993,50

To the order of David Fouts

David Fouts
 Ben of Jennifer Fouts
 458 Greenleaf Square
 Port Orange FL 32127

Thomas J. Clines

Mark A. Kemp

⑈545315⑈ ⑆041203895⑆ 4239702248⑈

Police and Fireman's Insurance Association 458 Greenleaf Square Port Orange FL 32127

Check Number- 545315

101 East 13th Street
 P.O. Box 1011
 Orange, Florida 32127



POLICE AND FIREMEN'S INSURANCE ASSOCIATION
101 East 116th Street • Carmel, IN 46032 • 800-221-7342 • www.pfia1913.org
LIFE - ACCIDENT & SICKNESS DEATH CLAIM

*** PLEASE USE BLACK INK ***

The Association does not waive any right nor admit any claim by furnishing this blank.

Policy numbers under which claim is being made 6501262

- 1 (a) Deceased's name in full James Lee Moore Smith
(b) Legal residence at death 4152 Greenleaf Sq. Red Orange IL 62427
(c) Occupation at death Bus Driver

- 2 (a) Date of deceased's birth May 6th 1970
(b) Source from which date obtained Birth Certificate

- 3 (a) Date of death April 24th 2010
(b) Place of death Skypine Dr / Down Hwy New Smyrna IL
(c) Cause of death Crash - Vehicle

(d) If death was due to suicide, homicide or accident, specify: Vehicle drove into path of motorcycle crossing street. Car died in scene. New Smyrna Police is investigating crash.

(e) Was there any hospitalization prior to death? Yes No
If so, please provide the dates of hospitalization _____

- 4 (a) If policy is assigned, give name and address of assignee _____
(b) Amount of assignee's claim _____

5. Are there any proceedings in bankruptcy now pending against the deceased or any of the beneficiaries? None

6. Names and addresses of all physicians who attended deceased during his/her last illness and during three years prior thereto:

Name None

Address _____

Dates of attendance _____

Disease or condition _____

Name _____

Address _____

Dates of attendance _____

Disease or condition _____

7. Policy enclosed Unable to locate/policy lost

PLEASE PROVIDE BENEFICIARY INFORMATION REQUESTED ON THE BACK OF THIS FORM

RECEIVED BY CLAIMS
MAY 05 2010

To whom it may concern:

The Association reserves the right to examine all medical documents and other relative information applicable to the death of the insured.

Name of Beneficiary David Fouts

Relationship to Deceased Husband

Date of Birth 10/02/70 Social Security Number [REDACTED]

Address 458 Greenleaf Square

Home Phone 386-589-9576 Work Phone _____

Signature of Beneficiary to whom proceeds are payable [Signature]

Name of Beneficiary _____

Relationship to Deceased _____

Date of Birth _____ Social Security Number _____

Address _____

Home Phone _____ Work Phone _____

Signature of Beneficiary to whom proceeds are payable _____

Name of Beneficiary _____

Relationship to Deceased _____

Date of Birth _____ Social Security Number _____

Address _____

Home Phone _____ Work Phone _____

Signature of Beneficiary to whom proceeds are payable _____



Police and Firemen's Insurance Association
101 East 118th Street
P.O. Box 1913
Carmel, Indiana 46032

PNC Bank, N.A. 078
Ashtabud OH

00-374613

Check Number: 545315
Date 3/24/2016

PAY EXACTLY \$***14,993*DOLLARS AND *50*CENTS

To the order of David Fouts

David Fouts
Ben of Jennifer Fouts
458 Greenleaf Square
Port Orange FL 32127

14,993.50
Thomas J. Clinch
Frank S. Kemp

⑈545315⑈ ⑆041203895⑆ 4239702248⑈

ISN# 3419060710
Date 6/28/2016

409230
Deposit Only
100075515253

100036 2110005710

Posting Date 2016 Jun 29
Account Number 4239702248



**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On August 1, 2018, Special Agent (SA) Christopher Deardoff of the Florida Department of Law Enforcement (FDLE) was contacted by Assistant Chief William Proctor of the Port Orange Police Department (POPD). Assistant Chief Proctor wanted to discuss allegations that POPD Captain Kimberly Kilpatrick had forged the signature on former POPD Officer David Fouts life insurance policy.

On March 1, 2019, SA Deardoff and SA Mark Mynheir obtained a voluntary, sworn, recorded statement from POPD Officer Justin Eugene White. The statement was obtained at the office of attorney Michael H Lambert, who was also present, located at 428 N Halifax Avenue, Daytona Beach, FL 32114. The following is a summary of Officer White's statement.

At the conclusion of the FDLE investigation into the original allegations regarding Captain Kilpatrick, an Internal Affairs (IA) investigation with the POPD was opened against Officer White for policy violations. The violations were related to Officer White reporting the original allegations to an outside agency and not directly to the POPD. When the IA investigation was opened, Officer White reviewed the initial FDLE investigation regarding Captain Kilpatrick. Officer White believed that there were inconsistencies in the investigation. The inconsistencies were related to the sworn statement provided by Captain Kilpatrick to SA Deardoff as well as documentation that Officer White and his wife, Cathleen White, had discovered. So as not to violate POPD policy, Officer White reported the findings to his chain of command in the form of a memorandum.

Officer White outlined that the inconsistencies in Captain Kilpatrick's sworn statement to SA Deardoff constituted perjury. Officer White advised that in Captain Kilpatrick's initial interview with SA Deardoff, she stated the Power of Attorney for Fouts was done "pretty immediate" after his traffic accident. Officer White learned through gathering documentation that the Power of Attorney was signed on or around June 29, 2016, and Fouts' traffic accident was on or around April 24, 2016. Another inconsistency Officer White found in Captain Kilpatrick's interview was her statements related to when the Power of Attorney was completed and when the life insurance policy change form was completed. According to Officer White, Captain Kilpatrick advised that the Power of attorney was completed prior to the life insurance policy change form. Officer White believed if that were the case, it would have been Alexa Nicole Fouts' signature on the documents and not Fouts'. This was because Alexa Fouts was named as Fouts' agent in the Power of Attorney. Officer White also advised that his wife obtained medical records which showed Fouts to be in a coma at the time the documents were signed.

Case Number: OR-14-0156	Serial #: 15
Author: Deardoff, Christopher Michael	Office: Brevard
Activity Start Date: 03/22/2019	Activity End Date:03/22/2019
Approved By: Kriegsman, Jason David	

Description:2nd Interview of Officer Justin White

THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

Case Number	OR-14-0156
IR Number	15

Officer White advised that another inconsistency with Captain Kilpatrick's statement was in regards to the names listed on Fouts' previous life insurance policy. According to Officer White, Captain Kilpatrick advised that Fouts' two children and ex-wife, Jennifer Lynn Fouts, were listed as beneficiaries on the life insurance policy prior to the change. Officer White believed this not to be true because the beneficiary listed on the policy prior to the change was Leslie A Fouts. Officer White mentioned that most of the documentation gathering was completed by his wife and Fouts.

Officer White mentioned that in the initial interview with Captain Kilpatrick, it was stated that the reasoning for Officer White bringing the allegations against Captain Kilpatrick was only because of inner departmental union differences. Officer White belongs to a law enforcement related union, while Captain Kilpatrick belongs to a different law enforcement related union. Officer White was unsure of how the idea was started that his reasoning for bringing information about Fouts to light was related to union differences. He advised that it was false. Officer White felt it was his obligation and the right thing to do. Officer White provided copies of the memorandum and its enclosures.

A copy of the audio recorded interview as well as the memorandum and its enclosures will be electronically maintained in the related items section this case file under INV-24 and INV-25.



PORT ORANGE POLICE DEPARTMENT



MEMORANDUM

TO: Chief Thomas Grimaldi

FROM: Justin E. White

DATE: 01/31/2019

FILE: JEW0119M.001

SUBJECT: Perjury/Untruthfulness

My wife has been assisting David Fouts with gathering his personal documents, when she noticed conflicting information. She expressed her concerns and reported her findings to me. Subsequently, I reviewed the information and noticed a potential criminal violation. Therefore, due to fear of retaliation, disparate treatment, being subject to Internal Investigation(s) or scheming to file criminal charges against me, I am reporting the following potential criminal and department policy violations committed by Captain Kimberly Kilpatrick or other parties:

- F.S. 837.02 – Perjury in official proceedings
- 26.1.121 Untruthfulness – Employees shall not knowingly make false or untrue statements except as authorized in the performance of duties and as necessary to maintain covert operations during investigation of criminal activities.
- 26.1.123 Perjury in an Official Proceeding – Employees shall not knowingly make false statements while under oath in any court, civil or criminal, in statements made to internal affairs investigators, notaries and persons taking depositions or other testimony or any other official proceeding as defined in FS 837.

According to the FDLE Investigation # OR-14-0156, Kilpatrick provided the following in a sworn statement:

- David Fouts had his own policy with Police and Firemen’s Insurance Association, in which, he listed his ex-wife Jennifer Lynn Fouts, his daughter Alexa Fouts, and his son Kevin Fouts as his beneficiaries.
- Kilpatrick went with Alexa Fouts to Attorney Guardiano to obtain a Power of Attorney, so that Alexa Fouts could take the Beneficiary Change Form to the hospital to have David Fouts sign the form that authorized the changing of the following beneficiaries: *From* ex-wife Jennifer Lynn Fouts, daughter Alexa Fouts, and son Kevin Fouts to *only* Alexa Fouts and Kevin Fouts. She stated that the Power of Attorney was “pretty immediate.”
- At the time that David Fouts allegedly signed the Beneficiary Change Form, he could not talk but he could “use his hands to signal.”

The above statements conflict with the following pertinent documents relevant to this case:

According to the Police and Firemen’s Insurance Association Policy Change Form, dated August 31, 2009, David Fouts lists a sole beneficiary of ex-wife Leslie A. Fouts, not ex-wife Jennifer Lynn Fouts, Alexa Fouts and Kevin Fouts, as Kilpatrick stated.

According to the Police and Firemen’s Insurance Association Policy Change Form, dated May 6, 2016, Alexa Fouts and Kevin Fouts were added as beneficiaries and Leslie A. Fouts was removed.



PORT ORANGE POLICE DEPARTMENT



According to the Power of Attorney which was prepared, signed and acknowledged by a Notary Public on June 28, 2016 and/or June 29, 2016 (conflicting dates on document), her sworn statement belies that it was "pretty immediate" and in place prior to the changing of the beneficiary on May 6, 2016.

According to David Fouts' medical records, dated May 4, 2016, he remained in critical condition, was unresponsive, and it was not clear by the medical staff whether he would survive. His chance of meaningful recovery was '0' due to massive brain injuries. By May 12, 2016, Fouts was still unresponsive. This in contrary to Kilpatrick's statement that Fouts was "better than he was initially" and was "moving his hands to signal" when he signed the Policy Change Form on May 6, 2016.

I have attached the Power of Attorney prepared by Attorney Steven J. Gurardiano, which was confirmed to be the attorney that Kilpatrick met with during her elaborate explanation with FDLE. I have also attached both Policy Change Forms by Police and Firemen's Insurance Association, which were obtained directly from the Police and Firemen's Insurance Association and are confirmed by the insurance association to be the only two Policy Change Forms that were associated with any and all policies for David Fouts.

It is my understanding that neither FDLE nor the POPD requested or obtained these documents in their investigations. While the information contained within appears critical for the original investigation itself, the documents appear to now confirm both the original allegation as well as perjury/untruthfulness during said investigations(s).

I am reporting this to you in writing so that I adhere to department policy 26.1.139, and prevent future discipline. Additionally, I have not used any department resources or my status or privileges as a law enforcement officer to investigate or obtain any information. As I have outlined herein, as well as during the prior IA investigation, David Fouts (former POPD Police Officer) is a friend of my family and my wife has been assisting him with gathering information to help with his current hardship.

A hard copy of this memo and supporting documents will be hand delivered.

Respectfully,

Officer Justin White ID# 3708

Enclosures:
2 Policy Change Forms
Power of Attorney



POLICE AND FIREMEN'S INSURANCE ASSOCIATION

101 East 116th Street • Carmel, IN 46032 • 800-221-7342 • www.pfia1913.org

POLICY CHANGE FORM

Do not send the policy with any of the following changes. Please, use black ink only.

All of the information within this box is required for processing.

Policy Number 556102 Insured John C. Fries Phone (386) 631 6080
Social Security 123-45-6789 123-45-6789 123-45-6789 FL 32127
Effective date for ALL changes 10/09

Change of Beneficiary

Change beneficiary to: Bestie J. Fries Relationship Wife
Relationship _____
Change contingent beneficiary to: _____ Relationship _____
Relationship _____

said above change to become effective upon filing notice at the Home Office. Please attach the acknowledged copy of this endorsement to your policy. The right to change the beneficiary is reserved unto the Insured without the beneficiary's consent.

Change of Billing

Name John C. Fries Reason for change _____
Address _____

Change of Name

The correct name of the _____ Reason for change* _____
is: (please print) _____
*Substantiate all changes, except those involving marriage or divorce, by submitting attached hereto copies of the court order in some other authentic form.

Change in Mode of Premium Payment

Change mode of premium payment to Annual Semi-Annual Quarterly Monthly ACH

Signed at _____ this _____ day of _____ 20____

Witness _____ Signature of Owner _____
Social Security No. _____

Owner Name _____
City/State/Zip _____
Owner Phone _____
Signature of Witness _____

I hereby consent to the change above

Signature of Beneficiary or Assignee: _____
(only necessary if beneficiary is not visible on the assignment)

Miscellaneous Changes

I hereby request the Association to change Policy No. _____ submitted herewith on the life of _____ (hereinafter referred to as the original policy) by reissue or endorsement as follows:

- Plan to _____ Amount to _____
- Rating to _____
- Add Premium Waiver Disability Benefit*
**Must be accompanied by a "Good Health Statement"*
- Cancel Premium Waiver Disability Benefit
- Date of birth to _____
**Must be substantiated by an authentic record (Birth certificate or baptism record) submitted attached.*
- Increase Disability Rider to \$400-800 or \$600-1,200
- Increase Accidental Death Benefit to \$50,000
- Other changes _____

It is understood and agreed as follows:

1. That I am to pay to or receive from the Association the net amount required to effectuate the change.
2. That the application on which the original policy was issued, together with this application, shall form the basis of the changed policy hereby applied for.
3. If the change applied for requires the cancellation and reissue of the original policy, then:
 - (a) I hereby offer to surrender the original policy with the understanding that the net cash value thereof (if any) is to be applied toward the payment of any amount due from me to effectuate such change. Any balance over and above such amount shall be paid to me.
 - (b) The Association will be liable on the changed policy from and after the approval of this application at its Home Office, but not prior to payment by me of such net amount as may be required to effectuate such change.
 - (c) All liability on the original policy shall cease at the same time that the Association's liability on the changed policy commences, unless the original policy cancels or expires before that time, in which event the Association's liability thereon shall not be extended nor shall liability on the changed policy be accelerated.
4. Any outstanding assignments of the original policy are to continue in effect as assignments of the changed policy.
5. The changed policy shall be payable to the same person or persons and in the same manner on record as of this date, unless change of beneficiary is requested on the reverse side hereof.

Signed at Port George, FL this 31 day of Aug, 2007

Signature of Witness: [Signature]

Signature of Client: [Signature]

Only to be used in connection with reissues or there is an assignment

Miscellaneous Changes

I hereby request the Association to change Policy # _____ submitted herewith on the life of _____
(hereinafter referred to as the original policy) by reissue or endorsement as follows:

- Cancel Premium Waiver/Disability Benefit
- Date of birth to _____ (Must be substantiated by an authorized doctor's birth certificate or baptismal record, submitted herewith)
- Increase Accidental Death Benefit to \$50,000 \$100,000
- Dividend Option to Cash Purchase Paid-Up Additions (if available)
 Apply dividends to premiums Accumulate at interest (if available)
- Other changes _____

It is Understood and Agreed as Follows:

1. That I am to pay to or receive from the Association the net amount required to affect the change.
2. That the application on which the original policy was issued, together with this application, shall form the basis of the changed policy hereby applied for.
3. If the change applied for requires the cancellation and reissue of the original policy, then:
 - (a) I hereby offer to surrender the original policy with the understanding that the net cash value thereof (if any) is to be applied toward the payment of any amount due from me to affect such change. Any balance over and above such amount shall be paid to me.
 - (b) The Association will be liable on the changed policy from and after the approval of this application at its Home Office, but not prior to payment by me of any such amount as may be required to affect such change.
 - (c) All liability on the original policy shall cease at the same time that the Association's liability on the changed policy commences, unless the original policy cancels or expires before that time, in which event the Association's liability thereon shall not be affected.
4. Any outstanding assignments of the original policy are to continue in effect as assignments of the changed policy.
5. The changed policy shall be payable to the same person or persons and in the same manner or record as of this date unless change of beneficiary is requested on the reverse side hereof.
6. It is expressly represented and warranted that no other person, firm or corporation has any interest in said policy except the undersigned, and that no proceedings in insolvency or bankruptcy have been instituted or are pending against the undersigned.

Signed at Dayton, OH the 6th day of July 2014

Signature of Insured

Signature of Witness

Signature of Insurance Broker

Must Complete Owner Information if DIFFERENT from the Insured

Owner Name _____ SSN _____
Owner Address _____
Owner Phone _____

**FLORIDA DURABLE POWER OF ATTORNEY
FOR DAVID CHRISTIAN FOUTS**

KNOW ALL MEN BY THESE PRESENTS

THAT I, David Christian Fouts of 458 Greenleaf Square, Port Orange, FL 32127, referred to herein as "Principal", designate my daughter, Alexa Nicole Fouts, to be my attorney-in-fact and agent (hereinafter called "Agent"). In the event that my daughter, Alexa Nicole Fouts, is unable or unwilling to act as my agent, then I designate my son, Kevin Tyler Fouts to be my agent.

1. General Grant of Power. I hereby grant to my agent full power and authority to exercise or perform any act, power, duty, right or obligation whatsoever that I now have or may hereafter acquire, relating to any person, matter, transaction or any interest in property owned by me, including, without limitation, my interest in all real property, including homestead real property; all personal property, tangible or intangible, all property held in any type of joint tenancy, including a tenancy in common, joint tenancy with right of survivorship, or a tenancy by the entirety; all property over which I hold a general, limited or special power of appointment; choses in action; and all other contractual or statutory rights or elections, including, but not limited to, any rights or elections in any probate or similar proceeding to which I am or may become entitled; all as to such property now owned or hereafter acquired by me.

Except as otherwise limited by applicable law, or by this durable power of attorney, my agent has full power and authority to perform, without prior court approval, everything necessary in exercising any of the powers herein granted as fully as I might or could do if personally present, with full power of substitution or revocation, and even though my attorney-in-fact may also be acting individually or on behalf of any other person or entity interested in the same matters. I hereby ratify and confirm that my agent shall lawfully have, by virtue of this durable power of attorney, the powers herein granted, including, but not limited to, the following:

a. To forgive, request, demand, sue for, recover, collect, receive, hold all such sums of money, debts, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pensions, profit sharing, retirement, social security, insurance and other contractual benefits and proceeds, all intangible and tangible

property and property rights, and demands whatsoever, liquidated or unliquidated, now or hereafter claimed for me, or due, owing, payable or belonging to me or in which I have or may hereafter acquire an interest.

b. To have, use, and take all lawful means and equitable and legal remedies and proceedings in my name for the collection and recovery of any property now or hereafter owned by me and to adjust, sell, compromise, and agree for the same, and to execute and deliver for me, on my behalf, and in my name, all endorsements, releases, receipts, or other sufficient discharges for the same.

c. To acquire, purchase, invest, reinvest, exchange, grant options to sell, and sell and convey personal property, tangible or intangible, or interests therein, for such price and on such terms and conditions as my agent shall deem proper including, without limitation, stocks, bonds, warrants, debentures, commodities, precious metals, futures, currencies, and in domestic and foreign markets or investment funds, including common trust funds.

d. To execute stock powers or similar documents and to delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities either into or out of my name or nominee's name.

e. To redeem bonds issued by the United States Government or any of its agencies or any other bonds; and to purchase bonds issued by the United States Government that can be redeemed at par in payment of federal estate taxes.

f. To acquire, purchase, exchange, grant options to sell, and sell and convey any and all of my real estate, lands, tenements, leases, leaseholds or other property partaking of the nature of real estate or any part or parcel thereof, which I now own or may hereafter acquire, or interests therein, including my homestead real property, at public or private sale, for such price and on such terms and conditions as my agent shall deem proper; to execute any and all documents necessary to effectuate same including, but not limited to, contracts, deeds, affidavits, bills of sale, assignments and closing statements; provided, however, that if I am married, my agent may not convey or dispose of my homestead property without joinder of my spouse or my spouse's legal guardian. Joinder by my spouse may be accomplished by the exercise of authority in a durable power of attorney executed by my joining agent, and either my spouse or I may appoint the other as an agent-in-fact and agent.

g. To maintain, repair, improve, invest, manage, partition, insure, rent, lease, encumber, and in any manner do it with any real or personal property, tangible or intangible, or any interest therein, that I now own or may hereafter acquire, in my name and for my benefit, upon such terms and conditions as my agent shall deem proper, and to execute, acknowledge and deliver all instruments necessary to effectuate the foregoing.

h. To open and maintain savings, checking, money market and other accounts in my name or otherwise in any bank or financial institution or with any insurance or brokerage firm; to make, receive and endorse checks, drafts, or other commercial or mercantile instruments, deposit and withdraw funds, specifically including withdrawals from any savings account or savings and loan deposits; to acquire and redeem certificates of deposit and to utilize and manage such accounts; to deal generally in my behalf with any instrument for the payment of money in which I may have an interest; and to execute or release such deeds of trust or other security agreements as may be necessary or proper in the exercise of the rights and powers herein granted.

i. To borrow from time to time such sums of money upon such terms as my agent shall deem appropriate for, or in relation to, any of the purposes or objects described herein, upon the security of any of my property whether real or personal, or otherwise, and for such purposes to give, execute, deliver and acknowledge mortgages with such powers and provisions as my agent may think proper, and also such notes, bonds, or other instruments as may be necessary or proper in connection therewith; provided, however, that if I am married, my agent may not mortgage my homestead property without joinder of my spouse or my spouse's legal Guardian. Joinder by my agent may be accomplished by the exercise of authority in a durable power of attorney executed by my joining spouse, and either my spouse or I may appoint the other as attorney-in-fact and agent.

j. To apply for a Certificate of Title upon, and endorse and transfer title thereto, for any automobile, truck, pickup, van, motorcycle or other motor vehicle, and to represent in such transfer assignment that the title to said motor vehicle is free and clear of all liens and encumbrances except those specifically set forth in such transfer assignment.

k. To conduct or participate in any lawful business of whatever nature for me

and in the nature of sole partnership agreements and amendments thereto incorporate, reorganize, merge, consolidate, recapitalize, sell, liquidate or dissolve any business; enter into voting trusts and other agreements or subscriptions; elect or employ officers, directors and agents; carry out the provisions of any agreement for the sale of any business interest or stock therein; and exercise voting rights with respect to stock, either in person or by proxy, and exercise stock options.

l. To make gifts to charitable organizations or to or in trust for my spouse or any descendant of mine in connection with estate, gift, generation-skipping transfer, income or other tax planning for me or to qualify me for any government assistance program, provided that no gift may be made (i) to my agent, other than for my agent's health and maintenance, or to discharge my agent's legal obligations.

m. To consent to any gift and to utilize any gift-splitting provision or tax election; and to pay gift taxes, but only if in furtherance of my estate plan or of my desire to minimize taxes.

n. To transfer any or all assets of mine to any revocable trust created by me as to which trust I am during my lifetime, a primary income or principal beneficiary.

o. To withdraw from any trust, whether revocable or irrevocable, in which I have a current beneficial interest, such amounts of the principal or accrued or collected but undistributed income of such trusts as I would be permitted to receive or withdraw pursuant to any right of receipt or withdrawal contained in such trusts.

p. To make, execute and file any and all declarations, joint or separate returns, waivers, consents, claims and other instruments or forms, including without limitation, IRS Form 2848 Power of Attorney and Petition of Appeal to the United States Tax Court relating to Federal, State, municipal and other taxes or assessments, including income, transfer, property, excise and other taxes of whatever nature and whether imposed or required by any domestic or by any foreign authority, and in connection with any such taxes or assessments due or claimed or believed to be due from me or in respect of any property or rights which I may own or in which I may have any interest.

q. To represent me before any office of the Internal Revenue Service, state agency, or any other governmental or municipal body or authority of whatever nature, domestic or foreign, and to conduct and transact any case, claim or matter whatsoever

in connection therewith; to receive confidential information regarding tax matters for all periods, whether before or after the execution of this instrument; and to make the elections.

t. To have access at any time or times to any safe deposit box rented by me, wherever located, and to remove all or any part of the contents thereof, and to surrender or relinquish said safe deposit box, and any institution in which any such safe deposit box may be located shall not incur any liability to me or my estate as a result of permitting my agent to exercise this power.

s. To exercise any statutory rights or elections, including, but not limited to, any rights or elections in any probate or similar proceeding to which I am or may become entitled; to renounce or disclaim any interest otherwise passing to me by testate or intestate succession or by inter vivos transfer.

r. To employ as investment counsel, custodians, brokers, accountants, appraisers, attorneys at law or other agents, such persons, firms or organizations, including my said agent and any firm of which my said agent may be a member or employee, as deemed necessary or desirable; to pay such persons, firms or organizations such compensation as is deemed reasonable; and to determine whether or not to act upon the advice of any such agent without liability for acting or failing to act thereon.

2. Interpretation and Governing Law. This instrument is to be construed and interpreted as a general durable power of attorney. The enumeration of specific powers herein is not intended to, nor does it, limit or restrict the general powers herein granted to my agent. This instrument is executed and delivered in the State of Florida, and the laws of the State of Florida shall govern all questions as to the validity of this power and the construction of its provisions. However, it is my intention that this power of attorney shall be exercisable in any other state or jurisdiction where I may have any property or interests in property.

3. Third Party Reliance. Third parties may rely upon the representations of my agent as to all matters relating to any power granted to my agent, and no person who may act in reliance upon the representations of my agent shall incur any liability to me or to my estate, beneficiaries, or joint owners as a result of permitting my agent to exercise any power prior to receipt of written notice of revocation, suspension, notice of a petition to determine incapacity, partial or complete termination, or my death. Any

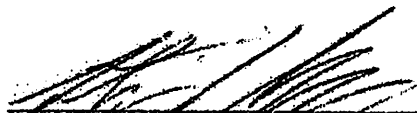
third party may rely on a duly executed counterpart of this instrument, or a copy certified by my agent to be a true copy of the original hereof, as fully and completely as if such third party had received the original of this instrument.

4. **Disability of Principal.** This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in Chapter 709, Florida Statutes.


IN WITNESS WHEREOF, I have hereunto set my hand and seal on June 28th, 2016

DAVID CHRISTIAN FOUTS

SEALED AND DELIVERED
IN THE PRESENCE OF:



Steven J. Guardiano
412 N. Wild Olive Avenue
Daytona Beach, Florida 32118



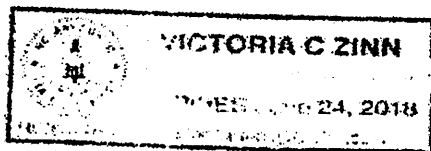
Dana C. Jacobsen
6221 Yosemite Dr.
Port Orange, FL 32127

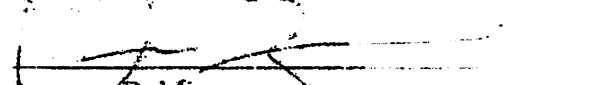
STATE OF FLORIDA

ss

COUNTY OF VOLUSIA

The foregoing Durable Power of Attorney was acknowledged before me on June 28, 2016, by **DAVID CHRISTIAN FOUTS**, who has produced his Florida Driver's License number F210-1159-70-312-C as identification.





Notary Public
My Commission expires June 24, 2018



**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On August 1, 2018, Special Agent (SA) Christopher Deardoff of the Florida Department of Law Enforcement (FDLE) was contacted by Assistant Chief William Proctor of the Port Orange Police Department (POPD). Assistant Chief Proctor wanted to discuss allegations that POPD Captain Kimberly Kilpatrick had forged the signature on former POPD Officer David Fouts life insurance policy.

On March 11, 2019, SA Deardoff and SA Mark Mynheir obtained a voluntary, sworn, recorded statement from Captain Kilpatrick. The statement was obtained at the office of attorney Greg Thomas Forhan, who was also present, located at 810 Fentress Court, Daytona Beach, FL 32114. The following is a summary of Captain Kilpatrick's statement.

SA Deardoff asked Captain Kilpatrick if she recalled the initial interview conducted on September 27, 2018, which she did. SA Deardoff mentioned the life insurance policy Fouts had prior to the traffic accident and how Captain Kilpatrick initially advised that his ex-wife and two children were listed as beneficiaries on the policy. SA Deardoff asked Captain Kilpatrick to explain how she was aware of that information. Captain Kilpatrick did not recall reviewing the life insurance documents but received the information third hand from a representative with the life insurance agency.

SA Deardoff requested Captain Kilpatrick to clarify her previous statement of "pretty immediate" within relation to Fouts' traffic accident to when the Power of Attorney for Fouts was obtained. Captain Kilpatrick stated that approximately two to three weeks after Fouts' traffic accident, she and Fouts' daughter, Alexa Nicole Fouts, met with attorney Steve Guardiano to discuss the process for Alexa Fouts to be her father's Power of Attorney. The meeting with Guardiano and Alexa Fouts was the only involvement Captain Kilpatrick had with the Power of Attorney Process. The Power of Attorney was not completed on that date, but the process had begun. According to Captain Kilpatrick, the two to three weeks after Fouts' traffic accident was what she was referring to when she initially stated "pretty immediate".

SA Deardoff requested Captain Kilpatrick to clarify her previous statements regarding Fouts' ability to move his hands and sign to people. Captain Kilpatrick advised that on multiple occasions, she witnessed Fouts, while in the hospital, move his hands or squeeze the hand of his daughter to communicate. The communication was primarily limited to "yes" or "no" type answers from Fouts. Captain Kilpatrick could not recall the timeframe from when she witnessed the hand communication of Fouts to when the life insurance policy was changed.

Case Number: OR-14-0156	Serial #: 16
Author: Deardoff, Christopher Michael	Office: Brevard
Activity Start Date: 03/22/2019	Activity End Date:03/22/2019
Approved By: Kriegsman, Jason David	
Description:2nd Interview of Captain Kimberly Kilpatrick	
<i>THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.</i>	

Case Number	OR-14-0156
IR Number	16

SA Deardoff asked Captain Kilpatrick if she would check in with hospital staff when visiting Fouts. Captain Kilpatrick advised that, for the most part, she would check in with hospital staff prior to meeting with Fouts. On occasion she was issued a visitors pass.

SA Deardoff presented Captain Kilpatrick with a copy of the Police and Firemen's Life Insurance Association policy change form that was included with the memorandum from Officer Justin Eugene White. The policy change form listed Fouts' son and daughter as the beneficiaries. Captain Kilpatrick advised that she did not sign as a witness on the form and that her POPD issued identification number was 2794. Captain Kilpatrick viewed the document and advised that the witness signature was not hers and she did not recognize it.

A copy of the audio recorded interview will be electronically maintained in the related items section this case file under INV-26.

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On August 1, 2018, Special Agent (SA) Christopher Deardoff of the Florida Department of Law Enforcement (FDLE) was contacted by Assistant Chief William Proctor of the Port Orange Police Department (POPD). Assistant Chief Proctor wanted to discuss allegations that POPD Captain Kimberly Kilpatrick had forged the signature on former POPD Officer David Fouts life insurance policy.

On March 11, 2019, SA Deardoff met with Halifax Health Safety and Security Chief Darrell Richey at Halifax Health, located at 303 N. Clyde Morris Blvd, Daytona Beach, FL 32114.

Halifax Health was the hospital Fouts was initially being treated after the traffic accident. SA Deardoff requested if Chief Richey could access visitor logs from May 6, 2016, which was the date Fouts' life insurance policy change form was signed. Chief Richey accessed the hospital's visitor log system and reviewed who visited Fouts on that date. Chief Richey advised that Captain Kilpatrick was not listed in the log as visiting Fouts on that date.

Case Number: OR-14-0156	Serial #: 17
Author: Deardoff, Christopher Michael	Office: Brevard
Activity Start Date: 03/22/2019	Activity End Date:03/22/2019
Approved By: Kriegsman, Jason David	

Description:Halifax Health Safety and Security

THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On August 1, 2018, Special Agent (SA) Christopher Deardoff of the Florida Department of Law Enforcement (FDLE) was contacted by Assistant Chief William Proctor of the Port Orange Police Department (POPD). Assistant Chief Proctor wanted to discuss allegations that POPD Captain Kimberly Kilpatrick had forged the signature on former POPD Officer David Fouts life insurance policy.

On March 26, 2019, SA Deardoff delivered the E-book to Volusia County State Attorney's Office Chief Investigator Noel Griffin. A case delivery receipt was completed.

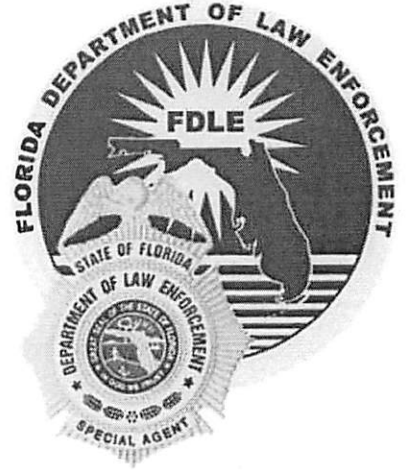
A copy of the case delivery receipt will be electronically maintained and a copy of the Investigative Summary and E-book will be maintained in the related items section of this case file under INV-27 and INV-28.

Case Number: OR-14-0156	Serial #: 18
Author: Deardoff, Christopher Michael	Office: Brevard
Activity Start Date: 03/28/2019	Activity End Date:03/28/2019
Approved By: Kriegsman, Jason David	

Description:E-Book Delivery

THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

Florida Department of Law Enforcement Case Delivery Receipt



A copy of the electronic case file for Case# OR-14-0156 was delivered to the Seventh Judicial Circuit in DeLand, Florida by:

Special Agent:

Chris Deardoff

Signature:

Chris Deardoff

Date/Time Delivered:

3/26/19 1400

And received by the following representative of such office:

Accepted by:

Noel Griffin

Title:

Chief Investigator

Signature:

Noel Griffin

Florida Department of Law Enforcement
Orlando Regional Operations Center

500 West Robinson Street
Orlando, Florida
(407) 245-0801

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On August 1, 2018, Special Agent (SA) Christopher Deardoff of the Florida Department of Law Enforcement (FDLE) was contacted by Assistant Chief William Proctor of the Port Orange Police Department (POPD). Assistant Chief Proctor wanted to discuss allegations that POPD Captain Kimberly Kilpatrick had forged the signature on former POPD Officer David Fouts life insurance policy.

On March 26, 2019, this case report was forwarded to the Volusia County State Attorney's Office Chief Investigator Noel Griffin for further review. On May 21, 2019, the State Attorney's Office responded to the case report and advised that based upon their review of the investigation, no further action was warranted.

A copy of the letter from the State Attorney's Office will be electronically maintained in the related items section of this case file under INV-29.

Case Number: OR-14-0156	Serial #: 19
Author: Deardoff, Christopher Michael	Office: Brevard
Activity Start Date: 05/21/2019	Activity End Date:05/21/2019
Approved By: Kriegsman, Jason David	

Description:State Attorney's Office Disposition Letter

THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

OFFICE OF THE STATE ATTORNEY

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

STATE ATTORNEY



251 NORTH RIDGEWOOD AVENUE
DAYTONA BEACH, FL 32114
PHONE: (386) 239-7710
FAX: (386) 239-7742

May 20, 2019

Re: Captain Kimberly Kilpatrick, SR19000025A01

MEMORANDUM TO FILE

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

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

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

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

The following interviews were reviewed:

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

The following documents were reviewed:

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

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

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

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

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

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

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

Officer Justin White alleges the statements to be false because:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robin L. Hutcheson", written over a horizontal line.

ROBIN L HUTCHESON
ASSISTANT STATE ATTORNEY