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PORT ORANGE POLICE DEPARTMENT



MEMORANDUM

TO: Chief Thomas Grimaldi

FROM: Justin E. White

DATE: 01/31/2019

FILE: JEW0119M.001

SUBJECT: Perjury/Untruthfulness

G.A.R.L.J.N

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.



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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