BLUE TEAM ACTION REPORT

GAINESVILLE POLICE DEPARTMENT
Gainesville, FL

Date OPENED	September 20, 2023	FILE NUMBER	23-035

DATE TO IA	January 5, 2024

EMPLOYEE(S) INVOLVED

Officer Name	ID #	Assignment Bureau, Position/Rank (ex: OPS, OFC)	Race	Sex
Christopher Bivins	1122	Operations / Officer	B	M
Jeffrey Kerkau	767	Operations / Sergeant	W	M

SUMMARY

In reference to Administrative Investigation Review (AIR) Form 23-035 I reviewed the CAD Report, incident report, supplemental report (Det L. Allen). In addition, I pulled up the MCT tracking form and case information report. I added Sgt Kerkau as an involved employee to blue team. On 11/28/2023 I reviewed evidence.com for Ofc Bivins' submission for CR 02-23-13630. This included one video and two (2) uploaded photographs.

On 08/25/2023 Ofc Bivins, while working for day shift in an overtime capacity (not co-responder regular duties), responded to DCF 1000 NE 16th Ave in reference to a DCF Investigation. The CAD notes detail that DCF was requesting law enforcement in reference to allegations of physical injuries for a victim (child) who was at Shands Hospital. The report was made to DCF by the hospital. At that time, it was unknown where the incident occurred.

The video starts with Ofc Bivins with two (2) DCF workers obtaining information regarding the complaint. At that time- it was unknown where the incident occurred. However, Ofc Bivins received information that the DCF report came in from mandatory reporters- hospital staff at Shands due to the child/victim having a brain bleed.

A short time later, the parents (suspects) of the victim were brought into the conference room. The DCF worker asked a majority of the questions with Ofc Bivins asking clarifying questions (when needed). Ofc Bivins learns that child has spent a majority of his life in the hospital and the parents are staying at a transition type housing via insurance due to medical treatment.

During the investigation the mother (suspect) said the incident occurred at the "Gables." I conducted a search of the Gables Apartments- which revealed an address of 4700 SW Archer Rd- which would be Alachua County Sheriff's Office Jurisdiction. Towards the end of the interview Ofc Bivins explains to the

parents (suspects) that he is there due to DCF Policy he has to take his own (LEO) report to which the DCF worker also appears to agree. The video ends with Ofc Bivins obtaining the DCF worker's ID number and walking outside to provide a case report number. According to CAD d at 1550 Ofc Bivins goes to the 4700 SW Archer Rd. At 1603 call notes detail GS767 (Sgt Kerkau) is aware reference going to the County.
On 11/29/2023 I spoke with Ofc Bivins. He recalled the incident and said he was working overtime for Lt Plourde. He said he spoke to the DCF investigator who had already been to the hospital and took pictures of the victim/child. Ofc Bivins said based upon the conversation he did not see anything that would be deemed as child abuse-that due to the child's medical conditions and mother's story of tripping/falling causing the baby to hit a toy. He said the parents has been at the hospital all day/night and DCF did not go to the house nor did they have the full address of where the incident occurred.
Ofc Bivins said he called Sgt Kerkau to make him aware of what he had and he was advised to contact detectives and go to the residence to photograph of the scene. Ofc Bivins said he did not realize the address of the incident was in the Alachua County Sheriff's Office jurisdiction. Ofc Bivins said he did not ask the parents to go with him to their home because they were at DCF worker completing drug test etc and they were going to be there for an extended period of time. Ofc Bivins said he was thinking the grandmother would be at the home to let him in. Ofc Bivins said no one answered the door. Ofc Bivins said he contacted Sgt Kerkau and told him no one came to the door and that he tried to contact Detectives. Ofc Bivins said Sgt Kerkau said to follow up the next day and he received approval to hold the report.
Ofc Bivins said he tried to contract CID Det Boyett and Bernal who were logged in by sending a visitnet message- he said there was no reply. Ofc Bivins said contact via message is something he has done before and if he doesn't get a reply he would send to all units- to call him- or even request via radio. Ofc Bivins said he doesn't think he did or recall if he requested a detective via the radio. Ofc Bivins said he did not go to the hospital because DCF already had been there, so he sent the evidence.com link to the DCF investigator.

On 11/29 I spoke with DCF Investigator Janine Owens. She emailed me a copy of the DCF intake report (attached). I also placed a copy in records to scan to the file- as I noticed the copy was not in RMS. I asked DCF Owens if she knew what the resolution was and she said that her notes indicated that the case was closed out in October with no indications of physical injury as a result and substance use/abuse.

On 11/29 I spoke with Sgt Kerkau who recalled the incident. Sgt Kerkau said that Ofc Bivins called him regarding the matter and gave him an update. Sgt Kerkau said he advised Ofc Bivins to attempt to check the scene of the incident and notify detectives. Sgt Kerkau said he did not realize the address of the incident was in the County. Sgt Kerkau said that he spoke with Ofc Bivins after he was unable to view the scene. Sgt Kerkau said he approved Ofc Bivins holding the report for follow up. Sgt Kerkau was not aware of the manner in which Ofc Bivins attempted to notify detectives (via visinet/MCT message). However he said that he believes Ofc Bivins may have tried requesting a detective over the radio and no one responded. Sgt Kerkau said that he believes Det Bernal responded to the message later that night after 2000hrs
Sgt Kerkau said that he spoke with Sgt Pandak after receiving an email from him (attached). At that time, is when he was made aware the incident was in the County. In addition, Sgt Pandak spoke about the incident and how sending an MCT message as CID notification was sufficient but also expressed concerns on having to track down detectives. Sgt Kerkau said he recalled that Det Bernal was working that evening however her radio was off and she was in court.
On 11/29 I left a message for Det Adams at ASO regarding the outcome of the case.
On 11/29 I left a message for Sgt Pandak. On 12/4 I called Sgt Pandak and spoke with him. He said that the main concern was that there was significant injury to the infant and information not passed on to detectives immediately. In addition the incident occurred in the County. Sgt Pandak said he was working overtime that night and could have seen the report if it was submitted. In addition, he said Det Bernal was also working- therefore if notified properly CID was available to assist.
12/4 I spoke with ASO Det Adams - he vaguely recalled- said there were no charges filed. He spoke to CPT medical Dr. Rosenthal and read all reports- because of all medications child is on- a light bump

described happened plausible could have caused injury because of pre-existing medical conditions. (ASO CR 23-7694). On 12/4 I spoke with Det Lindsay Allen – after reviewing the report she said she recalled the incident. Det Allen said she spoke with the dad (suspect2) and seemed frustrated that law enforcement kept asking questions. She said the dad told her the wife would be back in a week. Det Allen said she spoke with DCF and checked on the baby the next day. Det Allen said when checking on the baby, she was advised by nursing staff that they were worried the baby was going to die due to the brain bleed. Det Allen said the concern was that due the possibility of the baby dying, no detective was notified and there was no crime scene.
After reviewing all the available documentation (reports and polices), BWC, photos and speaking with the aforementioned persons I have come to the below conclusions from the AIR for the allegation of "inefficiency of job performance:"
1. "Contact with a detective was imperative. A MCT Message does not count."
I reviewed GO 40.8 Investigations of Physical and/or Sexual Abuse of Children for specific information on detective notification. Page 3 details: "2. Interviewing the Suspect: It is recommended the suspect not be interviewed prior to the child/victim being interviewed or prior to a Forensic Medical Exam of the child/victim. If the circumstances of the investigation dictate it is necessary to interview the suspect, the Member should:
i. Contact CID for assistance;
ii. If CID is not able to assist, the Member will conduct the interview with the suspect.
iii. If at all possible, the Member will videotape or record the interview;
iv. Ask questions as to how the child/victim sustained any injuries;
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e. Consider whether the suspect's explanation is consistent with the child/victim's injuries;
f. Evaluate the suspect's explanation compared to other information gathered during the investigation."

The policy is not specific on how contact with CID should be made. There is an overall expectation that contact occurs verbally especially due to the severity of cases (injury to child etc). Ofc Bivins should have known that proper consultation with detectives is verbally.

2. "The report was supposed to be completed, submitted and approved that same day....3. The investigation was days behind because the report wasn't read until Monday."

I reviewed GO 82.2 Field Reporting and Management page 5 which states:
F. Report Writing Procedures: Members shall accurately complete all required reports, documentation, and forms in a truthful, accurate, concise, legible manner.
1. Submission of Reports:
i. Members of the Department shall submit reports to their supervisors and/or the Records Unit in a timely manner.
ii. Reports shall be completed and submitted prior to the end of the employee's workday, unless otherwise authorized by a supervisor.

Sgt Kerkau gave Ofc Bivins approval to hold the report as required by GO 82.2.

I also reviewed Patrol Operations Directive Chapter 5 which states:
B. When a member is assigned an incident that requires a report, departmental personnel will complete the report by the end of their work day. Members must have supervisor approval before extending beyond their scheduled shift to complete a report. Supervisors may direct the member to complete a "Face Sheet" of the report before leaving for the day and to complete the report the following day, if the member is scheduled to work. If a supervisor directs the member to complete the "Face Sheet", the member will complete the following sections of the electronic report:
1. Case number
2. Dates and times
3. Location

4. Offense or Incident Type
5. Completed name records for all involved
6. Completed vehicle records.
The member will then enter into the Public Narrative section "Face Sheet" and submit the report electronically. The Supervisor approving the "Face Sheet" will then deny the report stating the deny reason of "To be completed by ", enter a completion date, and electronically submit the report. The member will then complete the report by the stated date. Supervisors should set the deadline for the following day unless extenuating circumstances exist. Any deviation from this directive must be addressed and approved by the shift commander. Reports should not be held for over 3 days.

The face sheet did not occur, however I do not believe this would have altered the incident outcomes because the report would have remained in a denial status.

4. ASO should have been contacted, although a detective would have done that if properly notified.... 5. search warrant would likely have been written and served by ASO that evening since the suspect left town.

Both Ofc Bivins and Sgt Kerkau did not realize the original incident occurred in the County until Sgt Padak's email was sent.

5. DCF doesn't decide if a case is criminal or not.
I reviewed GO 40.8 page 2 which states:
B. Investigative Responsibility: Department Members investigating a case involving an allegation of the physical and/or sexual abuse of a child will conduct an initial investigation to evaluate the complaint and determine whether or not the allegations are criminal. [CALEA 42.2.1.d]
1. Initial Investigation: The Department Member is responsible for taking the lead in the criminal investigation, even if a Child Protective Investigator from DCF is involved.
i. Initially, the Member will interview: the complainant, witnesses, neighbors, family members, parents, medical personnel, and any other person with knowledge. [CALEA 42.2.1.b]
ii. The Member should not interview the child/victim unless there are extenuating circumstances:
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a. The suspect is on-scene and will not be easily located at a later date.
b. There is a concern the parent/guardian will not protect the child.

I also reviewed the offense report in which Ofc Bivins documented that DCF Inv Owens expressed to me that the investigation will most likely be concluded as unfounded as she does not believe that Heather intentionally caused physical harm/abuse to Sebastian." I reviewed the BWC as well and the DCF worker did ask a majority of the questions. Ofc Bivins interjected when needed taking notes. Ofc Bivins should have conducted more of an investigation by going to the hospital and interviewing medical staff about the incident and injuries.
Based upon the totality of this review, there is evidence to justify the Inefficiency of Job Performance allegation. Ofc Bivins should have interviewed the hospital staff and notified CID verbally. Therefore, this incident will be concluded as sustained with verbal counseling. I also suggest that the policy for 40.8 regarding contacting CID for assistance for it to be specific on how to contact. Additionally, formalized expectations on how to notify CID in both business hours and non-business hours should be explicit.

PERSON COMPLETING REVIEW: Lieutenant L. Scott #890

Captain V. Young #645 - After reviewing the related CAD notes and reports, I concur with Lt. Lisa Scott's assessment that Officer Bivins' investigation demonstrated an inefficiency in job performance. This investigation also highlights an inefficiency in job performance for Sergeant Kerkau.

General Orders 40.8 (Investigations of Physical and/or Sexual Abuse) and 82.2 (Field Reporting and Management) clearly outline steps that should be followed as well as notifications and expected response

for investigations of this nature.

According to General Order 40.8, POLICY: It is the policy of the Gainesville Police Department to thoroughly investigate crimes involving the physical and/or sexual abuse of children to ensure the protection of children and the prosecution of offenders. Members will also properly report complaints of physical and/or sexual abuse of a child to the appropriate agencies.

A thorough investigation includes identifying location of occurrence and jurisdiction. The location of this incident may have been unknown at the beginning of the investigation, but Officer Bivins' report as well as CAD indicates that on 08/25/23 at approximately 1550hrs, he notified CCC that he would be in route to 4700 SW Archer Rd. CCC updated the CAD notes to indicate that this location is in the county. At 1603hrs, it appears Officer Bivins added a note into the call that reads, "G767 is aware ref county 10-20." If this is correct, then both Officer Bivins and Sergeant Kerkau were aware that the potential location was in the county. Even after the report was submitted the next day on 08/26/23 and Sergeant Kerkau denied, then approved Officer Bivins' report, he still did not identify that the address was outside of the city limits and/or notify ASO.

General Order 81.1 (Communications Functions and Radio Procedures) states: Monitoring Field Activities: Field supervisors shall remain aware of field officers' assignments and status. Field supervisors normally refers to patrol supervisors, such as Sergeants, Acting Sergeants, Patrol Lieutenants, and FST supervisors.

General Order 82.2 (Field Reporting and Management) states:
4. Review of Reports:
i. The receiving supervisor shall review the report, checking such areas as jurisdiction, completeness, appropriateness, accuracy, format, and grammar.

I am referencing the above general orders to demonstrate that there are several areas in policy that outline the responsibilities of the supervisor which are intended to provide guidance and support for officers in the performance of their jobs. Officer Bivins' failures (jurisdiction, ASO and CID notification, and delayed report submission) could not have occurred without Sergeant Kerkau failing to identify these areas in his review and supervision of Officer Bivins on this call.

Verbal counseling is reasonable for Officer Bivins as well as Sergeant Kerkau.

FINDINGS: Inefficiency in Job Performance – SUSTAINED

ACTION: Verbal Counseling

FOR USE BY INTERNAL AFFAIRS UNIT ONLY **FILE NUMBER:** 23-035

Internal Affairs: T. DURST **DATE:** 01.09.2024

Bureau Commander: [signature] **DATE:** 01/18/24

Chief Inspector: [signature] **DATE:** 01-12-2024

Assistant Chief: [signature] #1227 **DATE:** 1/12/24

Chief of Police: DESIGNATED TO ASSISTANT CHIEF **DATE:** —