

Florida Department of Corrections



Office of the Inspector General

**CRIMINAL INVESTIGATION
INVESTIGATIVE ASSIST
CASE # 16-19373**



FLORIDA DEPARTMENT OF CORRECTIONS
OFFICE OF THE INSPECTOR GENERAL
INVESTIGATIVE ASSIST SUMMARY REPORT



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Case Number: 16-19373

OIG Inspector: Inspector Kenneth Smith

Outside Agency: Florida Department of Law Enforcement

Outside Agency Investigator: Special Agent Lonnie Mills

Date Assigned or Initiated: 10-21-2016

Complaint Against: Inmate Daniel Upthegrove DC#H48274

Location of Incident – Institution/Facility/Office: Reception and Medical Center Main Unit

Complainant: Captain Gerald Whitehead

Outside Agency Case #: JA-37-0134

Use of Force Number: N/A

PREA Number: N/A

Classification of Incident: Homicide

Confidential Medical Information Included: Yes No

Whistle-Blower Investigation: Yes No

Chief Inspector General Case Number: N/A



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I. AUTHORITY

The Florida Department of Corrections, Office of the Inspector General, by designation of the Secretary and § 944.31, Florida Statutes, is authorized to conduct any criminal investigation that occurs on property owned or leased by the department or involves matters over which the department has jurisdiction.

The testimony references included in this report are summations of oral or written statements provided to inspectors. Statements contained herein do not necessarily represent complete or certified transcribed testimony, except as noted. Unless specifically indicated otherwise, all interviews with witnesses, complainants, and subjects were audio or video recorded.

II. METHODOLOGY

The investigation reviewed the derivations of the allegation advanced by the complainant. The scope of this investigation does not seek to specifically address tort(s), but violations of criminal statutes. The criterion used to evaluate each contention or allegation was limited to the following standard of analysis:

1. Did the subject's action or behavior violate Florida criminal statutes?

III. ANALYSIS

The standard and analysis in this investigation is predicated with the burden of proving any violation of law, established by probable cause. The evidence considered for analysis is confined to the facts and allegations stated or reasonably implied. The actions or behavior of the subject are presumed to be lawful and in compliance with the applicable Florida law, unless probable cause indicates the contrary.



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IV. DEFINITIONS

Unfounded:

Refers to a disposition of a criminal case for which probable cause does not exist to suggest the suspect's behavior or action occurred nor is an arrest or formal charge being initiated.

Closed by Arrest:

Refers to a disposition of a criminal case for which probable cause exists that an identified subject committed the offense and one for which an arrest or formal prosecution has been initiated.

Exceptionally Cleared:

Refers to a disposition of a criminal case for which probable cause exists that an identified suspect committed the offense, but one for which an arrest or formal charge is not initiated, or in the case of a death investigation, one for which no evidence exists that the death was the result of a crime or neglect.

Open-Inactive:

Refers to a disposition of a criminal case for which a criminal investigation commenced, but where evidence is insufficient to close as unfounded, closed by arrest, or exceptionally cleared.

Investigative Assist Closed

Refers to a disposition of an investigative assist, where the conduct being investigated by the outside agency did not concern allegations against a Department employee, contractor, inmate, offender, or other person either employed or under the supervision of the Department.



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V. PREDICATE

On October 20, 2016 at approximately 7:00 AM, Inspector Kevin Lingis was contacted by security staff at The Reception and Medical Center due to an inmate being ██████████ ██████████ in Gainesville, Florida ██████████. A preliminary investigation of the incident revealed Inmate James Sanders DC #026412 indicated to Captain Gerald Whitehead he ██████████ in the shower area of D-Dormitory ██████████ hitting his head on the shower floor. Based on this information the Florida Department of Law Enforcement (FDLE) was notified and responded and assumed the lead investigative role. FDLE's preliminary investigation revealed Sanders was involved in an altercation with Inmate Daniel Upthegrove DC #H48274 in the shower area of D-Dormitory at approximately 8:15 PM on October 19, 2016. During the altercation, Upthegrove picked up Sanders and slammed him to the floor. This caused Sanders' head to strike the tile floor. He was ██████████ at approximately 1:30 AM on October 20, 2016. At approximately 10:03 AM on October 20, 2016, FDLE was advised ██████████ Sanders ██████████

██████████ On October 22, 2016 at approximately 1:35 PM, Sanders ██████████ ██████████. This information was reported to the Office of the Inspector General via telephone contact and Management Information Notification System (MINS) Report #733180 on October 20, 2016 and was assigned as Investigative Assist #16-19373 to Inspector Kevin Lingis on October 21, 2016. FDLE Case #JA-37-0134 was initiated on October 20, 2016. This assist was reassigned to Inspector Kenneth Smith on June 7, 2017.

VI. SUMMARY OF INVESTIGATIVE FINDINGS

Based on the exhibits, witnesses' testimony, subject officer's statements, and the record as a whole, presented or available to the primary inspector, the following findings of facts were determined:

On October 20, 2016, at approximately 7:04 AM, while assigned as Lead Inspector for District 5, Inspector Kevin Lingis was contacted via telephone by Captain Glenn Anders at the Reception and Medical Center (RMC) Main Unit. Anders advised Inmate James Sanders DC #026412 housed in D-Dormitory was discovered by security staff lying on the floor of the side #1 shower in D-Dormitory at approximately 8:15 PM on October 19, 2016. Sanders was awake and alert and told Captain Gerald Whitehead he had been ██████████ and subsequently slipped and fell in the shower. Sanders ██████████. At approximately 1:30 AM ██████████ in Gainesville, Florida ██████████ Sanders' ██████████ and the Office of the Inspector General was notified.

Due to Sanders' ██████████, the Florida Department of Law Enforcement (FDLE) Watchdesk (Nicholai) was notified at approximately 7:20 AM on October 20, 2016 by Inspector Lingis. At approximately 7:35 AM, Special Agent Supervisor (SAS) Matt Walsh contacted Inspector Lingis and advised he would have a team respond to investigate the incident. The On-Call Supervisor for the Office of the Inspector General (Supervisor Katouree Jackson) was notified at approximately 7:53 AM. At approximately 9:22 AM, FDLE responded to RMC and assumed the lead of the investigation. Special Agent (SA) Lonnie Mills was the lead agent on the case and signed an investigative demand. Security records were released to SA Mills. At approximately 10:03 AM, Special Agent (SA) Mark Pentolino contacted Inspector Lingis ██████████ Sanders. ██████████



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██████████ working on Sanders advised him Sanders ██████████. Sanders' next of kin were notified by institutional staff and they permitted to visit him ██████████.

The video from the dormitory and recorded telephone calls were reviewed. FDLE also conducted sworn interviews with the inmates assigned to D-Dormitory. As a result of these investigative efforts it was determined by FDLE that Sanders allegedly propositioned Inmate Daniel Upthegrove DC #H48274 for sex several times in recent weeks and Upthegrove continued to fight off Sanders and refuse to have sex with him. On the evening of October 20, 2016, Upthegrove was showering in the shower area when Sanders again tried to proposition Upthegrove to have sex with him. Upthegrove allegedly picked up Sanders and slammed him on the tile floor. The back of Sanders' head struck the tile floor. Upthegrove gathered his things and exited the shower, leaving Sanders lying on the floor. According to FDLE an overwhelming majority of the inmates who were interviewed provided consistent testimony to these facts. Upthegrove also provided a post Miranda warning sworn confession to FDLE regarding the events that transpired.

As of 8:00 AM on October 21, 2016, Sanders ██████████.

Lingis and FDLE departed RMC at approximately 5:00 PM on October 20, 2016.

Because FDLE took the lead role in this case, Sanders was not photographed by Inspector Lingis. FDLE Crime Scene Technicians documented the incident photographically.

On October 22, 2016, Inspector Kenneth Smith was informed Inmate Sanders ██████████. Smith responded, took photographs, and performed a complete visual inspection of Sanders' body just prior to Sanders being ██████████.

In the FDLE final report submitted by Special Agent Lonnie Mills the following was noted:

On August 14, 2017, Special Agent (SA) Lonnie Mills received a letter from Assistant State Attorney (ASA) Shawn Patrick Thompson dated August 11, 2017. In his letter, Thompson advised he had reviewed the statements and evidence surrounding Sanders death following the altercation with Upthegrove and declined to pursue any criminal charges against Upthegrove. ASA Thompson cited that Sanders had continuously harassed, confronted, and stalked Upthegrove in an attempt to coerce or force sex for several weeks prior to the incident. ASA Thompson advised Upthegrove's actions were justified and a case of clear self-defense. Thompson also verbally authorized the release of all evidence in the case back to the DOC. All evidence in this case has been released to the DOC Inspector David Lee Manning

Based on the investigative findings of FDLE and the declination of prosecution by the Eight Judicial Circuit's State Attorney's Office, it is concluded that the aggravated battery committed by Upthegrove against Sanders was self-defense and justified pursuant to Florida State Statutes, Chapter 776.

This concludes FDLE's investigation into the circumstances surrounding the death of Sanders and the case is closed.



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It is requested this case be closed due to the FDLE investigation and Assistant State's Attorney Shawn Thompson's citing of Inmate Upthegrove's actions being justified and a case of clear self-defense.

VII. CHARGES

List alleged violations of Florida Law:

1. Violation of § 782.02, Florida Statutes, Justifiable Homicide.

§ 782.02, Florida Statute, the use of deadly force is justifiable when a person is resisting any attempt to murder such person or to commit any felony upon him or her or upon or in any dwelling house in which such person shall be.

VIII. CONCLUSION

Based on the information gathered during their investigation, it is the recommendation of Inspector Kenneth Smith the allegation against Inmate Daniel Upthegrove for the **violation of (782.02, Florida Statute, Justifiable Homicide)**, be termed as follows:

1. Exceptionally Cleared.

To Witt: On August 14, 2017, Special Agent (SA) Lonnie Mills received a letter from Assistant State Attorney (ASA) Shawn Patrick Thompson dated August 11, 2017. In his letter, Thompson advised he had reviewed the statements and evidence surrounding Sanders death following the altercation with Upthegrove and declined to pursue any criminal charges against Upthegrove. ASA Thompson cited that Sanders had continuously harassed, confronted, and stalked Upthegrove in an attempt to coerce or force sex for several weeks prior to the incident. ASA Thompson advised Upthegrove's actions were justified and a case of clear self-defense. Thompson also verbally authorized the release of all evidence in the case back to the DOC. All evidence in this case has been released to the DOC Inspector David Lee Manning

Based on the investigative findings of FDLE and the declination of prosecution by the Eight Judicial Circuit's State Attorney's Office, it is concluded that the aggravated battery committed by Upthegrove against Sanders was self-defense and justified pursuant to Florida State Statutes, Chapter 776.

Inspector Smith reviewed the investigation completed by FDLE, and administrative issues were not identified.