

Florida Department of Corrections



Office of the Inspector General

**CRIMINAL INVESTIGATION
INVESTIGATIVE ASSIST
CASE # 17-13353**



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



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Case Number: 17-13353

OIG Inspector: Senior Inspector Louis Cordova

Outside Agency: Florida Department of Law Enforcement

Outside Agency Investigator: Special Agent Kevin Kulp

Date Assigned or Initiated: July 28, 2017

Complaint Against: N/A

Location of Incident – Institution/Facility/Office: Martin Correctional Institution

Complainant: Lieutenant Johnny Harris

Outside Agency Case #: OR-37-0064

Use of Force Number: N/A

PREA Number: N/A

Classification of Incident: Inmate Death Investigation

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 July 28, 2017, the Department of Corrections Office of the Inspector General received notification Inmate Sylvester Smith (DC#072358) had been found [REDACTED] in his cell at Martin Correctional Institution. [REDACTED] and Inmate Smith was pronounced deceased on July 28, 2017, at approximately 6:06 p.m. Florida Department of Law Enforcement (FDLE) notification was made, and Senior Inspector Carrie Ryan responded to Martin Correctional Institution on July 28, 2017, to provide investigative assistance to FDLE. The case was re-assigned to Senior Inspector Louis Cordova on May 8, 2018.

VI. SUMMARY OF INVESTIGATIVE FINDINGS

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

Investigator's Note: *The summary findings listed below were obtained from the FDLE investigative reports associated with FDLE Case# OR-37-0064.*

According to FDLE Special Agent Kevin Kulp, on July 28, 2017, at approximately 18:30 hours, The Florida Department of Corrections (FDOC), Office of the Inspector General (OIG), requested the FDLE respond to Martin Correctional Institution regarding the in-custody death of Inmate Smith, who was found [REDACTED] in his cell. Inmate Smith pronounced deceased at 18:06 hours.

FDLE Special Agent Kulp arrived at Martin Correctional Institution and was directed to the prison [REDACTED] where the body of Inmate Smith remained. Special Agent Kulp was advised that Inmate Smith had been found [REDACTED] in his cell, D3-113, [REDACTED]. Photographs were taken of the body of Inmate Smith [REDACTED]. FDLE Special Agent Kulp indicated [REDACTED] of Inmate Smith. [REDACTED] consistent with observations previously made on different inmates that had been confirmed of having a history of smoking different narcotics to the point where the fingertips became stained. Special Agent Kulp indicated he reviewed and photographed Inmate Smith's cell. Nothing of evidentiary value was recovered from within the cell.

According to Lieutenant Johnny Harris, on July 28, 2017, he responded to D3-dormitory after overhearing radio transmission asking for assistance [REDACTED] inmate. Upon his arrival, he observed Officer Cheyenne Hall [REDACTED] to Inmate Smith. Lieutenant Harris indicated Inmate Smith [REDACTED] transported to the prison [REDACTED]. Lieutenant Harris [REDACTED] Inmate Smith's [REDACTED]. Lieutenant Harris indicated [REDACTED] inside cell D3-116, he observed that Inmate Smith [REDACTED]e, and on the floor next to him. Lieutenant Harris stated he could also smell K2 (synthetic cannabinoids) inside the cell.

According to Officer Chantrell Wilcher, on July 28, 2017, she was assigned as the D-dormitory Housing Officer. At approximately 5:15 p.m., Officer Wilcher indicated inmates from D3-dormitory



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(Officer Hall) was also in the cell, [REDACTED] had already begun on Inmate Smith. [REDACTED] to Inmate Smith [REDACTED] Inmate Smith [REDACTED] Officer Hall [REDACTED] [REDACTED] [REDACTED] stated Inmate Smith's [REDACTED] [REDACTED], Inmate Smith was pronounced deceased. [REDACTED] Inmate Smith [REDACTED].

According to Inmate Jose Perez, he was the cellmate of Inmate Smith since July 26, 2017. Inmate Perez stated he was returning to his cell for count and saw Inmate Smith lying on top of the lockers. Inmate Perez stated Inmate Smith looked like he was dead. Inmate Perez stated he called out to Inmate Smith in order to wake him, but Inmate Smith did not respond. Inmate Perez indicated he shook Inmate Smith, but Inmate Smith was not moving at all. Inmate Perez then went and alerted Officer Hall. Inmate Perez stated he was not aware if Inmate Smith had smoked K2 on July 28, 2017, and he was not hanging out with Inmate Smith prior to the incident.

According to Special Agent Kulp, a review of the video showed Inmate Perez coming out of a cell that was across the walkway in between the two (2) sides of cells. Inmate Perez was observed walking straight to the area where he could communicate with the officer's station. Inmate Perez was not observed first going to his cell for count and seeing Inmate Smith [REDACTED] as he indicated in his sworn statement.

According to Inmate Zuniga, he was housed in D3-dormitory where Inmate Smith was housed. Inmate Zuniga stated he saw Inmate Smith smoking K2 under the stairs at the rear of the wing. Inmate Zuniga stated he watched as Inmate Smith became [REDACTED] while smoking K2 under the stairs. Inmate Zuniga stated Inmate Smith was dragged back into his cell by other inmates after Inmate Smith became [REDACTED]. However, he did not know the names of the inmates who dragged Inmate Smith back to his cell. Inmate Zuniga stated Inmate Perez was not one of the inmates who dragged Inmate Smith back to his cell. Inmate Zuniga stated it was approximately two (2) hours after Inmate Smith was dragged into his cell that an inmate notified the control room of the dormitory (officer's station) to advise Inmate Smith [REDACTED]. Inmate Zuniga stated Inmate Smith's [REDACTED].

Special Agent Kulp's review of the fixed wing video revealed there was a discrepancy between the camera program time and the camera times as displayed on the monitoring screens. The time displayed on each monitoring screen was one (1) hour earlier than the time on the system program. The following events were captured on video:

- 18:14:56 – Officer Hall entered D3-dormitory. Officer Hall was observed communicating via her Department issued radio and directing inmates to return to their assigned cells for a lockdown of the wing, [REDACTED] Inmate Smith.
- 18:18:58 – [REDACTED] entered the wing, went into the cell where Inmate Smith was held, and was not seen until Inmate Smith was removed from the cell.



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- 18:21:15 – Officer Hall entered cell D3-116, where Inmate Smith was housed, and was out of view of the camera. Officer Hall remained in the cell [REDACTED] until the point Inmate Smith was removed from the cell.
- 18:23:00 – Lieutenant Johnny Harris entered the wing.
- 18:24:15 – [REDACTED] and orderly arrived [REDACTED] to the cell where Inmate Smith was housed [REDACTED]
- 18:25:19 – [REDACTED] of Inmate Smith.
- 18:27:24 – Inmate Smith [REDACTED]. Officer Hall [REDACTED] toward the entrance and exit door of the wing.
- 18:27:54 – Inmate Smith was last seen on video being removed from D3-dormitory.

Investigator's Note: *Special Agent Kulp noted in his review of the video surveillance that the video recording provided by the Florida Department of Corrections did not include security video recording as far back as two (2) hours prior to the incident, and it did not capture Inmate Smith being dragged back to his cell from under the staircase as indicated by Inmate Zuniga.*

On December 20, 2017, FDLE received the autopsy report of Inmate Smith. The autopsy was performed on July 31, 2017, by Associate Medical Examiner Linda O'Neil. According to Dr. O'Neil, Inmate Smith died [REDACTED]. The manner of death was listed as accidental.

Investigator's Note: *Senior Inspector Cordova obtained a copy of the D-dormitory Housing Log for July 28, 2017, after it was reported by Inmate Zuniga that Inmate Smith was in his cell [REDACTED] [REDACTED] for two (2) hours before being discovered by staff. The log indicated that Officer Fletcher (Michael Fletcher), Officer Wilcher, and Officer Hall were assigned as D-dormitory Housing Officers.*

A review of the D-dormitory Housing Log revealed a re-count was conducted at [REDACTED] by Sergeant Cameron Enders (Internal Security Sergeant) and Officer Wilcher. Visual security checks were conducted up till the time that a formal count was conducted by Sergeant Enders and Officer Wilcher at [REDACTED]

At 5:20 p.m., the log indicated the A1-team quick response team members entered D-dormitory with [REDACTED] inmate. Based on the D-dormitory Housing Log, D-dormitory Housing Officers were in violation of Post Order# 9 (Housing Officer/Sergeant) which states in part that housing officers "will conduct frequent security checks/cell front inspections, at least once an hour but on an irregular schedule/varied route. These inspections will be noted on the housing unit logs."

No cell front inspections were noted on the housing unit log from 12:50 p.m. until 4:55 p.m. This identified administrative issue was assigned to Senior Inspector Frank Lewis for administrative investigation in I.G. Case# 18-08457



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VII. CHARGES

There were no charges. Dr. Linda O'Neil ruled Inmate Smith's death as accidental, a [REDACTED]

VIII. CONCLUSION

Based on the information gathered during FDLE Special Agent Kevin Kulp's investigation, it is the recommendation of Senior Inspector Louis Cordova that the death of Inmate Smith be termed as follows:

- **Exceptionally Cleared**