



FDLE

PROFESSIONAL STANDARDS UNIT

**OFFICE OF EXECUTIVE INVESTIGATIONS
INTERNAL INVESTIGATION REPORT**

CASE NUMBER: EI-79-1691 **DATE:** March 15, 2016

CASE SUBJECT: Rusty Rodgers
Special Agent
FDLE – Jacksonville Regional Operations Center

ALLEGATION(S): Florida Administrative Code 11I-1.011 (23)-Substandard Work:

REPORT PREPARED BY: Inspector James Biddle

SECTION I

INVESTIGATIVE PREDICATE

On March 26, 2013, St. Johns County Sheriff's Office (SJCSO) Sheriff David Shoar filed a complaint with the Florida Department of Law Enforcement's (FDLE) Office of Executive Investigations (OEI), Professional Standards Unit (PSU) against Jacksonville Regional Operations Center (JROC) Special Agent (SA) Rusty Rodgers regarding negligence and unprofessional conduct. The complaint centered on how SA Rodgers handled FDLE's review of the investigation of the death of Michelle O'Connell on September 2, 2010, in St. Johns County, Florida.

Background

On September 2, 2010, the SJCSO received a call from off duty SJCSO Deputy Jeremy Banks in which he reported that his live in girlfriend, Michelle O'Connell, had just shot herself in their residence. Documents reflect that SJCSO and emergency medical services responded to the scene, where Michelle O'Connell was discovered, and an investigation was initiated. Within two days of the incident, and after an autopsy, the medical examiner, Dr. Fredrick Hobin, determined the manner of death to be suicide as a result of a self-inflicted gunshot.

Sheriff Shoar advised that within weeks of the medical examiners findings, the family of Michelle O'Connell voiced their opinion that Michelle O'Connell's death was the result of a homicide. Sheriff Shoar noted that Michelle O'Connell's mother, Patti O'Connell, and the victim's brother, Deputy Scott O'Connell worked for the SJCSO. Sheriff Shoar advised that based on these factors and the nature of the investigation, he requested FDLE, conduct a review of the SJCSO investigation of Michelle O'Connell's death.

On January 17, 2011, Special Agent Rusty Rodgers was assigned as FDLE's case agent and an investigation / review was initiated, in conjunction with the Office of the State Attorney, Seventh Judicial Circuit.

At the conclusion of FDLE's investigation and after a review by the Office of the State Attorney, Fifth Judicial Circuit, it was determined that insufficient probable cause existed to determine that Michelle O'Connell's death was a homicide. FDLE's investigation was then closed.

Sheriff Shoar then initiated a review of FDLE's investigation of Michelle O'Connell's death. After several weeks, Sheriff Shoar filed a written complaint against members of FDLE, including SA Rodgers, for possible criminal and administrative violations.

On August 9, 2013, Sheriff Shoar's complaint against SA Rodgers was forwarded to OEI's Public Corruption Unit for review / investigation. Governor Rick Scott appointed State Attorney William Cervone of the Eighth Judicial Circuit, to review Sheriff Shoar's complaint for potential criminal charges on the part of SA Rodgers (Executive Assignment No. 2014-201, 220, and 232). FDLE's investigative activities related to OEI's investigation were documented in FDLE case EI-14-0128.

On August 7, 2015, the Office the State Attorney, Eighth Judicial Circuit, released their findings associated with their review of SA Rodger's activities related to FDLE's investigation of Michelle O'Connell's death. In their findings, State Attorney Cervone determined that there was insufficient evidence to support criminal charges against SA Rodgers. See a copy of the State Attorney report contained in this case file.

Sheriff Shoar's complaint contained numerous descriptions of conduct or activities on the part of SA Rodgers that potentially were violations of FDLE policies or procedures. After a review of Sheriff Shoar's complaint, OEI identified the following possible violations of FDLE's rules, policies and procedures:

Allegations

- On April 14, 2011, SA Rodgers seized Banks' cellular phone and searched its contents without obtaining a search warrant in the Fourth Judicial Circuit, using the authority of a search warrant issued in the Seventh Judicial Circuit. See OEI Case EI-14-0128, Investigative Report #3 and related item #3 and #4 for details.
- SA Rodgers misrepresented and misquoted statements made by Jeremy Banks during a recorded 911 call on the night of Michelle O'Connell's death and used the quote in an application for a search warrant in the Seventh Judicial Circuit for Jeremy Banks' residence. See OEI Case EI-14-0128, Investigative Report #5 and related item #5, 6, 7, and 8 for details.
- April 14, 2011, during a voluntary recorded interview at FDLE /JROC, SA Rodgers, without proper authorization, told Jeremy Banks he was not free to leave the FDLE interview room, located in the Fourth Judicial Circuit, and as noted above, seized Banks' cellular phone prior to serving a search warrant issued in and for the Seventh Judicial Circuit for Banks' residence, which was also located in the Seventh Judicial Circuit.

- In a PowerPoint presentation that was presented to the Medical Examiner's Office, SA Rodgers provided specific details of a text message between Michelle O'Connell and Chrissy O'Connell where Michelle O'Connell indicated that she (Michelle) was on her way to pick up her daughter from Chrissy O'Connell on the night of Michelle's death. The only documentation of this text message was found in a hand written note in SA Rodgers' case file and the text message was not discovered in the forensic download of Chrissy O'Connell's cellular phone.

SECTION II

DOCUMENTS / RECORDS

1. Internal Complaint Summary.
2. A copy of St Johns County Sheriff David Shoar's complaint letter and supporting documentation.
3. Copy of FDLE's JROC investigation JA-73-1483.
4. A copy of the audio recordings in the case file.
5. OEI Investigation case file EI-14-0128.
6. Office of the State Attorney, Fifth Circuit Review and findings.
7. Office of the State Attorney, Eighth Circuit Review and findings.
8. Office of the State Attorney, Ninth Circuit Review and findings.

All documents related to this internal investigation will be electronically maintained in the Office of Executive Investigations' database and FDLE's automated investigative management system (AIM), and can be reviewed if additional information is needed.

SECTION III

INVESTIGATIVE NARRATIVE

In furtherance of this investigation, OEI Inspector James Biddle obtained / reviewed sworn statements from various witnesses. Below are notations from those statements. The audio files can be reviewed for further details.

Mark Johnson – Assistant State Attorney

Location: Office of the State Attorney Seventh Judicial Circuit, St. Augustine Beach, Florida
Date: May, 6, 2013
Type: Interview – recorded

- Assistant State Attorney (ASA) Johnson stated that he was assigned to FDLE's death investigation case (JA-73-1483) by Seventh Judicial Circuit State Attorney R. J. Larizza. ASA Johnson indicated that he was advised by State Attorney Larizza that Sheriff Shoar had asked FDLE to initiate a review of the SJCSO investigation of Michelle O'Connell's death.
- ASA Johnson was directed by State Attorney Larizza not to become actively involved in the investigation, but rather to provide support to FDLE in the form of answering any legal questions that might arise and obtaining any needed court documents such as subpoenas and search warrants.
- ASA Johnson stated that he reviewed multiple affidavits for search warrants provided to him by SA Rodgers related to FDLE's death investigation (JA-73-1483).
- ASA Johnson explained that, although he reviewed the affidavits for search warrants, and a [REDACTED] order, he was not involved in compiling information supporting the information contained in the affidavits or independently confirming the accuracy of that information.
- ASA Johnson indicated that he took the facts presented by SA Rodgers at face value.
- ASA Johnson indicated that he did not have any reason to believe that the information contained in the affidavits for search warrants presented by SA Rodgers was inaccurate.
- ASA Johnson explained that looking at it "after the fact," he would characterize the information in the affidavits for search warrants as "stretching the truth" versus "making things up."
- ASA Johnson did not believe that SA Rodgers withheld any information, but rather chose to emphasize and de-emphasize information supporting his (SA Rodgers) conclusion of homicide.
- ASA Johnson stated that he did not recall being involved in the first FDLE interview of Deputy Jeremy Banks and provided no direction to SA Rodgers regarding that interview.

Robert Hardwick – Assistant Chief of Investigations

Location: Office of the State Attorney Seventh Judicial Circuit, St Augustine Beach, Florida
Date: May 6, 2013
Type: Interview – recorded

- Hardwick explained that the SAO's role was not to "mirror" the FDLE investigation, but to

provide legal insight which included the involvement of Assistant State Attorney (ASA) Mark Johnson. Hardwick explained that the SAO did not direct SA Rodgers regarding the manner in which to conduct the investigation.

- Hardwick indicated that he originally met with SA Rodgers in approximately April of 2011. Hardwick stated that SA Rodgers advised that he (Rodgers) was investigating the Michelle O'Connell death investigation and believed it was a murder.
- Hardwick recalled SA Rodgers met with him and others from the SAO on a "regular basis" to discuss the status and up to date findings of the investigation.
- Hardwick stated that he did not want to refer to the Sheriff Shoar report because it was a "biased" opinion. Hardwick explained that he and ASA Johnson discussed the findings in the report prior to this interview. Hardwick further stated, "And honestly -- I'll be honest with you. I'm tainted. Everybody's tainted. The media tainted us. The conversations among cops that are local here have tainted us. My partners at FDLE; the whole thing is tainted by all of us, and it's not fair to anybody, to be honest with you. But that's just the way it is. "
- Hardwick explained that, as a former investigator for the SAO assigned to the Homicide Unit, their office did not have to see "stuff in writing to believe what a law enforcement officer says. If you come in and brief us on something we know down the road that we are going to get it from you."
- Hardwick stated that he mentioned this because certain information provided in Sheriff Shoar's report relating to alleged facts of the investigation, were never provided by SA Rodgers. Hardwick indicated, however, that he could not recall whether the information he was referring to was verbally discussed with SA Rodgers during the investigation.
- Hardwick stated that several meetings between the command staff of the FDLE, SAO, and SJCSO occurred, and information about the FDLE investigation was presented and discussed. Hardwick advised, "There's information that he would give us, and then we would verify later on was not exactly how it occurred."
- Hardwick stated that, as the investigation progressed, the SAO assisted with the issuance of subpoenas and search warrants as SA Rodgers advised of his investigative activity.
- Hardwick recalled a meeting with Medical Examiner Dr. Frederick Hobin during which a PowerPoint presentation was presented by SA Rodgers. Hardwick referred to a conversation he had with SA Rodgers, prior to this meeting, indicating "with some of the findings in the PowerPoint that he had showed us, that if, indeed, it was a homicide investigation, we don't want it to say one way or the other. I requested that it be undetermined. If we're gonna present a case to Dr. Hobin, we're gonna ask for it to be changed from suicide to undetermined. That gives us leverage one way or the other."

- Hardwick explained if the PowerPoint was presented properly, "it could show it weighs more in the fact of a suspicious death and not suicide. That's how I take it based on my experience working death investigations."
- Regarding the search warrants secured by SA Rodgers, Hardwick stated that he recalled SA Rodgers working on two of the search warrants at the SAO. Hardwick indicated that he may have discussed the warrants with SA Rodgers, but does not recall reading the probable cause affidavits or reviewing the content.
- With regards to SA Rodgers' initial interview of Deputy Jeremy Banks on April 14, 2013, Hardwick stated the SAO was not involved in directing how the interview would take place or the types of questions that would be asked. Hardwick explained that the SAO had knowledge of the fact that the interview was going to be conducted. SA Rodgers contacted Hardwick after the interview to inform Hardwick that Banks had requested a lawyer.
- Hardwick indicated that SA Rodgers also informed him that he (SA Rodgers) had seized Banks personal phone during the interview. Hardwick stated, "There was some conversation about his phone between Mark and I. I don't know if -- if we had talked about doing a search warrant for the phone contents."
- When asked if he believed SA Rodgers withheld or omitted vital information related to the investigation, Hardwick stated "It's kind of an unfair question because based on what I -- what I know now, I would say yes. I believe that he withheld some information and exaggerated information, but I think at the time, in 2011, based on what I -- the best I can believe -- is that he -- I -- I don't know if he withheld information on purpose because I never had the information.
- Hardwick said that he believes that SA Rodgers "exaggerated" information presented to the SAO.

Fredrick Hobin – Assistant Medical Examiner

Location: Office of the Medical Examiners, Seventh Judicial Circuit, St Augustine Beach, Florida

Date: May 6, 2013

Type: Interview – recorded

- SA Rodgers presented the case using a PowerPoint presentation which contained conclusions by a crime scene reconstruction expert from the Georgia Bureau of Investigation (GBI) and a section on gunshot residue (GSR). Hobin stated that the GSR evidence, which he believed was not reliable, and the evidence from the reconstruction expert, did not influence him to change his opinion in the findings of O'Connell's death.
- Hobin stated that SA Rodgers proposed a timeline that reflected a 20 minute delay before Deputy Banks called 911. Hobin further stated that SA Rodgers advised him that Deputy Banks, during the call to 911, had been "pretending to be a woman" and had

then "explained that he was a deputy sheriff." Hobin stated that SA Rodgers provided the information about Deputy Banks pretending to be a female during the 911 call from detectives of the SJCSO during the autopsy and, in particular, Jessica (unknown last name).

- Hobin stated that he did not recall that SA Rodgers ever made the statement that Deputy Banks pretended to be a female.
- Hobin stated that the report from SA Rodgers was very persuasive and caused him to change his findings.
- Hobin stated that SA Rodgers was very "professional and even" and did not "pressure" him into anything. Hobin stated that there had been a news article about how SA Rodgers had "bullied" him into changing his opinion; however, Hobin stated that he was never bullied by SA Rodgers. Hobin stated that, based upon the new information he has received; he changed his findings from suicide to homicide and provided a new death certificate. Hobin stated that the form (changed death certificate) was not supposed to leave the office and was not to be released. Hobin stated that he intended to make the change official until he received notification from the State Attorney's Office requesting that he delay the process pending receipt of further information.

Heather Ladley – Witness

Location: 114 Belles Chase Court, St. Augustine Beach, Florida

Date: May 6, 2013

Type: Interview – recorded

- Ladley was interviewed regarding her recollection of events relating to the FDLE investigation into the death of Michelle O'Connell. Ladley was previously interviewed by SA Rodgers on February 2, 2011.
- Ladley stated that she told a friend, Ciara Morris, that she (Ladley) heard gunshots on the night that O'Connell died. Morris relayed the information to SA Rodgers who then called Ladley to request an interview after advising her he was investigating the death of O'Connell.
- Ladley stated that she and her friend, Stacy Boswell, met SA Rodgers at her residence approximately 30 minutes after he called and they were separately interviewed by SA Rodgers in his truck while parked in her driveway.
- Ladley stated that, upon entering SA Rodger's truck, he began to record the interview and started by stating the date and then requesting that she tell her story. Ladley stated that SA Rodgers gave her no details of the investigation other than the fact that a deputy was involved.
- Ladley stated that SA Rodgers asked her questions during the interview and, upon the conclusion, gave her his business card and requested that she not discuss the matter

with the news media. SA Rodgers did not instruct Ladley not talk to any other law enforcement.

- Ladley was questioned regarding the issue of the State Attorney's Office attempting to interview her without SA Rodgers. Ladley stated that she did not know who the person was who contacted her and had checked with SA Rodgers to make sure they were not the news media.
- Ladley was then questioned about SA Rodgers demeanor and attitude at the time she was interviewed. Ladley described SA Rodgers as being nice and professional throughout the interview. Ladley was questioned as to whether or not SA Rodgers had coached her in any way to which she replied that he had not.

Stacey Boswell – Witness

Location: 110 Belles Court, St. Augustine Beach, Florida

Date: May 6, 2013

Type: Interview – recorded

- Boswell was previously interviewed by Special Agent (SA) Rusty Rodgers on February 2, 2011.
- Boswell stated that she was telephonically contacted by SA Rodgers to arrange an interview. SA Rodgers advised her that he had been brought in by the SJCSO to investigate the death of Michelle O'Connell due to the involvement of a deputy.
- Boswell stated that Ladley was interviewed first and that, upon the conclusion of Ladley's interview, she called Boswell to come and meet with SA Rodgers. Boswell stated that SA Rodgers recorded the interview and that he gave her no details of the case prior to starting the recorder.
- Boswell stated that the only other contact she had with SA Rodgers was when she took a polygraph test and met with SA Rodgers and 7th Judicial Circuit State Attorney Investigator Hardwick.
- Boswell reiterated that SA Rodgers provided her no details of what occurred the night of Michelle O'Connell's death and did not identify any of the persons involved.
- Boswell was asked if she had been coached or influenced by SA Rodgers, to which she replied that she had not and that SA Rodgers was "professional." Boswell also recalled that she had contacted SA Rodgers to verify that it was alright for her to talk to State Attorneys Investigators about the investigation.

Austin Taylor – Witness

Location: Via Telephone

Date: May 9, 2013

Type: Interview – recorded

- Taylor provided a statement to SA Rusty Rodgers and Special Agent Supervisor (SAS) Mark Brutnell on April 15, 2011.
- Taylor explained that he provided his statement to SA Rodgers, reiterating that he was not present at the Banks residence the night of Michelle O'Connell's death. Taylor indicated that he had some knowledge of the events that occurred, because he was friends with Jeremy Banks. Taylor advised that SA Rodgers was polite and professional during the interview and did not try to influence or "coach" him regarding the information he provided in his statement.

Steve Donaway – (Former) Assistant Special Agent in Charge

Location: Jacksonville Regional Operations Center

Date: May 13, 2013

Type: Interview – recorded

- Assistant Special Agent (ASAC) Donaway stated that he recalled FDLE initiated the investigation into the death of Michelle O'Connell at the request of SJCSO. ASAC Donaway indicated that the request was made due to an apparent conflict that arose between SJCSO and family members of Michelle O'Connell who were employed by the SJCSO. ASAC Donaway explained that the investigation was assigned to SA Rodgers.
- ASAC Donaway stated that, throughout the case, numerous meetings were held between members of FDLE and the SAO to discuss and provide investigative direction. ASAC Donaway stated that SJCSO Undersheriff Joel Bolante also attended these meetings.
- ASAC Donaway stated that FDLE worked the investigation in conjunction with the State Attorney's Office of the Seventh Judicial Circuit of Florida (SAO).
- ASAC Donaway indicated there was "heavy oversight" over the investigative actions of SA Rodgers because of the sensitivity of the investigation.
- ASAC Donaway stated that he had no firsthand involvement in the day-to-day investigative activity performed by SA Rodgers or the SAO Investigators.
- ASAC Donaway could not recall whether he reviewed any of the affidavits or related search warrants secured during the course of the investigation by SA Rodgers. ASAC Donaway explained that the SAO wanted, from the beginning, to review all legal processes related to the investigation.
- ASAC Donaway stated he did not have firsthand knowledge of the events that took place during the interview with regard to SA Rodgers taking possession of Banks' phone, but

recalled being informed by SA Rodgers that Assistant State Attorney Mark Johnson advised SA Rodgers to take possession of the phone.

- ASAC Donaway was advised that, during SA Rodgers' interview of Jeremy Banks, SA Rodgers advised Banks that he was not free to leave after the interview concluded. ASAC Donaway explained he was not aware of the statement. ASAC Donaway recalled being informed that there was difficulty in downloading the contents of Banks' phone. ASAC Donaway also recalled that he was advised by SAS Brutnell that Banks was told on multiple occasions that he could leave the FDLE office and the phone would be returned to him as soon as it could be downloaded. ASAC Donaway said he was further briefed by SAS Brutnell that Banks said he would stay until the phone download was complete.

Mark Brutnell – Special Agent Supervisor

Location: Jacksonville Regional Operations Center

Date: May 13, 2013

Type: Interview – recorded

- SAS Brutnell stated that the FDLE JROC was requested to review of the death investigation of Michelle O'Connell by SJCSO Sheriff David Shoar. Michelle O'Connell was the girlfriend of SJCSO Deputy Jeremy Banks and died at their shared residence while he was present. SAS Brutnell stated that Special Agent in Charge (SAC) Dominic Pape instructed SA Rodgers and him to meet with the SJCSO and obtain all pertinent information relating to the death of O'Connell.
- SAS Brutnell stated that he and SA Rodgers met with the majority of the SJCSO Robbery/Homicide Unit and several crime scene personnel and received the entire SJCSO case file relating to the O'Connell death investigation.
- SA Rodgers subsequently initiated an official FDLE investigation into the Michelle O'Connell death, which included a review of the SJCSO case file. During the initial stages of the investigation, it was determined that no evidence was submitted for forensic analysis by the SJCSO, which required numerous items of evidence to be submitted by SA Rodgers.
- SAS Brutnell stated that FDLE later began interviewing witnesses and, during this process, SA Rodgers received information from an O'Connell family member regarding Stacy Boswell and Heather Ladley, who reportedly heard gunshots and screams on the evening of the death of Michelle O'Connell.
- SAS Brutnell also stated that, prior to the interviews of Boswell and Ladley, SA Rodgers made several statements to SAS Brutnell indicating that he (SA Rodgers) believed that the death of O'Connell was a suicide.
- SAS Brutnell stated that he advised ASAC Steve Donaway and SAC Pape of the new information concerning Boswell and Ladley. SAS Brutnell stated that he and SA

Rodgers returned to the residences of Boswell and Ladley and questioned them as to why they had not brought forth the information to the SJCSO at the time Michelle O'Connell's death. SAS Brutnell stated that Boswell and Ladley had indicated that they did not relay the information to SCJCSO due to a lack of trust in that department.

- SAS Brutnell stated that the decision was made to polygraph both Boswell and Ladley. The United States Secret Service conducted both polygraphs, which resulted in determinations that both subjects had been truthful.
- SAS Brutnell stated that he and SA Rodgers then briefed SAO Investigators Robert Hardwick and Noel Griffin, ASA Mark Johnson (assigned to investigation), State Attorney RJ Larizza, ASA Luis Bustamante, and SCJCSO Undersheriff Bolante as a result of the polygraphs. SAS Brutnell further stated that ASA Mark Johnson and SAO Investigator Hardwick also interviewed both Boswell and Ladley and determined that they both appeared to have been truthful.
- According to SAS Brutnell, "Everyone was on the same sheet of music." Dr. Findley traveled to Florida and presented a PowerPoint presentation of his findings to SAS Brutnell, SA Rodgers, State Attorney Larizza, SCJCSO Undersheriff Bolante, and ASA Mark Johnson.
- SAS Brutnell stated that, after this presentation, SA Rodgers made several statements that he did not believe that the death of O'Connell occurred as reported by Deputy Banks. SAS Brutnell stated that SA Rodgers did not specifically state that the death was a homicide.
- It was determined through approval by SAO Investigator Hardwick that SA Rodgers would obtain search warrants for the residence of Deputy Banks located at 4700 Sherlock Place and a second residence at which Deputy Banks had resided on State Road 206.
- Deputy Banks was subsequently contacted and asked by SA Rodgers to come to the JROC office for a voluntary interview. Deputy Banks agreed and arrived at the JROC office for the interview with SA Rodgers. SAS Brutnell stated that the interview was conducted in an interview room that allowed for monitoring, audio and video recording.
- SAS Brutnell stated that he monitored most of the interview and was aware that SA Rodgers advised Deputy Banks several times that the interview was voluntary and that he was free to leave whenever he chose.
- SAS Brutnell stated that he was not specifically aware if there had been a search warrant for the phone of Deputy Banks but had relied on the more than thirty years of experience of SA Rodgers to have obtained the proper search warrants.
- SAS Brutnell stated that Deputy Banks provided his cellular phone to SA Rodgers and that FDLE had attempted to download the phone contents using the Cellbrite system. This could not initially be accomplished, and SAS Brutnell stated that he intervened and advised Deputy Banks that he could leave or wait for the phone.

- SAS Brutnell stated that he advised Deputy Banks that he would make sure to return the phone to him the following day. The phone was then secured in temporary evidence storage and Deputy Banks followed SAS Brutnell and SA Rodgers to his (Deputy Bank's) residence on State Road 206, where FDLE units were already waiting to execute the search warrant.
- SAS Brutnell stated that SA Rodgers was the "conduit" for information relating to the day-to-day operations of the Michelle O'Connell death investigation to the SAO. He further stated that SA Rodgers was on a "very tight leash."
- SAS Brutnell advised that everyone was apprised of the progress of the FDLE investigation and that no one raised any concerns regarding the manner in which SA Rodgers was conducting the investigation until the end, when SCJSO Undersheriff Bolante questioned SA Rodger's objectivity.
- SAS Brutnell was questioned about the text messages between Michelle O'Connell's phone and her sister Chrissie's phone. SAS Brutnell recalled that these messages had been reviewed; however, he was unsure of the outcome and why there would be time changes on the text messages. SAS Brutnell was also questioned about a particular text message that was alleged to have been received by Chrissie O'Connell at 10:58PM on the evening of the death of O'Connell. SAS Brutnell related that this information came from SA Rodgers and he (Brutnell) was not sure of the source of this information.
- SAS Brutnell was questioned about the issue of SA Rodgers seizing the phone of Deputy Banks after Deputy Banks had requested legal counsel in an interview. SAS Brutnell believed that there was a search warrant for the phone, but stated that he had not actually seen a search warrant specifically for the phone.
- SAS Brutnell stated that he was of the opinion that Deputy Banks had been free to leave at any time and he did not hear SA Rodgers advise Deputy Banks that he was not free to leave. SAS Brutnell advised that he had only monitored the interview through an audio/video system and had watched approximately 90 percent of the interview live.
- SAS Brutnell was questioned about the four affidavits and related search warrants authored by SA Rodgers during the course of the investigation. SAS Brutnell stated that he had reviewed the documents and made only grammatical corrections. SAS Brutnell directed SA Rodgers to provide the warrants to the SAO for approval, and JROC RLA Kemner was not part of the approval process. SAS Brutnell stated that he was never made aware of any concerns by the SAO in regard to the approval of the search warrants.

John Kemner – Regional Legal Advisor

Location: Jacksonville Regional Operations Center

Date: May 13, 2013

Type: Interview – recorded

- RLA Kemner stated that he was not involved in writing or reviewing any of SA Rodgers' search warrant affidavits because of ASA Johnson's assistance in the case.
- RLA Kemner stated that he was neither consulted nor did he assist in the preparation of any interview of Deputy Banks. RLA Kemner further stated that he did not have any knowledge of any of the actions taken by SA Rodgers during the interviews with Deputy Banks.

Noel Griffin – Chief of Investigations

Location: Office of the State Attorney Seventh Judicial Circuit, St. Augustine, Florida
 Date: March 24, 2015
 Type: Interview – recorded

- Griffin explained he occasionally received briefings from SAO Investigator Hardwick as to the status of the Michelle O'Connell death investigation and the direction it was going. Griffin stated that his only other involvement was attending executive briefings with the SAO, FDLE, and St. Johns County Undersheriff Joel Bolante. Griffin recalled attending approximately four to five executive briefings. Griffin indicated that the meetings were held to discuss the investigative findings of the case and to strategize about future investigative activity.
- Griffin stated that he did not recall any concerns being raised at these meetings about SA Rodgers or his actions; however, Griffin stated that Investigator Hardwick conveyed to him during the investigation that SA Rodgers may have lost his objectivity. Griffin indicated that no concerns were brought to his attention that SA Rodgers' activities were illegal, immoral or improper.

R.J. Larizza – State Attorney

Location: Office of the State Attorney, Seventh Judicial Circuit, St. Augustine, Florida
 Date: May 20, 2013
 Type: Interview – recorded

- Larizza advised that he was not involved in the day-to-day activities of the Michelle O'Connell death investigation, but was occasionally briefed on the progress of the investigation by Assistant State Attorney (ASA) Mark Johnson and/or Investigator Hardwick.
- Larizza stated that no concerns were brought to his attention regarding SA Rodgers' activities which rose to a level that he felt needed to be referred to FDLE command staff.

David Shoar – Sheriff

Location: St Johns County Sheriff's Office

Date: May 20, 2013
Type: Interview – recorded

- SJCSO Sheriff Shoar stated that his request for FDLE to conduct an independent investigation into the death of Michelle O'Connell was based on multiple factors. Sheriff Shoar indicated that these factors included familial relationships within the SJCSO, concerns by the family of a potential suspicious death, and the fact that the SJCSO initial investigation "came up short in some areas." Sheriff Shoar explained that because of these factors, he contacted SAC Pape and requested FDLE's assistance.
- Sheriff Shoar stated that he was not involved in the day-to-day investigative activities conducted by FDLE. Sheriff Shoar indicated that, while the investigation was ongoing, he received briefings regarding the status of the investigation from SJCSO Undersheriff Bolante.
- Sheriff Shoar stated that his report to FDLE was actually the fifth complaint made against SAC Pape and SA Rodgers. Sheriff Shoar explained that the first complaint was his verbal complaint to SAC Pape about SA Rodgers that caused him to schedule a meeting with FDLE Commissioner Gerald Bailey, which was later cancelled.
- The second complaint was correspondence provided to Brutnell that was written by the attorney of SJCSO Deputy Jeremy Banks regarding the actions of SA Rodgers.
- The third complaint was correspondence written by the father of SJCSO Deputy Banks, which also discussed the actions of SA Rodgers.
- The fourth complaint involved the actions of SAC Pape with regards to the correspondence SAC Pape provided to Assistant State Attorney Brad King, Fifth Judicial Circuit requesting a "coroner's inquest" and SAC Pape's subsequent request suggesting the correspondence be considered a "draft" document.
- Sheriff Shoar proceeded to reiterate and discuss many of the allegations made against SA Rodgers that were presented in his report. Sheriff Shoar indicated that he did not believe that SA Rodgers' actions were the product of "tunnel vision" or "sloppy" police work. Sheriff Shoar stated that he believed that SA Rodgers withheld evidence, advanced false information to both medical and judicial authorities, manufactured evidence, and exploited O'Connell family members.

Chrissy O'Connell – Witness

Location: Jacksonville, Florida
Date: June 11, 2013
Type: Interview – recorded

- O'Connell explained that SA Rodgers advised her that FDLE had initiated an investigation into the death of her sister, at the request of Sheriff Shoar.

- O'Connell stated that when SA Rodgers provided her the subpoena, she wanted to discuss numerous text messages on her phone between her and Michelle O'Connell from the night of her (Michelle O'Connell) death. O'Connell stated that she advised SA Rodgers about the manner in which the phone operated and further advised SA Rodgers that a text message appeared to be missing, specifically a 10:58pm text message from the night of Michelle O'Connell's death. O'Connell stated that SA Rodgers took notes while she was discussing the text messages. O'Connell stated she later provided an official interview to SA Rodgers at the Jacksonville Regional Operations Center.

Rusty Rodgers – Special Agent

Location: Jacksonville Regional Operations Center

Date: February 12, 2016

Type: Interview – recorded

- SA Rodgers stated that Chrissy O'Connell reported having received a text message from Michelle O'Connell at 10:58pm on September 2, 2010. Chrissy O'Connell reported that Michelle O'Connell stated in the text message that she was on her way to pick up her daughter Alexis, SA Rodgers stated that he documented the text message by placing it in a PowerPoint that he created with help from an analyst. SA Rodgers also stated that it was reported in the PowerPoint and was factual based on the information he has in his notes.
- SA Rodgers stated that he obtained one sworn statement from Chrissy O'Connell.
- SA Rodgers stated that when he documented in his investigative report that the time of the text was 10:00pm on the night of Michelle's death that it was probably 10:58pm and he wrote the wrong time down in the report.
- SA Rodgers stated "keep in mind these text messages that we're talking about are not in quotations these are not literally verbatim". SA Rodgers stated that "I am not reporting that they're verbatim, they're a content".
- SA Rodgers stated that the PowerPoint was a gathering of information of the facts and findings and passed on in a concise manner and taken from the download of Chrissy's phone and from the statements that Chrissy told him about, which he documented in the form of notes. SA Rodgers believed that he learned about the 10:58pm text message from Chrissy but not during a sworn interview.
- SA Rodgers stated that the reference he used with regard to being in possession of a 10:58pm text was not used as an interview technique, but was a factual text obtained during the investigation.
- SA Rodgers stated that Chrissy advised him that she sometimes used a web based text messaging format where on occasion texts were deleted or she never received them.

- SA Rodgers stated that he believed that the 10:58pm text message appeared in an Investigative Report as an attachment.
- SA Rodgers stated that he did not write an Investigative Report documenting the text message.
- SA Rodgers stated that he was not sure if he took a photograph of the 10:58pm text message. SA Rodgers stated that if he took a photograph of the 10:58pm text message from Chrissy's phone he would have placed it into the Related Items section of the case file.
- SA Rodgers stated that when Chrissy was interviewed by OEI Inspector Brett Lycett, she stated that she received a text message from Michelle at 10:58pm.
- SA Rodgers stated that a text message is not a hundred percent factual because we do not know who sent the message, somebody else could have had Michelle's phone. Rodgers stated that the text message is documented in his notes and in his PowerPoint, which was attached to the Related Items section of the case file.
- SA Rodgers stated that the PowerPoint slide containing the text messages was a factual document.
- SA Rodgers stated that Jerry Findley is a crime scene Reconstructionist who was hired at the request of the Office of the State Attorney 7th Judicial Circuit.
- SA Rodgers stated that he provided Findley information for him to review for his consideration and his interpretation.
- SA Rodgers stated that he interviewed SJCSO Deputy Debra Maynard as a witness in the investigation.
- SA Rodgers was asked about Investigative Report #82, which documented the interview of Deputy Maynard. Specifically, SA Rodgers was asked why only a portion of the interview was summarized in the Investigative report. SA Rodgers stated that his Investigative Report was a summary of the sworn statement of Maynard, and not a verbatim account of the events. SA Rodgers stated that it was a synoptic review, "if something is left out then its incumbent upon the person to go in and actually pull the original tape if there is stuff they feel like is missing."
- SA Rodgers stated that leaving the last part of the interview with Maynard out of the Investigative Report was unintentional.
- SA Rodgers stated that with regard to sworn taped statements, he would listen to the interview and then document the interview in an Investigative Report.
- When questioned about an incorrect quote that he (Rodgers) included in a search warrant affidavit, which described part of the 911 call Banks made on the day of Michelle

O'Connell's death, SA Rodgers advised that he should not have used quotes and should not have added the word "now" into the affidavit. SA Rodgers stated it was not intentional on his part.

- SA Rodgers stated that he believed Banks was being deceitful and trying to hide his identity when making the initial call to 911 on the night he reported the death of Michelle O'Connell.
- SA Rodgers stated that Banks was emotional and that Banks went from one extreme to another.
- SA Rodgers stated that the search warrant for Banks' home included language that allowed for the search of Bank's cellular phone.
- SA Rodgers stated that he spoke with Assistant State Attorney Mark Johnson about Banks' cell phone, and was told by ASA Johnson that based on the functions of Banks' cell phone (iPhone) that it would fall under the laptop, notebook, and pocket computer language.
- SA Rodgers advised that ASA Johnson told him that securing the cell phone outside of St. Johns County and scope of the warrant would be fine, that they would argue the scope of the warrant in a suppression hearing.
- SA Rodgers stated that the reason he did not get a specific warrant just for Banks' cell phone was that he already had a [REDACTED] on Banks' cell phone.
- SA Rodgers stated that he was already getting through the [REDACTED] order the information he would have requested from a traditional cell phone search warrant and the warrant was for the other items which included, photographs, text messages, possibly stored within Banks' cell phone.
- SA Rodgers stated that ASA Johnson put the language in the warrant and was comfortable with the execution of the warrant.
- SA Rodgers stated that Banks had over 11,000 text messages on his cell phone.
- SA Rodgers stated that it was important to return the cell phone back to Banks due to continuing to gather information through the [REDACTED]
- SA Rodgers stated that he had a team of FDLE agents ready to respond to Banks residence to execute the search warrant. SA Rodgers stated that once the interview was completed and the search warrant was ready to be served, the team was notified and then they responded to the address to secure the residence. SA Rodgers stated that Banks was detained until the team arrived on the scene and the residence was secure.
- SA Rodgers stated that he would create place holders in AIM for reports and then go back and write reports at a later date. SA Rodgers stated the he would do this so that

his reports in AIM would be in chronological order. SA Rodgers stated that it would take a few more weeks before the body of the report would be entered into AIM.

- SA Rodgers stated that he was never late on his Investigative Report writing.
- SA Rodgers stated that the rules for documenting in his case report was stipulated by his four levels of supervision and that other dynamics were involved that dictated the instructions provided to him. SA Rodgers added that he was given extensions on report due dates based on the fact that he was the only agent assigned to the investigation.
- SA Rodgers stated that there was not one administrative note logged into the case file because he was forbidden by SAC Pape to document meetings at the medical examiner or with the sheriff's office because SAC Pape was afraid that Sheriff Shoar would be upset.
- SA Rodgers stated that his investigative reports were usually completed in a word document then forwarded to SAS Brutnell. SA Rodgers added that several times SAS Brutnell disagreed with him over a particular report because "they sounded too nasty and we were going to make the sheriff mad at us."
- SA Rodgers stated that information he received and documented within the first two search warrant affidavits changed prior to completing a fourth search warrant affidavit. SA Rodgers stated that a witness in the investigation, Mindy Fox, advised that another witness, Austin Taylor, was present at the time of Michelle's death. SA Rodgers stated that by the time that he was authoring the fourth search warrant affidavit, he had interviewed Taylor and discovered that the information provided by Fox was not accurate and that Taylor was not present at the time of Michelle O'Connell's death. SA Rodgers stated that he did not include Fox's statement, that Taylor was present at the time of O'Connell's death, in the fourth search warrant affidavit.
- SA Rodgers stated that if there were things left out of his Investigative Reports and affidavits, they were not done intentionally.
- SA Rodgers stated that he believed that there should have been at least three more special agents assigned to this investigation.
- SA Rodgers stated that he does not have an opinion one way or the other what caused Michelle O'Connell's death. SA Rodgers stated that he has never said to anyone that Banks killed Michelle O'Connell, but that "toward the end of the investigation, it did not go down like he (Banks) said it did."
- SA Rodgers stated that, regarding the documentation of the case, there was always room for improvement.

SECTION IV

CONCLUSIONS / RECOMMENDATIONS

On March 26, 2013, St. Johns County Sheriff David Shoar submitted a 150 page report titled, "Review of Michelle O'Connell's Death Investigation", to FDLE's Office of Executive Investigations. SJCSO's report contained allegations that SA Rodgers withheld evidence, advanced false information to both medical and judicial authorities, manufactured evidence, and exploited O'Connell family members. After review of SA Rodgers' case file and the interviews of witnesses associated with multiple investigations and reviews of the matter it was determined that SA Rodgers' actions, as described, would be more appropriately addressed as possible substandard work.

1. Count 1: Florida Administrative Code 11I-1.011 (23)-Substandard Work:

After a review of all documents and sworn statements obtained in multiple criminal investigations / reviews and this administrative investigation it can be determined that on some occasions SA Rodgers did not follow established FDLE procedures while investigating Michelle O'Connell's death at the request of the SJCSO. The following are some examples of substandard work on the part of SA Rodgers. These examples are not all inclusive, but an overall representative of the actions by SA Rodgers:

- SA Rodgers provided specific details in a PowerPoint presentation regarding a text message, allegedly sent from Michelle O'Connell's cellular phone to Chrissy O'Connell's cell phone, noting that Michelle O'Connell was on her way to pick up her daughter. SA Rodgers noted that the text was to have originated at 10:58pm on the evening of Michelle O'Connell's death. The text message was not discovered in a forensic download from Chrissy O'Connell's cellular phone. SA Rodgers did not properly document the verbal receipt of a piece of information reported by Chrissy O'Connell in his Investigative Report and as a result failed to preserve the complete facts and circumstances surrounding the information.
- SA Rodgers omitted a portion of an interview with Deputy Debra Maynard in his Investigative Report #82, this being that the family of Michelle O'Connell was notified by Michelle throughout the day by phone call or text message.
- SA Rodgers misquoted a statement made by Jeremy Banks during his telephone call to 911 on the night of Michelle's death in several search warrant affidavits.

Each of the examples listed above will be addressed as follows:

During his sworn statement, SA Rodgers stated that Chrissy O'Connell told him about a text message that she received from her sister, Michelle O'Connell, at 10:58pm, where Michelle texted Chrissy that she was on her way to pick up her daughter Alexis. This text message was reported to have been the last known phone communication on the part of Michelle just prior to her death. However, data recovered from Michelle O'Connell and Chrissy O'Connell's cellular phones indicate that the last message sent by Michelle to Chrissy O'Connell was at 10:56pm which stated "Lexi will be happy and always have a good life".

It can be determined through the investigation and review of all of the documents in the case file that the text message, although significant to the timeline of events, was not properly documented within the case file. SA Rodgers did not obtain a sworn statement from Chrissy that indicated a text was received at 10:58pm. SA Rodgers advised that if he had taken a picture of the text message he would have documented it in the related items section of the case file. The only record of a text message at 10:58pm was found in a hand written note made by SA Rodgers and a PowerPoint SA Rodgers presented to a medical examiner. During a subsequent investigation by FDLE Inspector Brett Lycett in 2013, Chrissy O'Connell stated in a sworn statement to him that she had verbally told SA Rodgers of the text message she received from Michelle O'Connell at 10:58pm.

SA Rodgers failed to properly document Chrissy O'Connell's verbal statement in an official Investigative Report and instead chose to include the text information in a PowerPoint presentation without the necessary and required supportive documentation. SA Rodgers did not properly document the verbal receipt of a piece of information reported by Chrissy O'Connell in his Investigative Report and as a result failed to preserve the complete facts and circumstances surrounding the information. FDLE, Operational Procedures, Investigative Report and Documentation, Standards for Submission, state that Members are required to document analytical and investigative activities in an Investigative Report within the Automated Investigative Management System (AIMS). These activities may include, but are not limited to: Interviews.

SA Rodgers failed to properly document portions of an interview he conducted with Deputy Debra Maynard. In SA Rodgers case file, JA-73-1483, Investigative Report #82, SA Rodgers failed to document that Deputy Maynard reported to him that the family of Michelle O'Connell was contacted by Michelle, through telephone calls or text messages, throughout the day preceding her death. The information provided to SA Rodgers from Deputy Maynard was that the family told Deputy Maynard that they had all received either a text message or a phone call from Michelle on the day of her death in which she asked them to take care of her daughter in the event anything happened to her. Additionally, SA Rodgers failed to properly document a portion of Deputy Maynard's statement, indicating that she made a death notification to the family of Michelle O'Connell on the evening of her death.

SA Rodgers advised that upon obtaining a sworn audio recorded statement from a witness he then documented the statement by listening to the interview and writing a report. As a result, it can be determined that, SA Rodgers failed to thoroughly document relevant information of Deputy Maynard's interview in his report. FDLE, Operational Procedures, Investigative Report and Documentation state that the author is responsible for ensuring that the report is accurate and complete and free of errors.

SA Rodgers misquoted a verbal statement by Jeremy Banks, made during a recorded telephone call to 911 on the night of Michelle O'Connell's death, in three search warrant affidavits and a court order for a [REDACTED] that he prepared and obtained during FDLE's investigation. SA Rodgers stated that he should not have used quotes within the affidavit of his search warrants. In a transcript of Banks' 911 call, Banks is quoted as saying "It's Sir, it's Sir, listen hang on okay let me tell you the truth, I'm Deputy Banks with the St. Johns County Sheriff's Office, I'm I work with ya'll. Get someone here now" SA Rodgers quoted Banks in his affidavits by writing "going to tell [her] the truth now". The "[her]" in the 911 call is a reference to the dispatcher that Banks was talking with at the time of the call. SA Rodgers advised that he

should not have added the word “now” to the quote, but that he felt that it did not change the content of the information. SA Rodgers added that this was not intentional. FDLE, Operational Procedures, Investigative Report and Documentation state that the author is responsible for ensuring that the report is accurate, complete, and free of errors.

Therefore, a finding of **SUSTAINED** is recommended in the matter.

SECTION V

ADDITIONAL FINDINGS / RECOMMENDATIONS

A review of the actions by Special Agent in Charge (SAC) Dominic Pape was completed and conducted concurrently with the SA Rodgers administrative investigation. It was determined that there was no conclusive evidence, either by witness or documentation, that SAC Pape violated any of FDLE’s policies and procedures. SAC Pape had subsequently retired from FDLE and after contacted by OEI, former SAC Pape declined to provide an interview in the administrative investigation.

Included in SJCSO’s complaint was an allegation that SA Rodgers improperly detained Jeremy Banks at the conclusion of a voluntary interview on April 14, 2011, in the fourth judicial circuit, and seized and searched Banks’ iPhone outside the jurisdiction scope of a search warrant he obtained for a residence located in the seventh judicial circuit

On July 29, 2015, State Attorney Jeff Ashton’s Office (Ninth Judicial Circuit) was assigned to conduct a review of SA Rodger’s investigation / review of the Michelle O’Connell death investigation, as presented to State Attorney Brad King’s Office (Fifth Judicial Circuit). State Attorney Ashton was to review and evaluate any newly discovered evidence that might be in existence, which could potentially have altered the outcome of the prior inquiry. State Attorney Ashton’s office concluded that, whatever suspicions remain as to the manner of death of Michelle O’Connell, the evidence does not rise to the level of probable cause that a homicide occurred. State Attorney Ashton deferred to the State Attorney’s Office for the Eighth Judicial Circuit, who was charged with reviewing SA Rodger’s conduct in the matter. See a copy of State Attorney Ashton’s closing letter and supportive documents for complete details.

The allegations noted above were reviewed and addressed by the State Attorney’s Office in the Eighth Judicial Circuit, pursuant to Governor’s Executive Assignment #2014-220, and later expanded to act in the Seventh Circuit by Executive Orders No. 2014-201 and 232. State Attorney William Cervone’s office was assigned an investigation into allegations of misconduct by SA Rodgers. State Attorney Cervone was asked to determine if SA Rodgers had violated any criminal laws during the course of his investigation into the Michelle O’Connell death investigation, and if any such violation might have occurred and was supported by sufficient evidence for prosecution. After having conducted their investigation, State Attorney Cervone determined that he would not file any criminal charges against SA Rodgers. See a copy of State Attorney Cervone’s closing letter and supportive documents for complete details.

Regarding an allegation that SA Rodgers improperly detained Jeremy Banks at the conclusion of a voluntary interview on April 14, 2011, the results are as follows:

Based upon a review of audio / video recordings and SA Rodger's statements, it can be determined that SA Rodgers acted in good faith when he briefly detained Jeremy Banks and seized his iPhone, just prior to executing a search warrant for Banks residence in St Johns County, Florida. In a sworn statement provided by ASA Mark Johnson, he advised that he was a part of the review process of all search warrants and the court order for a [REDACTED] regarding the Michelle O'Connell death investigation. SA Rodgers advised that ASA Johnson reviewed the search warrants and the court order for a [REDACTED] on Banks' cellular phone and this review by ASA Johnson clearly covered the discussion of the jurisdiction of seizing the cellular phone. It can be concluded that SA Rodgers was acting in concert with legal recommendations and other guidance that he was provided in the matter. During his sworn statement, SA Rodgers explained that the actions he took at the conclusion of Banks voluntary interview were linked to the impending execution of a search warrant and the collection / preservation of evidence, as described in the search warrant.

It is recommended that the Michelle O'Connell death investigation, FDLE Case #JA-73-1483, be reviewed / assessed with a specific emphasis to identify any needed changes to the investigative policy, procedures or required training of responsible members.