

TO: John J. Hearn, City Attorney
FROM: Andrew B. Dunkiel, Assistant City Attorney
RE: Inquiry into assist EMS call involving Dan Daley
DATE: 9/28/2017

I was asked to conduct an inquiry into the events that occurred on September 14, 2017, relating to an assist EMS call. The scope of this inquiry was to determine (1) whether there was a violation of policy, and (2) whether there was undue command influence.

FACTS

I sent memoranda to each sworn law enforcement member involved in this call asking them to provide me (1) their involvement and role in the call, (2) what actions they took on this call, and (3) what decisions were made and who made those decisions.

The following set of facts are based on a synthesis of the responses from the sworn law enforcement members, 911 call audio, and other information available to me. All memoranda received are substantively consistent. The relevant facts are as follows:

On September 14, 2017 at 5:22 A.M. a tow truck driver called 911 regarding a motorist who was unconscious and unresponsive. The tow truck driver indicated during the 911 call that when she spoke to the motorist on the phone earlier that he was alert and responsive. Police officers and fire rescue were dispatched. Officer Kaban arrived on scene first and, upon approaching the vehicle, recognized the individual in the vehicle to be Dan Daley. The vehicle did not have body damage but had a flat tire. Dan Daley refused EMS and Officer Kaban canceled the call for EMS. He also notified Officer Kaban that he was waiting for a ride. Shortly thereafter Officers Murdock and Anderson arrived on the scene.

Officer Kaban called Sergeant Vullo. Sergeant Vullo was at the police station with Lieutenant Neese and both responded to the scene.

At some point before Sergeant Vullo and Lieutenant Neese arrived at the scene or shortly thereafter, Deputy Chief Parry was briefed by Lieutenant Neese. Lieutenant Neese originally assumed that Dan Daley was intoxicated and notified Deputy Chief Parry of this assumption. Lieutenant Neese made this assumption based on the time of day and the fact that the vehicle was inoperative. Deputy Chief Parry said that he would call Lieutenant Neese back and called Acting Chief Backer to pass along this information.

On scene Lieutenant Neese noted that that Dan Daley's car, "appeared to be properly parked in a public parking space." Further, no one observed Dan Daley driving and no roadside exercises were conducted. Officer Kaban also informed Lieutenant Neese that Dan Daley's car was inoperable due to a flat front tire.

At the moment he was notified of the flat tire, Lieutenant Neese received a call from Deputy Chief Parry. Lieutenant Neese updated Deputy Chief Parry of the facts as he then understood them.

Based on the facts that they knew, the decision was made that the vehicle would be towed and a cab would be called to take Dan Daley home.

Lieutenant Neese then made contact with Dan Daley. According to Lieutenant Neese, Dan Daley did not smell like alcohol, was not slurring his words, and did not appear to be intoxicated. Dan Daley explained that he had struck a curb and pulled into a parking space after his tire blew. He attempted to call an Uber, however they were not operating, and he therefore called AAA.

A short time later Officer Wetherington decided to go to the scene after his off-duty detail had ended. Upon his arrival at the scene Lieutenant Neese informed Officer Wetherington to leave since he was not on duty and his assistance was not needed.

The last officer cleared the call upon the dispatch of a robbery in progress call.

The next day Officer Wetherington authored a mobile communications terminal message to Officer Murdock after Officer Murdock made a DUI arrest. A copy of the message is attached hereto. Officer Wetherington explained that Officer Murdock is a friend and that this message was intended as a joke.

RELEVANT POLICIES

General Order 2, Organization and Administration

General Order 10, Limits of Authority

General Order 23B, Driving Under the Influence

General Order 38, Media Relations

DISCUSSION

The first issue is whether there was misconduct on the part of the officers on scene. As discussed below, the officers and supervisors on scene acted appropriately and consistent with policy.

Police officers have the ability to, “act in accordance with what is fair and equitable under the specific circumstances guided by the spirit and principles of the law.” GO 10.2. This limited ability is called discretion. Discretion is a limited decision based on what is “reasonable, justifiable, articulable, and within the limits of the law.” *Id.*

All decision making within the Police Department is subject to the chain of command. GO 2.3.6. The chain of command is based upon a rank structure for decision making purposes. *Id.* On the night of the September 14, 2017, Lieutenant Neese was the highest ranking member on duty and therefore responsible for the decisions made in this case. *See* GO 2.3.5(C) (providing supervisors responsible for acts of subordinates); *see also* GO 2.3.5(E) (providing that during nights, weekends, and holidays, that the highest ranking person in the Operations Division on duty is responsible for all operations).

In this case, Officer Kaban notified his supervisor of the situation and his supervisor communicated that information to Lieutenant Neese. This notification was consistent with the past practice in the enforcement of GO 38, relating to notifications of any incident that may attract media coverage.

Once notified, Lieutenant Neese had the authority to make all relevant decisions in this case including whether to arrest or to conduct field sobriety tests. In making his decision of what actions to take he consulted with Deputy Chief Parry. During that conversation Deputy Chief Parry and Lieutenant Neese agreed that, based on the facts, a cab should be called and Dan Daley should be released from the scene. Lieutenant Neese decided to proceed with that course of action. It should be noted that in reviewing the decision of calling a cab, I consulted with Sergeant David Kirkland from the Office of Professional Standards who confirmed the calling of a cab is a practice that has been extended to other individuals in a similar circumstances.

Further, based on the memorandum from Lieutenant Neese, probable cause for arrest did not exist. GO 23B.3.5 states that during a DUI investigation officers should take notice of certain indicators of impairment such as the odor of alcohol on their breath, the individual's general attitude, the individual's degree of cooperation, and any unusual actions.

In his memorandum, Lieutenant Neese says that he did not smell alcohol on Dan Daley's breath, that the car was parked "perfectly" in the parking spot, Dan Daley did not slur his words, cooperated by explaining the circumstances for the tow truck driver responding, and most importantly "did not appear to be intoxicated."

Based on the foregoing Lieutenant Neese made his decisions based on reasonable, justifiable, articulable facts. As such, there were no violations of policy on behalf of the responding officers or supervisors.

Turning to the second issue of whether there was undue command influence, no evidence exists that Deputy Chief Parry or Acting Chief Backer issued an order or otherwise required any action of Lieutenant Neese. Here, Lieutenant Neese sought to speak with Deputy Chief Parry since officers were on scene with Dan Daley. Deputy Chief Parry and Acting Chief Backer decided to allow the officers and supervisors on scene to decide the appropriate course of action. Therefore, based on the foregoing, there was not undue command influence.

CONCLUSION

On September 14, 2017, officers responded to an assist EMS call. Officers arrived on scene and notified their supervisor consistent with established policy. Lieutenant Neese had decision making power on scene pursuant to established policy. The decision was made that the vehicle (which had a flat tire) would be towed and that Dan Daley would be released from the scene. Based upon Lieutenant Neese's observation that Dan Daley "did not appear to be intoxicated," probable cause did not exist for arrest. Lieutenant Neese and his subordinates acted appropriately and consistent with policy. Furthermore, Lieutenant Neese did not have his decision making ability encroached upon by command staff and there was no undue command interference.

TO: Shawn Backer, Acting Police Chief
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

The City Attorney's Office is conducting an administrative inquiry relating to an "assist EMS" call on September 14, 2017 at approximately 5:30 A.M. This is not an internal investigation through the Office of Professional Standards and you are not the subject of an investigation.

The purpose of this inquiry is to fact find the events that occurred on September 14, 2017 at approximately 5:30 A.M.

You must submit a memorandum to me no later than Monday September 25, 2017 by 5:00 PM that details: (1) your involvement and role in this call, (2) what actions you took on this call, and (3) what decisions were made and who made those decisions on this call.

Your response needs to be signed, dated, and also have attached any and all documents, text messages, emails, and/or other information that have not previously been provided to Captain McKeone.

TO: Sean Kaban, Police Officer
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

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TO: Troy Murdock, Police Officer
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

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TO: Travis Neese, Police Lieutenant
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

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TO: Clyde Parry, Deputy Police Chief
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

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TO: Giovanni Vullo, Police Sergeant
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

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TO: Taylor Anderson, Police Officer
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

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Your response needs to be signed, dated, and also have attached any and all documents, text messages, emails, and/or other information that have not previously been provided to Captain McKeone.

TO: Stephen Wetherington, Police Officer
FROM: Andrew B. Dunkiel, Assistant City Attorney
DATE: 9/21/2017
RE: Assist EMS call

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The purpose of this inquiry is to fact find the events that occurred on September 14, 2017 at approximately 5:30 A.M.

You must submit a memorandum to me no later than Monday September 25, 2017 by 5:00 PM that details: (1) your involvement and role in this call, (2) what actions you took on this call, and (3) what decisions were made and who made those decisions on this call. Specifically, please address the substance of the mobile communications terminal message attached to this memorandum.

Your response needs to be signed, dated, and also have attached any and all documents, text messages, emails, and/or other information that have not previously been provided to Captain McKeone.

Brad McKeone

From: Thomas Ciampi
Sent: Tuesday, September 19, 2017 11:36 AM
To: Brad McKeone
Cc: Katherine Liriano
Subject: FW: Record in question

Brad,
This is what Adam found. 1A45 was Murdock, no return message.

From: Adam Cohen
Sent: Tuesday, September 19, 2017 11:35 AM
To: Thomas Ciampi <tciampi@coralsprings.org>
Subject: Record in question

actindex	rectime	userid	username	mesact	acttype	mctid	unitid
1472037	2017-09-15 04:52:22.000	PDSLW	STEPHEN WETHERINGTON	F1007 PDSLW STEPHEN WETHERINGTON 09/15/17 04:52:21 1A45 I GUESS THIS DRUNK DRIVER WAS NOT VICE MAYOR DAN DALEY LIKE LAST THE ONE FROM LAST NIGHT SO THE SUPERVISORS DON'T HAVE A PROBLEM WITH YOU MAKING THIS ARREST.	32	7050	F1007



Adam S. Cohen
Systems/Solutions Analyst • Information Technology Dept.
acohen@coralsprings.org • Phone 954-344-1078
City of Coral Springs • 9551 W. Sample Rd. • Coral Springs, Florida 33065





Police Department Memorandum

TO: Assistant City Attorney Andrew Dunkiel

FROM: Officer Taylor Anderson ID#1005

RE: Call # 20170120769

DATE: 9/27/2017

CC:

On September 14th, 2017 I responded to the parking lot of Orchard Supply Hardware (2322 North University Dr.) in reference to a medical call. While on scene I observed a Jeep SUV, (FL tag WC41K) parked in a parking space in the rear parking lot of the business. I observed a white male later identified as Daniel Daley standing outside the vehicle. I also observed that the vehicle appeared to have a flat left front tire. I remained on scene for a short time before I was dispatched to another call for service at a different location. I had no further involvement.

Thank You.



CORAL SPRINGS
EVERYTHING UNDER THE SUN

POLICE DEPARTMENT

To: Andrew Dunkiel, Assistant City Attorney
From: Lieutenant Travis Neese
Subject: Assist EMS Call
Date: September 22, 2017

Per your request, I am authoring this memo to address the incident that occurred in the early morning hours of September 14, 2017. I was meeting with Sergeant Vullo at approximately 0515 hours prior to briefing at the Police Department. An assist EMS call was dispatched because a AAA tow truck driver was trying to wake a subject in a vehicle they were going to tow. Several minutes later, Sergeant Vullo received a call from one of his officers stating that they were in contact with Dan Daley in reference to the call. Sergeant Vullo and I subsequently responded to the scene since it involved a City employee, and while en route, I called Deputy Chief Parry to advise him of the situation. He did not answer.

As I arrived, there were three officers on scene and a subject sitting outside of his car on the curb. The tow truck was parked behind a vehicle, which appeared to be properly parked in a public parking space. I met with the officers who advised that the subject was in fact Dan Daley. I asked if he was involved in a traffic crash involving another vehicle, Officer Kaban responded by stating that the vehicle was inoperable because he had a flat front tire.

At that moment, I received a call from Deputy Chief Parry. I advised him of the incident, to which we both agreed to have the vehicle towed and to call for a taxi to have Mr. Daley taken home.

I spoke to the officers on scene and told them what Deputy Chief Parry and I discussed. Since no roadside exercises were conducted, and no one observed Mr. Daley driving, the decision was made to have Mr. Daley taken home by way of taxi and his car towed.

At that time, I made contact with Mr. Daley who was seated at the curb. I advised him of what was going to occur and he understood. I did not smell an odor of an alcoholic beverage on him, however I only assumed he was intoxicated because of the time of day

this had occurred and his vehicle was inoperative. During our conversation, I made a comment to him how perfectly his vehicle was parked in a parking space. He said that he had struck a curb and pulled into this parking space after his tire blew. He tried to call Uber to bring him home, but because it was only days after the Hurricane, Uber was not operating, so he called AAA. Mr. Daley was not slurring words and did not appear to be intoxicated.

While we were waiting for the Taxi to arrive, I had conversation with the officers who were on scene. I told them that this situation was similar to the oral board question we ask our applicants and the identical question I was asked during my oral board with the Sunrise Police Department. The question is asked to gauge an applicant's ability to exercise discretion.

Several minutes later, Officer Wetherington arrived on scene. He was not on duty and had just left a detail. I met him at his vehicle as he arrived. I instructed him to leave since he was not working and his assistance was not needed.

While waiting for the taxi, I instructed the other officers to clear, since they were midnight shift officers and Sergeant Vullo would remain on scene. A very short time later, an armed robbery call was dispatched and I cleared the scene.




Travis Neese

Coral Springs Police Department

MEMORANDUM

Mission: To provide professional, high quality and effective police service in partnership with the community.

TO: Andrew B. Dunkiel, Assistant City Attorney

FROM: Deputy Chief Clyde Parry 

SUBJECT: Assist EMS call

DATE: September 25, 2017

On September 14, 2017, at 05:34 hours, Lt. Neese called my cell phone. I was sleeping at the time and did not hear the call.

At 05:35 hours, I received a text message from Lt. Travis Neese stating "Please call me when you can". The combination of the call and text alert woke me. I got out of bed and walked to a different section of my residence as I didn't want to wake my wife.

At 05:37 hours, as I was about to call Lt. Neese, I received another call that I answered. Lt. Neese stated that Capt. McKeone was out of town so he was calling me to make me aware that our officers responded to a call from a Triple A tow company. The tow company was at Orchard Hardware, located at Royal Palm and University Dr., to tow a vehicle that was parked at that business. When the tow driver arrived, the driver was sleeping in the vehicle. This prompted a call to dispatch for assistance. Lt. Neese advised that Officers Kaban and Murdock responded to the call and woke Dan Daily from a deep sleep. Lt. Neese stated that it appeared that Mr. Daily may have been drinking and hit a curb damaging his tire and rim of his vehicle. Mr. Daily apparently parked his vehicle, called for a tow and then fell asleep waiting for the tow. Lt. Neese advised that the officers on scene may do an impaired driving investigation and he wanted me to be informed of that. I told Lt. Neese that I would inform Interim Chief Backer.

At 05:39 hours, I called Interim Chief Backer and advised him of my conversation with Lt. Neese. We briefly discussed the options available to the officers on scene. I told Chief Backer that I would call him back when I learned what actions were taken by the officers on the scene.

At 05:43 hours, I called Lt. Neese back and to ascertain the status at the scene. I asked Lt. Neese if the damage to Mr. Daily's vehicle was consistent with a single vehicle striking a curb? Lt. Neese confirmed that the damage was only to the tire and rim and it was consistent with hitting a curb. I asked Lt. Neese if any other vehicle or property was damaged. Lt. Neese confirmed no other vehicle or property was damaged. I confirmed that we were dispatched to the call as an assist to the tow company and that none of our officers pulled the vehicle

over, or observed the vehicle being driven by Mr. Daily. Lt. Neese confirmed that information. I told Lt. Neese that under the circumstances, if I were the officer dispatched to the call, I would exercise discretion. Lt. Neese agreed with my assessment and stated that he believed that was how the call would be handled.

At 05:47 hours, I called Chief Backer again to relay the conversation I had with Lt. Neese.

At 10:46 hours, I sent Lt. Neese a text message saying "Can you please call or stop by". This message was because I was asked by Chief Backer if any of the officers on the scene did any field sobriety test on Mr. Daily. I did not know that answer to that question, so I sent the text to Lt. Neese. Lt. Neese was in the building so he walked to my office. Lt. Neese stated that no field sobriety test were conducted. I relayed this information to Chief Backer.



Police Department Memorandum

TO: Andrew B. Dunkiel, Assistant City Attorney

FROM: Troy Murdock, Police Officer


RE: Assist EMS call

DATE: 09/22/2017

Per your request I am writing this memorandum in regards to the Assist EMS call on, 09/14/2017, at approximately 0530 A.M. I was dispatched to the aforementioned call which was located at 2322 N. University Drive.

Upon arrival I made contact with Officer Kaban who was in contact with a male who I know to be Vice Mayor, Dan Daley. I then stood by on this call as a backup officer. Lt. Neese and Sgt. Vullo arrived on scene. A short time later Lt. Neese advised us that AAA was towing the vehicle and, a ride was being called for Dan Daley. Since I was no longer needed on scene I cleared this call.

Officer Troy Murdock
I.D #1063

To: Andrew Dunkiel, Assistant City Attorney
From: Shawn Backer, Acting Police Chief 
Date: September 25, 2017
Re: Assist EMS Call

Mr. Dunkiel,

On September 14, 2017, at approximately 0540 hours, I was woken by a cellular phone call from Deputy Chief Clyde Parry. Before speaking I took the time to move to another room in the home as to not wake my family. DC Parry advised me that our officers, were on a call with Dan Daley at the Orchid Parking lot and that they may be conducting a driving under the influence investigation. We discussed the different outcomes and both agreed that the use of discretion was an option, as allowed by policy. DC Parry advised that he would call the officers back and let me know the outcome. DC Parry called me back a few moments later and advised that he believed discretion was being utilized. A few hours later, at a more reasonable hour, I notified City Attorney John Hearn and City Manager Mike Goodrum of the event. During this conversation, I was asked if Field Sobriety exercises had been completed. I was unaware if they had so I inquired with DC Parry to ascertain that answer.



Police Department Memorandum

TO: Andrew B. Dunkiel, Assistant City Attorney
FROM: Sergeant Giovanni Vullo
RE: Assist EMS Call
DATE: September 22, 2017

Per your request, I am writing this memo in regards to the Assist EMS call that occurred on September 14, 2017 at approximately 5:30 A.M.

I was contacted by Officer Kaban regarding Vice Mayor Dan Daley parked in a parking lot of a plaza located at 2322 N.University Dr. Ofc. Kaban advised me that Dan Daley was found asleep in his vehicle by his AAA tow truck driver. I immediately advised LT. Neese, who was standing next to me, what Ofc. Kaban had reported to me. At that time, LT. Neese and I responded to the scene. Once on scene, LT. Neese advised that we would be contacting a taxi for Mr. Dan Daley and that his vehicle would be towed by AAA. I requested CSPD Dispatch for a taxi to respond to the scene. Due to an extended wait time for the taxi, Mr. Dan Daley advised me that his friend was coming to pick him up to give him a ride. AAA towed the vehicle away from the scene. Shortly thereafter, an armed robbery call was dispatched and I was ordered by LT. Neese to set up a perimeter and to assist with the robbery. I then advised Mr. Dan Daley that I needed to leave due to an emergency call. I had no further involvement in this incident.

Sergeant Giovanni Vullo



Police Department Memorandum

TO: Assistant City Attorney Andrew Dunkiel

FROM: Officer Stephen Wetherington

RE: Dan Daley Incident

DATE: 9/22/17

CC:

While working an off duty detail at Broward Health Coral Springs, I heard the call dispatched regarding this incident. Officer Murdock was present with me at the hospital at the time. He then left since he was dispatched to this call. At the conclusion of my detail at 0600 hours, I responded to the incident location on my own accord. The incident location was close by and I wanted to assist if needed as I have extensive training in DUI investigations.

When I arrived I spoke with Lt Neese and was informed the vehicle was being towed and that my assistance was not needed.

Sometime after this incident I was again working an off-duty detail at Broward Health Coral Springs. I heard Officer Murdock radio that he had an individual in custody for DUI. I then sent him a private MDB message referencing how no supervisors had a problem with him conducting this current DUI investigation. Officer Murdock is a personal friend of my mine and I sent the message somewhat as a joke between us. I am aware that the Dan Daley incident was handled by a supervisor pursuant to policy.



Police Department Memorandum

TO: Andrew B. Dunkiel, Assistant City Attorney

FROM: Sean Kaban, Police Officer

RE: Assist EMS Call

DATE: 9/22/2017

Per your request, I am writing this memorandum in regards to the assist EMS call on 9/14/17 at 0530 hrs. The following is my involvement:

I was the first officer to arrive on-scene. I pulled behind the vehicle, which was legally parked in a parking space. As I exited my vehicle, I saw the driver's body moving around in the front seat. As I approached, the driver opened the door to the vehicle. Once I saw the male's face, I recognized him as Coral Springs Vice Mayor, Dan Daley. Mr. Daley told me that he was waiting for a ride. I observed the vehicle to have a flat front driver side tire, and no body damage. Mr. Daley refused EMS. I then spoke with the complainant, a AAA tow truck driver, who told me that she responded to the location to assist a motorist with a flat tire. She told me that once she arrived, the driver was asleep at the wheel and would not wake up. She told me that she contacted CSPD in the interests of the driver's health. Consistent with policy, I contacted my supervisor, Sergeant Giovanni Vullo, and informed him of my interaction with Mr. Daley. Sergeant Vullo told me that he would be coming to the scene.

A few minutes later, Sergeant Vullo and Lieutenant Travis Neese, arrived to the location. I stood-by with Mr. Daley until Lieutenant Neese informed me that AAA would be towing the vehicle and a cab would be called for Mr. Daley. Due to my shift ending at 0630 hrs, Lieutenant Neese told me that I could start heading home. Once my shift ended, I changed the header of the call via radio communication from an assist EMS call to an assist motorist call and coded it out disposition code '04' (assist motorist). I had no further involvement in this incident.

Sean Kaban