

Filed in open Court this
15th day of October

A.D. 2024

KELVIN SOTO, ESQ., CLERK OF THE
CIRCUIT COURT & COUNTY COMPTROLLER

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA

By S. Perera D.C.

PRESENTMENT OF THE GRAND JURY SPRING TERM 2024

The Grand Jurors of the State of Florida, impaneled and sworn to inquire and true presentment make, in and for the County of Osceola do present the results of a review of the Kissimmee Police Department's ("Department") response to a use of force by Officer Andrew Baseggio on April 22, 2023. The Grand Jury convened on August 1, August 21, September 11, and October 2, 2024, and heard evidence on this matter both as to the use of force and to the Department's collective response to the use of force. We issued a true bill for Officer Andrew Baseggio on August 1, 2024. Following the indictment of Andrew Baseggio, we continued to receive evidence to determine whether further criminal charges were warranted against other individuals and conducted an inquiry into the activities of the Kissimmee Police Department. We have considered the results of a thorough investigation led by the Office of the State Attorney of the Ninth Judicial Circuit. We issue this report to inform our community and its stakeholders of our findings and to make recommendations to improve the Kissimmee Police Department and to make Osceola County safer.

INTRODUCTION & ORGANIZATION

The length and breadth of this investigation, combined with the fact that much of what we discovered came about through an investigation in a specific officer's conduct, makes presenting our findings and recommendations in an organized fashion somewhat difficult. Initially the evidence came from publicly available sources and then, to a limited degree, from the Florida Department of Law Enforcement's ("FDLE") investigation. A great deal of testimony then came from interviews conducted by the Office of the State Attorney, and then from additional interviews that prosecutors conducted on our behalf. Evidence and "facts" obtained early in the investigation were often later contradicted by other evidence as the investigation unfolded and more questions were asked. Our goal is to bring the facts we uncovered to the attention of both the public and the community leaders capable of addressing

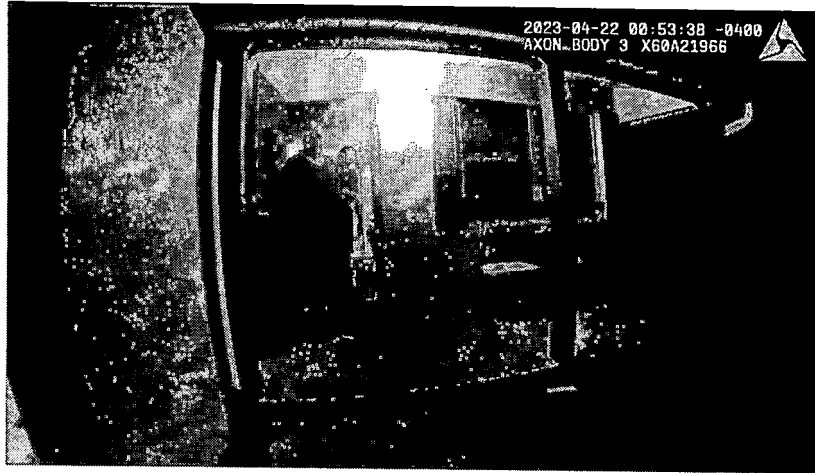
the issues and, in some instances, misconduct we have discovered. Achieving this goal means providing the information and evidence to these groups in the easiest way to understand possible. Accordingly, we will lay out the facts we learned from the initial investigation into the conduct of Andrew Baseggio, which led to our inquiry into the activities of the Kissimmee Police Department. This presentment will then discuss facts established through the investigation of the State Attorney's Office and obtained through compelled interviews and public records requests, starting with facts focusing on Andrew Baseggio's unlawful use of force and concluding with facts developed surrounding the Department's handling of *this* use of force—and others. We then state our conclusions based on the evidence received. Finally, we will end this document with recommendations that we hope will improve the Kissimmee Police Department, enhance public confidence in law enforcement, and therefore make our community a safer, more just place to live.

FACTUAL REVIEW

1. Timeline from the Initial Investigation

The Kissimmee Police Department received a call for service from a citizen asking officers to respond a disturbance at a residence on Brack Street just after midnight on April 22, 2023. Officer Andrew Baseggio was the first officer to respond and upon arrival he encountered a road and driveway full of clothing and other debris. The evidence received by the Grand Jury established that there was never any danger to the public or law enforcement. Officer Baseggio approached the residence and spoke to Sean Kastner through a window and requested him to exit the residence. At the time, Sean Kastner was living with his parents at their Brack Street residence. Mr. Kastner lawfully refused to exit the residence. When additional officers arrived, Baseggio told them there was no crime for which to arrest Sean Kastner. Officer Baseggio, as well as his backup officers, Officers Darrius Benjamin and Jonathan Fernandez, were all “critical incident” trained. Despite this training, the officers did not take any steps to address the fact that Sean Kastner may have been having an episode related to mental illness.

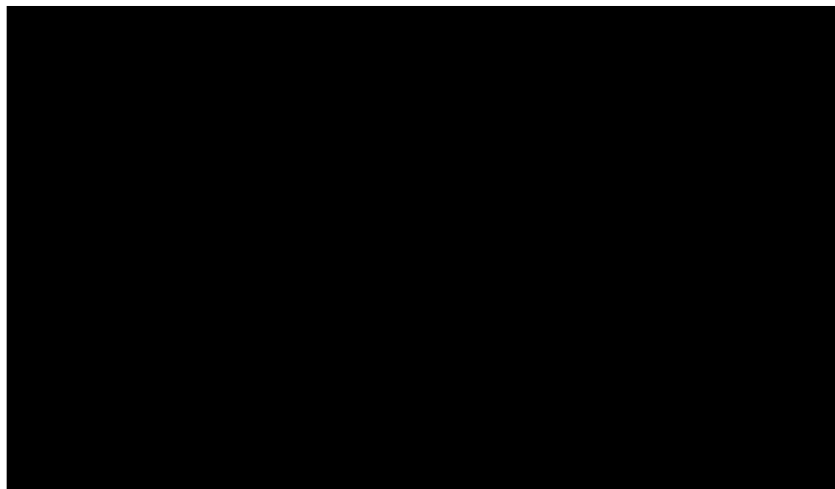
Sean Kastner's father eventually awoke due to the commotion and opened the front door to determine what was going on outside. Sean did not want police inside the home. In an attempt to close the door, Sean nudged his father out of the doorway.



Ex. A – Sean Kastner as seen from Baseggio’s Body Worn Camera

Officer Baseggio witnessed this slight contact and used it as a justification to rush into Sean Kastner’s home to make an arrest. There is no evidence that Baseggio or his backup officers believed, prior to rushing into the home, that there was an emergency or exigency inside. There was no evidence in that moment that a felony occurred. All the evidence indicates Baseggio, Benjamin, and Fernandez knew nothing about Sean Kastner’s father, and they had no reason to believe he was over the age of 65, when they rushed into the home—a fact that Officer Baseggio would place much significance on after he realized the potential consequences of his actions.

The entry was captured on the body-worn camera of all three (3) police officers. Sean Kastner is seen retreating into his own living room, with his hands raised in the air. He is shirtless and clearly unarmed.



Ex. B – Kastner retreats into his residence

At the time of the incident, Sean Kastner was 5'7" tall and weighed approximately 165 pounds. The three (3) officers involved were all significantly larger than Sean Kastner. As the Officers approached the couch in the living room, Officers Benjamin and Fernandez each grabbed a hold of one (1) of Sean Kastner's arms. During the struggle, Benjamin said to Kastner, "bring your ass." Officer Baseggio is heard calling Sean Kastner a "bitch." Despite both of Sean Kastner's arms being under control by the assisting officers, Officer Baseggio grabbed Sean's hair and said, "I'm gonna knee spike you in the face." Baseggio did not pause to allow Sean Kastner to comply before he delivered two (2) knee spikes, in quick succession, to Sean Kastner's face.



Ex. C – Baseggio knee spikes Sean Kastner in the face

Baseggio never said "stop resisting." Both knee spikes landed squarely in Kastner's face and blood immediately started pouring from his face. Prior to the knee spikes, Kastner never swung his arms or kicked at the officers.

Shortly after the knee spikes, Officers Benjamin and Fernandez maintained control of Kastner's arms. The evidence definitively established that at this point there was nothing that prevented Officer Baseggio from applying his handcuffs to Kastner's controlled wrists. Instead, Officer Baseggio delivered the first of seven (7) taser stuns to Sean Kastner. One of the stuns was applied to Sean Kastner's neck. Following one of the full taser cycles, Sean Kastner laid exhausted and nearly motionless on the floor. None of the officers used this opportunity to apply handcuffs. Instead, Officer Baseggio tased Sean Kastner again. Following the two (2) knee spikes and seven

(7) taser cycles, all of which were inflicted in his own living room, Sean Kastner was finally handcuffed. When Kastner stated he did not want to go outside with law enforcement, Officer Baseggio threatened to use additional force, stating to Kastner he was “going to be in a world of pain.” Neither Officer Benjamin nor Officer Fernandez attempted to intervene while Officer Baseggio was delivering knee strikes or continuously tasing Sean Kastner.

The body-worn cameras of Officers Benjamin and Fernandez recorded for several minutes following the incident. At no point did either officer report or attempt to report concerns about Officer Baseggio’s use of force on Sean Kastner. Officer Fernandez is seen grinning, if not laughing, while demonstrating his failed attempts to handcuff Sean Kastner. At one point, another officer asks Benjamin, referring to Sean Kastner, “who did that to his face?” Benjamin responds, “who do you think?” When asked if the “floor” damaged Kastner’s face, Officer Benjamin acknowledges his body camera and says, “we’ll talk about it later.” A few minutes later, when the discussion again turns to the use of force in front of other officers, Benjamin again says, “we’ll talk about it after.”

In Officer Baseggio’s Reporting Officer Narrative, he made the following statements that later proved to be false or inconsistent with the other evidence reviewed by this Grand Jury:

- “Sean was observed meandering around the driveway with a large pipe wrench in his hand prior quickly [sic] running inside the residence when he observed my presence.”
- “I waited on scene at a safe distance, until additional units arrived due to Sean’s strange actions and being armed with a large wrench.”
- “It was apparent that Sean had previously applied some type of oily substance on his body that made it difficult to get a sufficient grasp of his extremities.”
- “Sean also tried to kick me and missed my left knee. I then verbally told Sean that I was going to knee strike him, but he continued to aggressively overcome our efforts to affect the arrest.”

There is no evidence Sean Kastner was outside his residence when Andrew Baseggio arrived on scene. There is no evidence Sean Kastner ever possessed a weapon or a wrench on the night of the incident. No wrench was observed by any other witness or located on scene. There is no evidence Sean Kastner ever had any foreign substance on his skin or that any foreign substance was applied. During the use of force incident and after Sean was placed into custody,

multiple officers placed their hands on Kastner and none of them are seen slipping or heard referencing a substance.

Sean Kastner was eventually transported to the hospital and treated for facial injuries. The medical records from his treatment reflect a “nasal bone fracture” and “laceration of the eyebrow.” After being seen at HCA Florida Hospital in Kissimmee, Kastner was taken to the Osceola County Jail. The charging affidavit sworn to by Officer Baseggio listed the arrest charges as “Battery Simple—Victim 65 YOA” and “Obstruct Officer *Without Violence*.” (emphasis added). The Office of the State Attorney received a case package from the Kissimmee Police Department regarding this incident on April 27, 2023. The case package included the final “Incident/Investigation Report” authored by Officer Andrew Baseggio, as well as “Case Supplemental Reports” authored by Officers Benjamin and Fernandez. The reports from Benjamin and Fernandez indicate they were approved by Lieutenant Omar Berrio on April 27, 2023. Sean Kastner *sat in the Osceola County Jail for 34 days* until he entered a plea to the resisting without violence charge on May 25, 2023. The prosecutor responsible for the plea agreement did not review the body worn camera footage, but instead relied on the accuracy of the written police reports.

The Department’s policy requires an initial review of all use of force incidents. Corporal Takeya Close was assigned as the initial supervisor to undertake the review and write a “Response to Resistance Report.” (“RTR Report”). A review of Corporal Close’s RTR Report indicates that she conducted verbal interviews with Officers Baseggio, Benjamin, and Fernandez. Her RTR Report affirmatively states, “[a]fter speaking with everyone involved, I reviewed the body camera footage of the incident.” Interestingly, Corporal Close then states that “Sean continued to resist and responded by kicking Officer Baseggio in the leg.” Corporal Close’s RTR Report concludes as follows:

My investigation revealed Officer Baseggio, responded to a disorderly subject who was yelling, screaming and throwing items in the driveway and roadway. While speaking with the subject and attempt [sic] to de-escalate the situation, the subject pushed his father. While attempting to arrest the subject, he continued to resist the officer by pulling away from them, trying to kick them, and not listening to their verbal commands. Officer Baseggio delivered a front knee strike to the subject. The subject did not comply. Officer Baseggio deployed his CEW and after several attempts was effective. Officer Benjamin and Officer Fernandez assisted with placing the subject in double-locked handcuffs, while he was being non-compliant. The subject was then transported to HCA Florida Osceola Hospital for his injuries

and then the Osceola County Jail for Domestic Battery on a Subject 65 years or older and resisting officers without violence.

Based on my investigation, I find that the officers' response to resistance was objectively reasonable, and within department guidelines and general orders, given the totality of the circumstances. I approve this response to resistance.

The body worn camera footage does not support Close's conclusion that there was an attempt to deescalate the situation. The RTR Report expressly references Sean Kastner "trying to kick" the officers—an action never visible on the body camera footage until after the use of force. The RTR Report also references only one (1) knee spike delivered by Officer Baseggio. Finally, Corporal Close's RTR Report categorizes the level of resistance as "Active Physical" with no explanation as to how she reached this conclusion. The RTR Report never categorizes or attempts to categorize the level of force Officer Baseggio used. Corporal Close signed her report on April 22, 2023—the same day as the use of force.

Corporal Close's RTR Report was sent to Lt. Omar Berrio for review pursuant to Department policy. Lt. Berrio reviewed the body camera footage of the incident and concluded that because Kastner only offered "active resistance" that Officer Baseggio's use of force was not within Department policy. Lt. Berrio signed an Initial Notice of Inquiry ("INOI") regarding Officer Baseggio's use of force, which is the first step in beginning an internal affairs investigation.

Department policy provides that the "Chief of Police or designee shall review each complaint and determine the method of investigation: Supervisory Referral, Supervisory Investigation, or Internal Affairs Investigation." Significantly, Department policy states, "[n]o employee is to discuss the contents of any internal investigation until it has become public record. If an employee is unsure of the status of a particular case, they shall contact the Internal Affairs Supervisor." When it comes to the responsibility for Internal Affairs, Department policy is clear:

"Sworn Internal Affairs employees shall operate under the direct authority of the Chief of Police while conducting an official investigation. Internal Affairs employees, regardless of rank, shall be subordinate only to the Chief of Police. This would include any employee assigned to complete an Internal Affairs Investigation."

On May 15, 2023, an Internal Affairs Investigation into Officer Baseggio's use of force on Sean Kastner was formally authorized. On June 16, 2023, Sergeant Clyde began to conduct

interviews. The IA Report contains summaries of the interviews with Lt. Berrio, Corp. Close, Officer Benjamin, Officer Fernandez, and Officer Baseggio. Sergeant Brian Clyde completed his report on Internal Investigation number IA 23-013 on July 26, 2023 (“IA Report”).

In his interview with Darrius Benjamin for the internal affairs investigation, Benjamin acknowledged that immediately prior to the knee spikes he had control of one of Sean Kastner’s arms and Fernandez had control of the other. The IA Report then documents Benjamin stating his “opinion Kastner’s resistance level did not rise to the point of warranting intensified techniques.” In other words, Benjamin believed that Baseggio used excessive force. Similar circumstances unfold during Sergeant Clyde’s IA interview with Jonathan Fernandez, where Sergeant Clyde documents the following:

Referencing the Kissimmee Police Department Response to Resistance Policy, I pointed out to Officer Fernandez the policy states: Strikes – (forearm, knee, hands/fists, or kicks) shall not be targeted above the shoulders, to spine, groin or solar plexus unless intensified techniques or deadly force is warranted. Officer Fernandez stated he was familiar with the policy and *believes this situation did not warrant intensified techniques.*

(emphasis added). In other words, the IA Report documents the fact that two officers involved in a use of force recognized it was excessive when interviewed despite doing and reporting nothing at the time the force took place. Corporal Close was interviewed for approximately five minutes. The IA Report does not address why she incorrectly concluded that Baseggio’s use of force was justified under department policy.

On July 16, 2023, Sergeant Clyde interviewed Andrew Baseggio for the internal affair investigation. While many of the statements in the interview are similar to those listed in his initial report, Baseggio offered new facts in support of his actions during the course of the interview. First, Baseggio stated that as he initially drove by the Kastner residence on Brack Street he witnessed, “Sean Kastner, in the front yard banging on a safe with a wrench.” Next, Baseggio stated that when he looked in the window of the Kastner residence he, “noticed Kastner had a sheen on his body, which he later suspected to be massage oil due to its odor, and suspected Kastner put it on himself to make it more difficult for law enforcement to take him into custody.” Andrew Baseggio goes on in the interview to state, “he feared Kastner would go somewhere else in the residence and arm himself.” Baseggio, however, never explained the factual basis for that fear.

Baseggio also stated in the interview that, “he announced to Kastner he was going to knee spike him in the face and hoped the warning would stop him from resisting.” Sergeant Clyde did not challenge Baseggio on the lack of a delay between the “warning” and the delivery of the knee spikes, and Baseggio does not address the issue. Sergeant Clyde’s IA Report then documents the following:

Officer Baseggio explained he was going to charge Kastner with resisting with violence, however, NIRBS required a victim for the charge and he did not believe at the time Kastner had battered him. Two days later, Officer Baseggio noticed bruising to his legs and attributed the bruise to Kastner kicking him. Officer Baseggio did not photograph the bruise, did not complete a supplemental report, and stated he was not going to charge Kastner with the offense. It is Officer Baseggio’s opinion based on the totality of the circumstances, if Kastner would have broken away from Officer Benjamin and Officer Fernandez, he would have armed himself and therefore, intensified techniques were warranted.

Yet again, Baseggio offers no factual basis for his opinion or belief, and none are stated in the body camera from the incident, his charging affidavit, or the report he authored.

Sergeant Clyde’s IA Report goes on to summarize the body-worn camera footage of Officers Benjamin, Fernandez, and Baseggio. The Report then documents Clyde’s findings that, “Officer Baseggio’s knee spikes to Kastner’s face were not warranted,” and that at least one of the taser deployments was not warranted. Based upon these violations, Sergeant Clyde finds the accusations that Andrew Baseggio violated policy are “sustained.” Significantly, however, the IA Report concludes there was a violation of Department “General Order 201.02(k)—Obedience to Policies and Procedures,” rather than a violation of the response to resistance policy. In other words, the substance of the violation, *which was clearly for an excessive use of force*, was titled a violation of a general policy.

On August 17, 2023, Lieutenant Jeinly Ortiz wrote a memorandum to Chief Betty Holland with her recommendation for disciplining Andrew Baseggio for his violating Department policy by tasing Sean Kastner and knee spiking him in the face on April 22, 2023. Lt. Ortiz’s memorandum references the discipline imposed in “previous violations of General Order 201.02(k)” as her basis for a recommendation. After a brief analysis, Lt. Ortiz recommends an eight (8) hour suspension. Officer Baseggio accepted the discipline on August 25, 2023. Significantly, again, the two (2) cases referenced are described as incidents where an officer “used

an inappropriate level of force,” but were formally deemed violations of General Order 201.02 rather than a violation of the use of force policy. The evidence received by the Grand Jury established that the Department has a pattern formally referring a sustained excessive use of force violation as “general” policy violation.

The next time this investigation found Baseggio’s use of force came to the Chief’s attention was on October 3, 2023. A public records request to the Department revealed that on that date, Chief Holland sent an email to Kissimmee City Manager Mike Steigerwald documenting “key points for the investigation” into Andrew Baseggio’s April 22, 2023, use of force. Given that WFTV Channel 9 ran a story on the use of force two (2) days later on October 5, 2023, it appears the email was information sent to the City in advance of the story airing on television. The “key points” in the email include several assertions made in Baseggio’s report that are inconsistent with what is seen on body camera footage, including reference to Sean Kastner, “with a wrench in his hand banging on items that were in the yard,” and the assertion that Kastner resisted by “kicking” at the officers. Chief Holland then sat for an interview for the WFTV story where she acknowledged “obvious” mental health issues based upon the scene itself, stating that, “officers need to pick up on that.” Chief Holland went on to assert in the interview that she “took Officer Baseggio at his word” despite some aspects of his report not appearing on video.

The Kissimmee Police Department never reported the sustained internal affairs finding against Andrew Baseggio to the Office of the State Attorney as required by Florida Statute section 112.536(1)(b).¹ The Investigation also revealed the Department never reported the sustained finding to the Criminal Justice Standards and Training Commission (“Commission”) as required by Florida Law.² Finally, the Department never conducted nor sought outside input on whether to conduct a criminal investigation into Baseggio’s use of force. Due to the Department’s failure to make these required notifications, the Office of the State Attorney did not become aware of Baseggio’s use of force until Monday evening, October 5, 2023, when State Attorney’s Office Chief Investigator Eric Edwards saw the WFTV news story discussed above. Chief Investigator Edwards confirmed that no criminal case against Baseggio existed within the Office of the State

¹ Section 112.536 became law and effective on July 1, 2023. Section 112.536(1)(b) states, “[t]he employing agency of a law enforcement officer or correctional officer shall forward all sustained and finalized internal affairs complaints relevant to s. 90.608, s. 90.609, or s. 90.610 to the prosecuting agency in the circuit in which the employing agency is located to assist the prosecuting agency in complying with its obligations under the *Brady* decision.”

² See Florida Statute section 943.1395(7).

Attorney and confirming the Florida Department of Law Enforcement (“FDLE”) had not been asked to investigate the matter criminally. Thereafter, the Office of the State Attorney conducted a review of the available evidence, including the body camera from Baseggio, Benjamin, and Fernandez. Following that review, State Attorney Andrew Bain wrote a letter to Chief Holland on November 28, 2023, to formally request a criminal investigation into Baseggio’s use of force on Sean Kastner.³

On December 28, 2023, Chief Holland declined in writing to the State Attorney’s request for a criminal investigation. Chief Holland’s letter provided her rationales for not conducting a criminal investigation into Baseggio’s use of force and included the following statements:

- “In each incident the officers had a lawful reason to be on the scene due to investigating a criminal incident.”
- “Each person that was arrested was in fact actively resisting the officer’s efforts to affect an arrest.”
- “Although each officer acted out of our policy, it was not their intent to batter or injure either subject. It was their effort to gain control of a subject who was actively resisting them.”
- “In Officer Baseggio’s incident, he verbally stated that he would knee spike the subject in the face if he didn’t stop resisting. This is not an uncommon practice for officers to verbally try to gain compliance of a subject who is actively resisting arrest.”
- “The Criminal Justice Standards and Training Commission reviewed the information submitted and decided that there were insufficient grounds to pursue [sic] any disciplinary action regarding their Law Enforcement Certification by the Commission for Officers [sic] Benjamin and Officer Peppin. [sic]”

Three (3) documents were attached to Chief Holland’s letter. The first document was the State Attorney’s letter requesting the criminal investigation. The second and third documents were from the Commission. The second document was dated December 15, 2023, and was from Erica Gaines, the Training and Research Manager for the Commission. The subject of this letter was “Manuel E. Pepin” and the letter concluded the Commission “completed a review of the

³ The State Attorney’s letter also requested a criminal investigation into a separate use of force incident by two (2) other Kissimmee Police Department officers. That incident was documented under Department Internal Affairs number IA-23-014 for uses of force on May 2, 2023, by then officers Darrius Benjamin and Manuel Pepin.

information submitted concerned the above-named officer and have found there is no basis for any further action by the Criminal Justice Standards and Training Commission at this time.”⁴ The third document was dated December 1, 2023, and was also from Ms. Gaines. It contained identical language but was in reference to subject “Darrius D. Benjamin.” There was no letter from the Commission addressing materials received regarding Andrew Baseggio attached to Chief Holland’s letter.

Following additional meetings with State Attorney Andrew Bain and representatives for FDLE in January 2024, Chief Holland authorized FDLE to conduct a criminal investigation into Baseggio’s use of force incident on Sean Kastner. FDLE provided its final report to the Department and the Office of the State Attorney on Tuesday, May 14, 2024. The State Attorney’s Office reviewed the report and determined a substantial amount of follow up investigation was needed to render a fair and thorough review and decision as to whether Andrew Baseggio’s use of force on Sean Kastner should result in criminal charges. For example, FDLE failed to conduct an interview with Darrius Benjamin, who was no longer employed by the Kissimmee Police Department when he was approached for an interview. While there was a recorded interview with Officer Jonathan Fernandez, it was very brief and failed to challenge many of the statements Fernandez made that were unsupported by facts. Understanding the serious nature of the allegations State Attorney Andrew Bain authorized an extensive investigation by the assigned prosecutors and State Attorney Investigators into matters not addressed by FDLE and to gather more information about Andrew Baseggio’s use of force. Towards that end, on June 7, 2024, the Office of the State Attorney issued investigative subpoenas to conduct interviews with the following witnesses: Darrius Benjamin, Detective Jonathan Fernandez, Sergeant Moises Diaz, Corporal Gerry Garrett, Officer Jaylynn Nieves, and Officer Dariel Quiles Davila.⁵ These interviews resulted in additional subpoenas and interviews based on the information provided by each witness. The additional witnesses interviewed pursuant to investigative subpoena included Officer Milagros “Millie” Sanchez, Lieutenant Omar Berrio, Corporal Gerry Garrett, Roland and Katherine Kastner, Manuel Pepin, Corporal Charles Nieves, Officer Michael Elder, Sergeant Andrew Holmberg, Sergeant Brian Clyde, Corporal Takeya Close, Deputy Chief Wilson Munoz,

⁴ It is important to note Manuel Pepin and Darrius Benjamin were both permitted to resign in lieu of termination because of their policy violations.

⁵ Though subpoenas were issued for Jaylynn Nieves and Dariel Quiles Davila, interviews with these individuals were not conducted.

Lieutenant Brandin Suarez, Deputy Chief Camille Alicea,⁶ and Corporal Justin Lunsford. The Office of the State Attorney also conducted lengthy, voluntary interviews with Andrew Baseggio and Chief Betty Holland, both of whom appeared without being served a subpoena and a grant of immunity.

2. Facts Obtained through State Attorney & Grand Jury Investigations

a. Facts Surrounding the Use of Force on April 22, 2023

While most of the evidence surrounding Andrew Baseggio's use of force on Sean Kastner comes from body camera footage that captured the incident, there was significant evidence also obtained by the Grand Jury from officers who responded to the scene that night, including Darrius Benjamin, Jonathan Fernandez, Michael Elder, and Gerry Garrett. Moreover, Andrew Baseggio's willingness to appear before the Grand Jury left no doubt about what occurred—and why it occurred—on April 22, 2023.

The testimony from these witnesses established that none of the officers on scene saw, heard, or were otherwise made aware of the presence of a wrench or weapon. No wrench was ever recovered from outside or inside the Kastner residence on Brack Street. None of the witnesses present ever saw Sean Kastner with a weapon or observed any behavior from him that indicated there was a threat to officers on scene. Additionally, no witnesses, including Benjamin and Fernandez, heard Andrew Baseggio express any concern that Sean Kastner was armed or that he might arm himself inside the residence. Baseggio himself stood by the assertions in his initial police report that he observed Mr. Kastner with a wrench, but his testimony stands alone in support of this claim.

There is also no evidence from any source that Sean Kastner was covered in, had applied, or had any “oil” or “foreign substance” on his body at the time of his arrest. None of the officers who had contact with Mr. Kastner recalled him being “slippery” or covered in a substance. When shown body camera footage and still images, none of the involved officers observed any foreign substance on Kastner's body. Most importantly, Andrew Baseggio acknowledged there was never any oily substance present and that he lied about Sean Kastner being covered in such a substance.

⁶ Camille Alicea is no longer a Deputy Chief at the Kissimmee Police Department. She resigned on September 6, 2024.

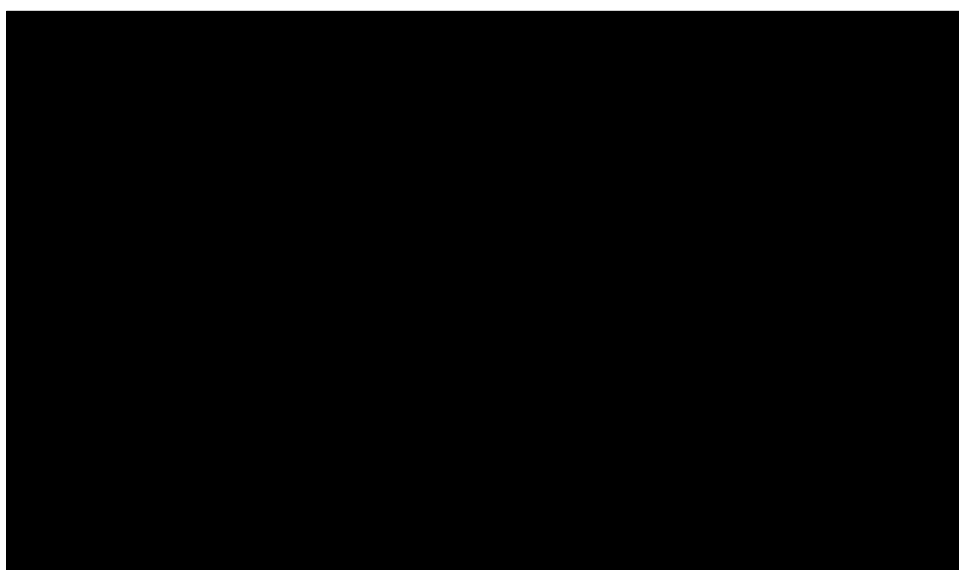
Baseggio also acknowledged before us that he encouraged Darrius Benjamin to include this lie in the report Benjamin authored.

The evidence is also clear that none of the officers who entered the Kastner residence that night had a lawful reason to do so.⁷ No officer could then, or has since, articulated an exigent circumstance that would permit entry into the residence without a search warrant. Equally clear, however, is that the officers on scene wrongfully believed that witnessing a felony, regardless of its character, would provide them a lawful basis to pursue Sean Kastner into his residence without a warrant. Even if that erroneous belief were accurate, there is no evidence that Andrew Baseggio, Darrius Benjamin, or Jonathan Fernandez had probable cause to believe a felony had occurred to allow them to enter the residence. There is no evidence anyone on scene had knowledge of Roland Kastner's age prior to entering the house, a fact which Andrew Baseggio would later acknowledge before the Grand Jury. Instead, the felony offense of "Battery on a Person over 65" was an after the fact justification he manufactured in hopes it would justify the warrantless entry into the Kastner residence.

Finally, there is clear evidence Andrew Baseggio's use of force on Sean Kastner was excessive—and that those around him knew it. Witness after witness who reviewed the body camera footage readily concluded the knee strikes Baseggio delivered were not warranted. There is no evidence Sean Kastner's resistance ever went beyond pulling away or struggling. He never swung or kicked at an officer prior to the unlawful use of force. Nonetheless, Andrew Baseggio delivered not one (1), but two (2) knee spikes to Sean Kastner's face at a time when he was defenseless because two (2) large police officers had control of his arms. Andrew Baseggio never attempted to handcuff Sean Kastner despite multiple opportunities to do so. Instead, he delivered knee spikes and then tased him not once, but seven (7) times, including drive stuns dangerously close to Sean Kastner's neck. Andrew Baseggio himself now admits his use of force on Sean Kastner was outside of policy—and unlawful.

⁷ See *State v. Markus*, 211 So.3d 894, 906–07 (Fla. 2017) "We reject the proposition that a pursuit which continues into the suspect's home to effect an arrest for a minor offense or infraction with no evidence to indicate any danger to the public, police, or property and no indication that critical evidence will be destroyed, constitutes the exigent circumstance of a hot pursuit such that the warrant requirement for entry into the home is excused." See also *Conner v. State*, 641 So.2d 143, 144 (Fla. 4th DCA 1994) "...we do not believe that the misdemeanor of resisting arrest without violence or even the 'battery' [that defendant committed in pushing and slapping another person] constituted serious enough offenses to uphold the warrant less entry into defendant's home for what were then two minor misdemeanors."

The evidence surrounding this use of force shows it was excessive—and never should have happened. Everything confronting the officers that night told them Sean Kastner was experiencing a mental health emergency. The very nature of the scene and Andrew Baseggio’s interactions with Mr. Kastner make Sean’s mental health struggle in that moment clear to even the untrained observer. In fact, just minutes before Andrew Baseggio battered Sean Kastner, he acknowledged that no crime had occurred and, if anything, they should have Sean Kastner evaluated to determine his “mental stability.” Instead, Andrew Baseggio made a warrantless entry into the Kastner residence and delivered two (2) knee spikes to Sean’s face that sent him to the hospital.



Ex. D – Corp. Takeya Close body worn camera footage of Sean Kastner at the hospital

b. Facts Pertaining to the Department’s Handling of the Use of Force—and Other Matters

Our initial review of Andrew Baseggio’s use of force on Sean Kastner revealed evidence that we found troubling regarding how the Department handled its internal investigation, and its response to a request for an external review of Baseggio’s actions. We think it is important for the stakeholders and decision makers within the City of Kissimmee’s government, as well as the residents of the City and our community at large, to be aware of this evidence so they can take the appropriate action. Our review of the evidence starts with the Department’s initial review of Baseggio’s use of force, continues through the criminal investigation eventually conducted by

FDLE, and concludes with our review of Chief Betty Holland's voluntary interview with the Office of the State Attorney conducted on September 26, 2024.

i. The Department's Internal Investigation

Corporal Takeya Close was assigned to conduct the initial Response to Resistance ("RTR") investigation into Baseggio's use of force. This initial investigation is conducted each time there is a police officer use of force. The RTR investigation results in a report that provides a factual overview of the incident and makes a recommendation as to whether any department policies were violated. Thereafter, the report is reviewed by a lieutenant or watch commander who then determines if an internal affairs investigation should be recommended to command staff. At the time of Baseggio's use of force, Corporal Close had very little experience in conducting these investigations and testified that she received virtually no formal training from the Department on how to carry out such an investigation. Corporal Close's report indicates she spoke to the officers involved, attempted to speak to Mr. Kastner at the hospital, and then reviewed the body worn camera. After taking these actions, Corporal Close wrote, "[b]ased on my investigation, I find that the officers' response to resistance was objectively reasonable, and within department guidelines and general orders, given the totality of the circumstances. I approve this response to resistance." Nowhere in her report does Corporal Close address the fact that Department policy permits strikes to a subject's head only when "intensified techniques or deadly force is warranted."⁸ Nor does Corporal Close's report explain why the level of force matched the resistance Sean Kastner offered while inside his home. In short, the report offers a conclusion favorable to Officer Baseggio without any real analysis of the facts and applicable department policy.

Lieutenant Omar Berrio was the watch commander charged with reviewing Corporal Close's RTR Report and conclusions. Lieutenant Berrio testified that upon review of the body-worn camera footage of the incident, he immediately knew Baseggio's use of force was not within policy.⁹ Accordingly, Berrio stated that he filled out an Initial Notice of Inquiry ("INOP"),

⁸ Kissimmee Police Department, General Order 401, Response to Resistance. The general "policy" regarding response to resistance under General Order 401 states: "Employees shall use only the force reasonably necessary to effectively bring an incident under control in accordance with the rights afforded by the United State Constitution and the constitution and laws of the State of Florida."

⁹ Following his testimony before the Grand Jury, the State received a response to its prior public records request that the City of Kissimmee provide emails on the topic of this use of force. The State received an email from Lt. Berrio addressed to Deputy Chief Camille Alicea, dated April 28, 2023, wherein Berrio stated "I found this RTR to be within policy but there are some things that need to be addressed..." This email is inconsistent with Lt. Berrio's

triggering a potential Internal Affairs investigation pending approval from his chain of command. Both Deputy Chief Wilson Munoz and former Deputy Chief Alicea testified that they were shown the body worn camera footage of the incident and provided their approval of an internal affairs investigation. Chief Holland ultimately approved the internal affairs investigation into Baseggio's use of force and assigned Sergeant Brian Clyde to conduct it. The Grand Jury is aware of no evidence that anyone within the Department's chain of command ever addressed Corporal Close's clearly erroneous conclusion or provided her with additional training or guidance following this incident.

The evidence suggests that Sergeant Clyde was assigned to conduct Baseggio's internal affairs investigation, as well as at least one other investigation near in time, due to insufficient staffing in the Internal Affairs Section. Sergeant Clyde's report indicates he conducted interviews with Lt. Berrio, Corporal Close, Darius Benjamin, Jonathan Fernandez, and finally with Andrew Baseggio. According to Clyde's report, both Benjamin and Fernandez, when confronted with Baseggio's knee strikes and the Department's Response to Resistance policy in General Order 401, acknowledged that Sean Kastner's level of resistance did not authorize intensified techniques or deadly force, meaning Baseggio's knee strikes were outside of Department policy. These acknowledgments are significant because neither Benjamin nor Fernandez sought to intervene while Baseggio was using excessive force. Neither officer reported the force as excessive to a supervisor afterwards either. Instead, Fernandez is seen grinning if not laughing about Baseggio's use of force following the incident. General Order 401.01 states that, "[e]mployees have an affirmative duty to intercede to prevent the use of excessive force if the employee has reason to know excessive force is being used and there is a realistic opportunity to intervene to prevent harm." The Order goes on to assert that "appropriate action" in such a circumstance may include "[i]mmediate notification to a supervisor." Neither Benjamin nor Fernandez¹⁰ sought to intercede at the time of the knee strikes or tasings that Baseggio inflicted on Sean Kastner. Neither Benjamin nor Fernandez notified a supervisor of their having witnessed what they later told Sergeant Clyde,

testimony and creates a concern about his candor before the Grand Jury. The Grand Jury recommends that this concern be forwarded to the Kissimmee Police Department for an internal investigation.

¹⁰ Jonathan Fernandez was promoted from Officer to Detective in the time between Baseggio's use of force and this investigation. It is our understanding he is currently working as a Detective in the Criminal Investigations Division of the Department.

and eventually this Grand Jury, what they knew was an excessive use of force. Despite this fact, Sergeant Clyde failed to note either man's failure to intercede in his report.

Following his interviews, and what appears to be an extensive review of the body worn camera footage of the three (3) officers who entered the Kastner residence, Sergeant Clyde "sustained" Baseggio for violating Department policies with his knee spikes and tasing of Sean Kastner. Strangely, however, though Clyde's report references General Order 401 and the fact that knee strikes represent deadly force, Sergeant Clyde's conclusion is that Baseggio violated "General Order 201.02(k): Obedience to Policies and Procedures," rather than a policy regulating use of force or clarifying the finding was based on an excessive use of force. The chain of command approved of the finding but recommended only an eight (8) hour suspension as discipline for Baseggio's policy violation. Baseggio was served with his discipline in August 2023, but the Office of the State Attorney was never notified of the discipline.

ii. The Department's Failure to Report to the Criminal Justice Standards and Training Commission

Andrew Baseggio's use of force became an issue in the Department's Internal Affairs ("IA") section again in October of 2023. At that time, Corporal Justin Lunsford was assigned as the sole IA investigator. Corporal Lunsford testified extensively about multiple issues within the IA section at the Department. He first described a lack of established policies and procedures governing the IA section, leaving little guidance to incoming corporals and employees who often had little to no IA experience. Corporal Lunsford also noted the IA corporal position was largely viewed as "promotional," meaning agency members who served in that role were often promoted, resulting in regular turnover in the position. Additionally, Corporal Lunsford shared with the Grand Jury that the IA section often faced a tremendous backlog of cases. He explained that time constraints placed on these investigations by Florida law sometimes made it impossible to complete the investigation thoroughly. Consequently, Corporal Lunsford's transition into the IA section was challenging, marked by very little guidance and virtually no training on how to serve in this important role responsible for investigating allegations of wrongdoing by law enforcement officers in the Department.

Lunsford testified to attending a training held by the Criminal Justice Standards and Training Commission ("Commission") in October of 2023. One of the primary training topics

concerned the legal requirement that law enforcement agencies report internal investigations where the sustained findings constitute an officer failing to maintain “good moral character” by committing certain acts or violations.¹¹ This reporting allows the Commission to ensure law enforcement officers who are disciplined, resign, or are terminated by one agency cannot simply apply and gain employment with another agency without that agency knowing of the officer’s prior wrongdoing. In some cases, the Commission can revoke or terminate a law enforcement officer’s certification, thereby preventing him or her from working in law enforcement going forward. Corporal Lunsford was unaware of this reporting requirement prior to attending the October 2023 training. Upon returning to the Department, he sought to ensure his agency was in compliance. He quickly learned the Department was not fulfilling its obligations under Florida law.

When Corporal Lunsford returned to the Department, he confirmed the agency had not sent the required documentation for the policy violations of two (2) officers with recent sustained or verified findings—Officers Darrius Benjamin and Manuel Pepin. He brought this failure to Chief Holland’s attention, and Chief Holland authorized him to prepare the required forms to the Commission for Officers Benjamin and Pepin. Chief Holland signed the forms for Benjamin and Pepin on October 26, 2023.¹² Around this time, Corporal Lunsford fulfilled a public records request for the IA documents associated with Officer Baseggio’s sustained violations and discipline. Corporal Lunsford testified that after he reviewed the video and report on Baseggio’s use of force, he informed Chief Holland that she needed to review this matter closely. Eventually, Corporal Lunsford told Chief Holland the Department needed to send the required “Form 78”¹³ for Officer Andrew Baseggio to notify the Commission Baseggio had been sustained for an excessive use of force. Chief Holland *did not* authorize Lunsford to report Baseggio’s sustained IA finding to the Commission. Lunsford explained that in July of 2024 he was asked to assist with

¹¹ Florida law governing these reporting requirements spans several statutes, including Florida Statute sections 943.13 and 943.1395. Florida Administrative Code section 11B-27 also lays out in detail the definition of “good moral character” and details the actions a law enforcement agency must take upon finding violations of certain agency policies. Significantly, the Code states that an officer does not maintain good moral character if he or she commits an act that constitutes “[e]xcessive use of force.” Fla. Admin. Code 11B-27.0011(4)(c)(1.) (2024).

¹² Both Officer Darrius Benjamin and Manuel Pepin were permitted to resign in lieu of termination after having been found to have used excessive force under Department policy. When an officer separates from an agency, the agency sends a “Form 61” documenting the reason. See Fla. Admin. Code 11B-27.002(5). Though they were sent, the Form 61s for both of these officers failed to properly note that termination was for a “moral character” issue, i.e. excessive force.

¹³ Form 78 is titled an “Internal Investigation Report” and is to be sent by a law enforcement agency to the Commission pursuant to Fla. Admin. Code 11B-27.003(2)(a) when a law enforcement officer is sustained for a violation of policy that meets certain criteria, the first of which listed is “excessive use of force.”

fulfilling a public records request made by the State Attorney's Office in connection with this investigation. Among the documents requested by the State Attorney's Office was a copy of the completed Form 78 for Andrew Baseggio's sustained excessive force finding that was sent to the Commission. Because the form had not been sent, the Department responded by stating "Regarding request 1, per Cpl Justin Lunsford, we do not have a Form 78 for Officer Baseggio." The State Attorney's Office public records request prompted Corporal Lunsford to perform an audit of the Department's IA files to determine if there were other sustained IA findings that had not been properly reported. His search resulted in identifying approximately 10 such cases where there were sustained findings that should have but were *not* reported to the Commission. Corporal Lunsford also noted that, like Baseggio's IA, there were several findings that concerned excessive force or violations of the Response to Resistance policy but were referred to as violations of a separate, more general order such as, "Failure to Obey Policies and Procedures." Corporal Lunsford testified that shortly after compiling the list of cases he brought them to the attention of Chief Holland. Corporal Lunsford informed the Grand Jury that he requested approval from Chief Holland to prepare the forms for these cases for her signature and transmission to the Commission, but she refused. According to Lunsford, Chief Holland explained that she feared sending these forms at this juncture would make it appear that she and the Department were trying to cover things up. Thus, as of his testimony before us on August 21, 2024, the Department had failed to report several mandatory sustained findings to the Commission as required by Florida law—including the finding for Baseggio—despite Chief Holland being expressly told she needed to do so.

iii. The Initial Refusal to Conduct a Criminal Investigation & Conduct Once the Investigation was Authorized

When a law enforcement officer is alleged to have used excessive force, or more force than is necessary to affect an arrest under the circumstances, the law enforcement agency must make an initial determination regarding whether the use of force should be criminally investigated. In other words, the agency must evaluate whether an investigation should occur to determine if the officer's actions were not only outside of policy, but also constituted a criminal offense.¹⁴ It is

¹⁴ For example, an officer's use of force during an arrest could comply with department policy but would be otherwise justified because she reasonably believed that such conduct was necessary to defend herself against the arrestee's imminent use of unlawful force. *See* Fla. Stat. § 776.012.

critical the agency make this decision prior to authorizing the internal affairs investigation because the internal investigation will result in compelled statements by the officer(s) that cannot be used in a criminal investigation and can, in fact taint, any criminal investigation into the matter.¹⁵

Kissimmee Police Department policy is silent as to when and how the decision to conduct a criminal investigation into an officer is made. The evidence established, however, that there was a discussion of whether to criminally investigate Andrew Baseggio's use of force, though that evidence contains conflicts. Deputy Chief Wilson Munoz testified to participating in a discussion with Deputy Chief Alicea and Chief Holland about whether to criminally investigate Baseggio's actions. According to Chief Munoz, all three (3) of these command staff members agreed no criminal investigation was warranted. However, Deputy Chief Munoz could not explain the basis for that decision or what factors were considered while it was being made. For example, Deputy Chief Munoz could not specify what, if any, crimes were evaluated or what factors the command staff considered when determining a criminal investigation was not necessary. Munoz vaguely referenced a "lack of intent" on Baseggio's behalf despite Baseggio's statements prior to delivering the knee spikes. Deputy Chief Munoz also confirmed that no lawyer or member of the Office of the State Attorney was ever consulted about this topic or asked about the potential merits of merely conducting an investigation. Thus, Chief Holland's initial decision on behalf of the Department was that a criminal investigation would not be conducted, and the internal affairs investigation moved forward as described above.

The need for a criminal investigation into Baseggio's use of force on Sean Kastner arose again in October of 2023. The evidence established that after Chief Investigator Eric Edwards saw the WFTV story on Baseggio's use of force—and viewed the associated body worn camera footage—he brought it to the attention of State Attorney Andrew Bain and Chief Assistant State Attorney Ryan Williams. Mr. Williams then called Chief Holland on behalf of the State Attorney, in Chief Investigator Edwards' presence, to formally request Baseggio's use of force be subject to a criminal investigation. Chief Holland declined that request, citing a lack of "intent" on Baseggio's part to harm Sean Kastner. On November 28, 2023, State Attorney Andrew Bain sent a letter formally requesting a criminal investigation into Baseggio's April 2023 use of force. Approximately four (4) weeks later, Chief Holland sent a letter in response to State Attorney Bain on December 20, 2023, which articulated her basis for refusing to conduct a criminal investigation.

¹⁵ See *Garrity v. State of New Jersey*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967) and its progeny.

At that point, State Attorney Bain asked FDLE to conduct the criminal investigation he believed was necessary and that Chief Holland refused to authorize. FDLE informed State Attorney Bain it would not conduct this investigation, and does not generally conduct such investigations, without an express request from the head of the applicable law enforcement agency. State Attorney Bain did not relent. This resulted in a formal, in person meeting at the Office of the State Attorney in Osceola County in the middle of January of 2024. Chief Holland and Deputy Chief Munoz attended the meeting with State Attorney Bain on behalf of the Department while Assistant FDLE Commissioner Lee Massie and FDLE Special Agent in Charge of the Orlando Regional Office John Vecchio attended on behalf of FDLE. According to Deputy Chief Munoz, after this meeting Chief Holland finally decided to authorize FDLE to conduct a criminal investigation. FDLE's criminal investigative report states that it received the formal request to investigate on February 1, 2024. Prior to making this request, however, Chief Betty Holland made a remarkable notification.

The undisputed evidence is that in January of 2024, sometime between her meeting with the State Attorney and her formal request on February 1, 2024, Chief Holland called Andrew Baseggio and told him she was authorizing FDLE to undertake a criminal investigation into his use of force on Sean Kastner. Andrew Baseggio testified to receiving a phone call from Chief Holland wherein he was told that FDLE would conduct a "review" of his use of force and that he should consider hiring a lawyer.¹⁶ Baseggio explained he was confused by this call because he didn't understand why a "review" would justify the need for legal representation. Nonetheless, the call sufficiently informed Andrew Baseggio he was the target of a criminal investigation. When asked if it was appropriate for a law enforcement officer to notify the target of a criminal investigation that the investigation was beginning, every law enforcement officer who appeared before us said "no." There was and is a universal agreement that this notification gives the suspect certain advantages and opportunities that can hamper or obstruct the investigation, including the opportunity to contact and tamper with potential witnesses. The evidence is clear that Chief Holland's notification was one of the reasons Andrew Baseggio was allowed to do that very thing. Incredibly, however, this was not the only occasion where Chief Holland provided information to Officer Andrew Baseggio that allowed him to attempt to compromise the investigation.

¹⁶ Even though Andrew Baseggio was under active criminal investigation, Chief Holland chose not to relieve him from duty as she was authorized to do under policy. Andrew Baseggio remained on duty until he was indicted on August 1, 2024.

Phone records and testimony establish that on May 14, 2024, FDLE delivered a copy of its criminal investigative report to Chief Holland at the Department and to the Office of the State Attorney. Lieutenant Brandin Suarez testified that he received a phone call from Chief Holland on the evening of the 14th.¹⁷ Chief Holland was out of the office but directed him to retrieve a blue folder from her desk and to contact Officer Baseggio to arrange a time when Baseggio could review the contents of the folder at the Department. Lieutenant Suarez identified the folder as the one he eventually learned contained FDLE's criminal investigative report on Baseggio's use of force. Lieutenant Suarez testified to calling Baseggio and arranging for him to read the contents of the folder in his office while Suarez sat at his desk and performed other tasks. Suarez indicated that Baseggio asked to take photographs of the report but stated that he did not allow him to do so. Once Baseggio was done with his review, Lt. Suarez placed the folder back on the Chief's desk per her directive.

Andrew Baseggio's testimony before the Grand Jury corroborated the testimony by Lieutenant Suarez. Baseggio testified to receiving a call from Suarez and going to the Department to review what he also identified as FDLE's criminal report into his conduct. Baseggio confirmed that he requested permission from Saurez to copy or photograph the report and was denied. Andrew Baseggio also testified to subsequently contacting witnesses listed in the report, specifically Darrius Benjamin and Jonathan Fernandez, and attempting to influence their testimony in interviews conducted by the Office of the State Attorney. This testimony was corroborated by text messages reviewed by the Grand Jury.

Lieutenant Brandin Suarez testified under oath that he was not aware the blue folder he provided to Baseggio contained FDLE's criminal investigation report. Lt. Suarez, along with every other member of the Department asked about the topic, could not think of a legitimate reason why a law enforcement officer would show a suspect in a criminal investigation a copy of the police report before a charging decision was made by the Office of the State Attorney. Lieutenant Suarez appeared visibly upset at the idea that he was used as a vessel to provide Baseggio with information he should not have had, testifying that had he known the folder contained a report concerning the criminal investigation, he would have refused the Chief's directive and sought guidance from others in the Department's command staff.

¹⁷ Lt. Brandin Suarez was one of Andrew Baseggio's supervisors.

The evidence received by this Grand Jury established that the third and final occasion that Chief Holland provided Andrew Baseggio with information about the criminal investigation into his use of force occurred on June 6, 2024. On that date, a member of the police union that represents some members of the Department, informed Chief Holland of his belief that the Office of the State Attorney was “not happy” with FDLE’s criminal investigation and his expectation that the Office of the State Attorney intended to conduct its own investigation into Baseggio’s use of force. Chief Holland called Assistant Commissioner Massie to inquire about that fact, and Mr. Massie eventually directed Chief Holland to call Chief Assistant State Attorney Ryan Williams. Mr. Williams told Chief Holland that additional investigation would be forthcoming and that the Office of the State Attorney would appreciate any cooperation the Department could provide. Andrew Baseggio testified that he also received a phone call from Chief Holland on or about that same day. Baseggio testified that Chief Holland told him the Office of the State Attorney did not like the FDLE investigation, that the Office of the State Attorney would be conducting additional interviews, and that prosecutors had seen something on the body worn cameras from that evening that appeared to indicate Baseggio had done something like this before. He also alleged the Chief told him she had tasked Corporal Lunsford with rewatching the body worn camera footage to determine what the State Attorney’s Office was investigating.

The final testimony relevant to our inquiry—and not originating from Chief Holland herself—arises from events surrounding the interviews conducted by the Office of the State Attorney. On June 27, 2024, Detective Jonathan Fernandez appeared for an interview pursuant to an investigative subpoena. During his interview, Detective Fernandez agreed to turn over his personal and agency cell phones to be forensically extracted. The news of Detective Fernandez turning over his cell phones quickly traveled through the Department. Among the officers that learned of this development was Officer Milagros Sanchez. Shortly thereafter, Officer Sanchez was served with an investigative subpoena of her own, ordering her to appear on July 3, 2024. This development greatly upset Officer Sanchez and she sought out Corporal Lunsford to vent her frustrations. Sanchez and Lunsford briefly met in his office. Lunsford quickly realized that he was unable to address her concerns and decided to take Sanchez to meet with Chief Holland. Lunsford found Chief Holland in her office where the Chief was meeting with Deputy City Attorney Curtis McGehee. Officer Sanchez began to express displeasure with receiving an investigative subpoena from the State Attorney’s Office and suggested that she would not comply with the subpoena.

According to Sanchez, Chief Holland told her that while she had to appear before prosecutors in compliance with the subpoena, Sanchez did not have to provide her personal phone to the Office of the State Attorney and that she should not take it with her to the interview. The existence of this meeting and people present was confirmed by testimony from Corporal Lunsford. Moreover, Lunsford recalled attorney McGehee pushing back on the Chief, asserting that the advice she was giving was not appropriate.

iv. The Voluntary Testimony of Chief Betty Holland

Chief Betty Holland appeared before the Office of the State Attorney for a voluntary interview on Friday, September 27, 2024. The parties agreed the interview would be video recorded and played for the Grand Jury per their request.¹⁸ The questioning covered the range of topics known to the Grand Jury up to the date of her interview and took place over four (4) hours. While we reviewed the entirety of her testimony, we write to describe what we believe are the most important portions.

Chief Holland testified to believing Baseggio's use of force was "inappropriate" the first time she watched the body worn camera footage of the event. She stated, however, that she did not relieve Baseggio of duty following the use of force. When asked about General Order 202.15 titled, "Relief from Duty," *requiring* an officer be relieved of duty if he or she is "significantly involved in incidents in which death or serious bodily injury occurred,"¹⁹ Chief Holland stated she did not believe the use of force on Sean Kastner involved "serious bodily injury."

Chief Holland confirmed the Department's RTR policy does not address when a criminal investigation into a use of force should occur or what factors should be considered when deciding to authorize that investigation. However, she testified to her understanding that the decision to conduct a criminal investigation into a use of force must be made before an IA investigation occurs, and that the decision to authorize a criminal investigation must be made by the chief of police. Chief Holland asserted that the only person she spoke to about whether to authorize a criminal

¹⁸ Chief Holland agreed to appear in person before the Grand Jury on Thursday, September 26, 2024. That convening of the Grand Jury was cancelled due to weather and scheduling concerns led the parties to the September 27, 2024 date.

¹⁹ The Department's General Order 202.15 states as follows: "As a matter of policy, any employee significantly involved in incidents in which death or serious bodily injury occurred shall be temporarily removed from duty and shall not be returned to duty until the completion of a preliminary administrative review."

investigation into Baseggio's use of force was former Chief Jeff O'Dell.²⁰ She confirmed she never showed former Chief O'Dell the video of the incident nor shared any of the reports documenting the use of force with him. Ultimately, Chief Holland decided a criminal investigation was not warranted. Chief Holland's reasoning for that decision was not clear. She acknowledged the elements of battery occurred and the force used was, by definition, excessive, but she had no explanation as to why these facts did not trigger a criminal investigation. Chief Holland confirmed she never consulted with an attorney or any subject matter experts inside the Department.

Following her decision not to initiate a criminal investigation into Baseggio's use of force, Chief Holland testified she authorized the internal affairs investigation into the use of force, assigning it specially to Sergeant Brian Clyde. She explained that Sgt. Clyde was assigned because he had experience investigating "serious" cases.²¹ The Chief denied any further knowledge of Baseggio's IA investigation until she received a request for a media interview on the matter in October of 2023. Chief Holland testified that, prior to that request, she was never made aware of Baseggio's sustained finding or the eight (8) hour discipline he received. She stated that she did not believe the eight (8) hour suspension was appropriate and she could not explain why Baseggio received his suspension when Officers Benjamin and Pepin were permitted to resign in lieu of termination when their sustained finding, in a separate incident, was also for an excessive use of force. When directly asked why these officers were treated differently when it came to discipline, Chief Holland responded, "I don't have an explanation."

The questioning then turned to the mandatory notifications that should have been made to the Office of the State Attorney and the Commission based upon Baseggio's sustained finding for a policy violation. Chief Holland admitted it was her responsibility to notify the State Attorney's Office of the sustained finding for *Brady* purposes and pursuant to Florida law.²² She acknowledged she did not send the notification, calling it an "oversight." Significantly, Chief Holland acknowledged she did send the *Brady* notifications for Officers Benjamin and Pepin whose sustained findings were finalized within weeks of Baseggio. Again, Chief Holland could

²⁰ This testimony is inconsistent with the testimony of Deputy Chief Wilson Munoz who stated he was in a meeting with Chief Holland and Deputy Chief Alicea where a criminal investigation was discussed, and they all agreed this investigation should not occur.

²¹ Chief Holland also acknowledged an inordinately large number of pending IA cases that led to the assignment to Sgt. Clyde despite the fact that Clyde was not assigned to the IA section at the time.

²² See Fla. Stat. § 112.536(1)(b).

not explain these disparate outcomes. Chief Holland's testimony regarding the failure to report to the Commission was even more troubling.

Chief Holland was shown the Form 61 the Department sent to the Commission documenting the separation of Officers Benjamin and Pepin. She acknowledged reviewing and signing those notifications on October 26, 2023.²³ The Chief then acknowledged that the required Form 78 reporting Baseggio's use of force to the Commission was never sent. When asked why the form was not sent, Chief Holland said, "I don't have a reason." According to Chief Holland, she definitively knew she needed to report Baseggio's finding to the Commission when she learned of his indictment on August 1, 2024. Inexplicably, Chief Holland admitted that as she sat in the interview, nearly two (2) months later, that she still had not sent the Form 78 to the Commission. Again, she could not explain why this had not been done. Chief Holland also denied anyone in her agency ever advised her that she should send the Form 78 for Baseggio to the Commission prior to her interview. This testimony directly contradicts that of Corporal Lunsford who stated he had, on multiple occasions, advised Chief Holland she should notify the Commission of Baseggio's sustained finding. During this portion of the interview, Chief Holland spontaneously volunteered she was "not trying to cover anything up."

The final aspect of the "reporting" portion of the interview involved the apparent pattern or practice within the Department of sustaining excessive force violation under a Department policy that obscured the true nature of the violation. Chief Holland acknowledged that the findings in Baseggio's IA report could be more accurately described. Moreover, she acknowledged Corporal Lunsford bringing approximately 10 prior cases where the policy that was officially found to have been violated did not accurately reflect the true nature of the violation. Chief Holland also admitted Lunsford telling her those cases, some or all of which were sustained under Chief O'Dell's administration, had not been reported to the Commission. Chief Holland referred to this as a "practice" that had existed at the Department and, again, could not articulate a reason as to why she had not sent the required notifications to the Commission for those cases.²⁴

²³ Upon inspection, even these forms were not accurate in that they both stated the resignation in lieu of termination occurred for policy violations that were *not* related to "moral character" when in fact they were—they were for excessive use of force. Chief Holland stated this was an oversight. This "oversight" was consistent with Justin Lunsford's testimony that he filled out this form and did it incorrectly.

²⁴ At one point, Chief Holland identified a requirement in the Florida Administrative Code that the form be submitted to the Commission within 45 days of the sustained IA finding as the reason why she did not make the required notifications. Essentially, she took the position that if a finding was not reported within 45 days, she was not obligated to report it at all.

The testimony then turned to State Attorney Andrew Bain's request that Chief Holland conduct a criminal investigation into Baseggio's use of force. Chief Holland agreed at the start that her Department has the authority to conduct its own criminal investigation, or she can ask FDLE to conduct a criminal investigation. She further admitted that she knew FDLE will not conduct a criminal investigation on an officer's use of force unless the head of the law enforcement agency requests it. In other words, it was Chief Holland's understanding that FDLE will not conduct a criminal investigation solely at the request of the Office of the State Attorney.

Chief Holland testified to receiving a call from Chief Assistant State Attorney Ryan Williams in October of 2023, wherein Mr. Williams conveyed the State Attorney's request that she conduct a criminal investigation into Baseggio's use of force. Chief Holland recalled that she refused this initial request for a criminal investigation. She stated that she did not consult with anyone before making that decision. Chief Holland then acknowledged receiving the State Attorney's letter making the same request in writing on November 28, 2023. The Chief then referred to her letter to the State Attorney dated December 20, 2023, for the reasons why she did not approve this second request for a criminal investigation. The specifics of the letter were discussed at length.

Chief Holland's letter cited to Baseggio's lack of intent to batter or injure Sean Kastner as one reason why a criminal investigation was not warranted. She acknowledged Baseggio's clear statement of his intent to "knee spike" Kastner in the face before doing it and could not square that statement with her assessment that he lacked intent. Chief Holland was also shown, and seemed to be previously unaware, of Baseggio's statement to Kastner after he delivered the knee spikes that if he did not go outside, "[w]e're going to use more force on you and you are going to be in a world of pain." An additional rationale for not requesting a criminal investigation articulated in the letter was that none of the subjects of the use of force "came forward to complain about the officers." When confronted with this statement, however, Chief Holland readily acknowledged that the victim's level of cooperation was not an appropriate consideration for whether to *conduct* a criminal investigation. Chief Holland was asked to explain the statement in her letter that read "...[Baseggio] verbally stated that he would knee spike the subject in the face if he didn't stop resisting." After being afforded an opportunity to re-review the body worn camera footage, Chief Holland acknowledged that the statement was not accurate. Chief Holland was unable to explain why her letter included this objectively inaccurate account of the incident. Finally, Chief admitted

that her assertion in her letter to the State Attorney that the Commission “has reviewed the information” did not apply to Baseggio’s use of force since she never sent a notification regarding his sustained IA finding.

Chief Holland testified her letter to State Attorney Bain did not end the inquiry. Rather, she testified she met with the State Attorney again in January of 2024, along with Assistant Commissioner Lee Massie and Deputy Chief Munoz, where the State Attorney pressed for their assistance with launching an investigation into Baseggio’s conduct, telling the room his office would investigate the matter if she did not. Following that meeting, Chief Holland stated she agreed to request FDLE conduct a criminal investigation into Baseggio’s use of force.

Chief Holland testified that once she consented to the request for FDLE to conduct a criminal investigation, she called and notified Andrew Baseggio of that decision. In other words, the head of a law enforcement agency admitted to calling the suspect in a criminal investigation and telling him he was about to be investigated. Chief Holland acknowledged it would be inappropriate for an investigator to notify the target of a criminal investigation that the investigation was underway, and she admitted there was no “exception” for the investigation of a law enforcement officer. Nonetheless, Chief Holland testified to calling Andrew Baseggio and informing him of the criminal investigation—consistent with his testimony to us. She did not, however, relieve Baseggio of duty. Chief Holland also failed to accurately inform other members of the Department of the true nature of FDLE’s investigation, often referring to it as a “review.”

The Florida Department of Law Enforcement dropped off its investigative report regarding Baseggio’s use of force to the Office of the State Attorney on May 14, 2024. On the same day, FDLE provided a copy of that report to Chief Holland. The Chief admitted to showing the report to Baseggio on that day or soon thereafter, but she alleged she did so after Lt. Brandin Suarez called her and asked her if he could show the report to Baseggio to calm him down. According to Chief Holland, she called former Chief O’Dell about what she alleges was Suarez’s request and the former Chief told her “he didn’t see any reason why not” when asked if Baseggio could read and review the investigation. This testimony is inconsistent with that of Lt. Suarez who asserted Chief Holland called him and arranged for him to show Baseggio the report. Two (2) facts are significant here. First, Chief Holland could not explain how Lt. Suarez would be aware of the FDLE report being finalized and delivered so he could even make the request to show Baseggio as she claims he did. Second, phone records show Chief Holland called Lt. Suarez that day, not

the other way around.²⁵ Given Chief Holland's extensive experience in criminal investigations, her conduct during this episode is difficult to comprehend.

The final topic of significance in Chief Holland's testimony centered around a meeting in her office in late June where she, Corporal Lunsford, Deputy City Attorney Curtis McGehee, and Officer Milargos Sanchez were present. Chief Holland remembered this meeting occurring and Officer Sanchez being upset about having a received a subpoena. She remembered directing Officer Sanchez to comply with the Office of the State Attorney's subpoena and cooperate with the investigation. When asked if she gave any orders or made any statements requiring or suggesting Officer Sanchez not provide their phones to the State Attorney's Office, Chief Holland replied simply and clearly, "I did not."

FINDINGS & CONCLUSIONS

Having reviewed all the evidence and testimony above, we make the following findings of fact and reach the following conclusions:

The Kissimmee Police Department exhibits a culture of silence—or a culture of cover up. Andrew Baseggio used clearly excessive force on Sean Kastner that went on for several minutes. Neither of the officers with him intervened—neither of them reported it to a supervisor afterwards. The involved officers laughed about the use of force afterwards and made it clear they would not discuss it on camera. Statements made by other officers who arrived on scene strongly suggest they not only knew the force was inappropriate, but that Baseggio was the one who used it. The initial corporal who reviewed the use of force approved it, and there is evidence of a practice of officers involved in a use of force discussing one another's reports to ensure they "match up." Officers across the Department discussed the internal affairs investigation, contrary to policy once the investigation was authorized. When an internal investigation was completed, and despite serious findings of policy violations, Baseggio's punishment was a day off without pay. His misdeeds were labeled as a "failure to obey policies" and were not reported to the Commission responsible for ensuring only people with good moral character can serve as police officers. No criminal investigation was completed and the request

²⁵ The phone records for Chief Holland's agency phone do not show a call to former Chief O'Dell. However, it is possible she made this call from her personal cell phone, the records for which the Office of the State Attorney has not yet obtained.

for one was denied for several months. When a criminal investigation was finally authorized the subject of the investigation was notified, not relieved of duty, and shown the report before the Office of the State Attorney could review it. There is also evidence of a “practice” at the Department of calling instances of excessive force a failure to obey policy rather than specifying the nature of the misdeed. We cannot say for certain this was done intentionally to avoid reporting to the Commission, but when combined with that failure to report the inference is present and we must admit this is a possibility.

Kissimmee Police Department officers and command staff lack the training necessary to improve performance and public safety in a variety of areas. Despite being “critical incident trained,” none of the three (3) officers responding to Sean Kastner’s residence took steps recognizing the mental health crisis he was experiencing. Not a single officer or agency member at the Department understood the entry into the Kastner home by the initial officers was unlawful. Law enforcement cannot enter a home without a warrant absent an exigency that was clearly not present, but none of them seem to know that. Corporal Close was asked to review a Response to Resistance without ever receiving meaningful training on how to do so.

The Kissimmee Police Department’s Internal Affairs Section lacks sufficient resources, procedures, and continuity to function effectively. The evidence paints a picture of an IA section staffed by only one individual responsible for far too many functions. The number of cases assigned combined with the time constraints to complete the investigations make completing a thorough investigation difficult, if not impossible. Incoming corporals receive little to no training and inherit a section with insufficient procedures and record keeping. Turnover occurs regularly in the section leading to a lack of expertise and continuity.

Chief Holland has knowingly failed to comply with Florida law and its requirement to report certain conduct to the Criminal Justice Standards and Training Commission. There are close to a dozen or more instances of sustained policy violations, from the administrations of multiple chiefs of police, that should have been, but were not reported to the Commission. There is evidence this may have initially been due to a lack of training and knowledge in the IA section and command staff. However, there is also evidence Chief Holland was made aware of these prior failures to report and as of her interview on September 27, 2024, had taken no action to bring her Department into compliance with Florida Law. This failure has left the Commission

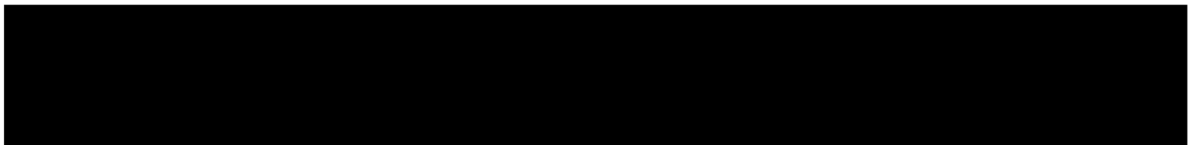
without the information it needs to monitor individuals across the state who wish to work in law enforcement.

Members of the Kissimmee Police Department either acted inappropriately or were dishonest in their testimony during this investigation. There is clear evidence that some law enforcement officers still employed at the Department either were not forthcoming with their testimony or outright lied in interviews with the State Attorney's Office or in their testimony before us. This was not a singular event and causes us grave concern. It is our understanding, however, that the Office of the State Attorney has an ethical obligation to notify the Department of these instances to evaluate each officers' potential placement in the *Brady* Notification System, so we leave those specific notifications to the prosecutors and investigators who presented the evidence in this case.

We lack confidence in the Kissimmee Police Department's current command staff and their ability to lead the agency. The head of a law enforcement agency is ultimately responsible for everything that occurs within it, but our concerns with Chief Holland go beyond this general responsibility for failures. Chief Holland repeatedly refused to criminally investigate a use of force that anyone could see was problematic upon initial review of the video. There is evidence she was directly and expressly told that Baseggio's sustained violation—and as many as a dozen others involving other officers—needed to be reported to the Commission. She refused and as of her interview stated none of this had been done. Chief Holland never relieved Baseggio of duty after authorizing a criminal investigation into his behavior and appeared to hide the true nature of the investigation from some of the members of her agency, including Baseggio's direct supervisor. Finally, Chief Holland notified the target of a criminal investigation that the investigation was beginning and then allowed him to read the criminal investigative report before prosecutors had the chance to do so, allowing that target to reach out to and tamper with witnesses. While it is true Chief Holland admitted taking most of these missteps, she was repeatedly unable to offer any rational reason why she took them. We as a body have serious concerns about her ability to lead the agency going forward in a way that will maintain our community's faith in law enforcement.

RECOMMENDATIONS

We are citizens who lack law enforcement training and experience. None of us has run or been responsible for running a law enforcement agency or a city. We have, however, invested dozens of hours gathering facts and listening to evidence about an agency charged with protecting the community we live in. Accordingly, and consistent with the conclusions we've reached, we make the following suggestions to the City of Kissimmee Manager, the City Council, and any other officials responsible for ensuring the effective functioning of the Kissimmee Police Department:



- (2) Conduct an evaluation of the current command staff to ensure those individuals are prepared and able to lead the Department with experience and integrity going forward;
- (3) Ensure the Department's leadership has the resources to quickly address the following issues:
 - a. A culture of acceptance and non-reporting, particularly surrounding use of force or officer wrongdoing;
 - b. Provide extensive and detailed training to officers in multiple areas, including but not limited to:
 - i. Crisis management and dealing with citizens experiencing a mental health emergency;
 - ii. The law on search and seizure, particularly warrantless entry into residences;
 - c. Update existing Department policies in several areas, including, but not limited to:
 - i. Formalizing when a criminal investigation should occur as a result of a Response to Resistance and laying out the factors that should be considered in such a decision;
 - ii. Establishing formal discipline for officers who fail to comply with orders not to discuss pending IA investigations;

- d. Undertake a complete review of the IA section of the Department, providing that section appropriate staffing and implementing procedures to guide investigations and reporting;
- e. Ensure the Department is in compliance with its reporting requirements to the Commission under Florida law, establishing procedures to ensure reporting is done moving forward; and
- f. Addressing any truthfulness or other concerns raised by the reporting of the Office of the State Attorney.

We wish to make it clear that we respect law enforcement and appreciate the extremely difficult job they do to protect our community every single day. We also recognize the Kissimmee Police Department is full of law enforcement officers who are honest, hardworking, and dedicated public servants. Our findings and recommendations in this case should in no way be interpreted to impugn the integrity of all those Kissimmee Police Department officers working to do the right thing and serve. We nonetheless feel obligated to bring the matters above to the attention of the public and those in a position to resolve the issues we discovered, believing that a community with faith in its law enforcement officers and agencies is safer and more just for everyone.

Respectfully submitted this 15 day of October, 2024.



Foreperson of the Grand Jury

As authorized and required by law, I have advised the Grand Jury returning this Presentment.



M. Ryan Williams
Chief Assistant State Attorney, on behalf of
Andrew Bain, State Attorney



Sean Wiggins
Assistant State Attorney

In and for Osceola County