



MELBOURNE POLICE DEPARTMENT

David Gillespie, Chief of Police

OFFICE OF THE CHIEF OF POLICE

To: David Gillespie, Chief of Police
Via: David Waltemeyer, Deputy Chief of Police
From: Jennifer DeCaro, Staff Inspections Sergeant
Date: March 12, 2024
Subject: Staff Inspection MP9000052779

D *4/30/24*

J

This memorandum addresses the parameters of the staff inspection ordered by Chief Gillespie on 06/22/2023, which included to locate all evidence, electronic records, and written records pertaining to case number MP9000052779, with the goal of finding the evidence, and/or providing a detailed account of what happened to the evidence in this case.

SCOPE

The scope of the staff inspection focused on the procedural functions of sworn and non-sworn member's collection, packaging, submission, short- and long-term storage, transfer, and disposition or destruction of evidence in 1990 to locate and account for all evidence from case number MP9000052779. Additionally, interviews with current and former members of the Property and Evidence and Investigations units were conducted to determine to the best of our ability how this case was handled. Finally, a review of available policies and procedures were conducted to determine the procedures for collection, packaging, submission, short- and long-term storage, transfer, and disposition or destruction of evidence in 1990.

RESULTS

The evidence was not located for this case. Additionally, the investigative case file and the paperwork related to the evidence were not retained for this investigation, beyond the Records Section file. Additional contents, including the final disposition from the State Attorney's Office (exhibit A1), and the Florida Department of Law Enforcement (FDLE) investigative file for evidence processing (exhibit A2) were added to the Records Section file during this audit. While the evidence and documentation sought for this investigation was not located, information that may explain why the department no longer retains these items is contained in the narrative of this report.

2023 STAFF INSPECTION FOR CASE MP9000052779

RETENTION REQUIREMENTS

This section contains information derived from historical searches of law, public records information, and interviews for the purposes of this staff inspection and is not intended to be a legal opinion. The City of Melbourne Attorney should be consulted to clarify or further evaluate content in this section.

The guiding statutes pertaining to public records and evidence retention may provide understanding about why the evidence and records for this case were not retained. While current law is occasionally referenced in this report, the focus of the report is on legal requirements in 1990 that may have applied to the department.

General Records Schedule for Law Enforcement Agencies (BC-2)

Pursuant to requirements of Florida Statutes § 119.021 and § 257.36, which each statute indicates was created in 1967, the Florida Department of State created the General Records Schedules for Local Government Agencies (BC-1) and the General Records Schedules for Law Enforcement Agencies (BC-2) to provide guidelines for custody and disposal of public records. For this audit, the BC-1 and BC-2 that were in force in 1990 were requested and received from the Florida Department of State in September 2023 (exhibit A4). *Note: General Records Schedules do not control the retention of the physical evidence, only the documentation associated with it.*

Regarding the retention of computer aided dispatch (CAD) records, the BC-2 (p. 19, #41) reflects two fiscal years retention was required, therefore the department was not obligated to retain the original CAD records for this case beyond about 1992. (Exhibit A1.)

Regarding the retention of the incident report, laboratory reports, and other items described under the Criminal Investigative Information Records section of the BC-2 (p. 24, #50), § 119.011(3)(b), Fla. Stat. states: “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Per § 119.011(3)2, Fla. Stat.: Criminal investigative information shall be considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

For the items described by definition above, the “Recommended Retention” in the BC-2 was “50 years after offense is committed, or 4 years after the death of the individual...” (p. 25,

2023 STAFF INSPECTION FOR CASE MP9000052779

#50). The term “recommended retention” may require legal opinion about the department’s obligation to retain these records in 1990, as current General Records Schedules do not use the term “recommended”. However, in compliance with item #50, the department does currently maintain a physical copy of the original incident report and laboratory tests for this case. *Note:* as described in the interview with ASA Hunt, the department did not retain documentation to show that it met the definition of an “active” investigation in the years following the laboratory processing of the evidence, which could indicate that the department was not responsible for maintaining any record (or evidence) of this case because a prosecution effort became impossible or unlikely as time passed.

Regarding the disposition of evidence processing records listed in the BC-2, (p.33, #68, Evidence Processing Records), the “Recommended Retention” for these records was “60 days after disposition of evidence or property provided applicable audits have been released.” Therefore, the department was not required to keep the evidence processing records for this case beyond the applicable 60 days after the evidence was disposed. However, this review was unable to determine when or why the evidence was disposed. The current General Records Schedules for Law Enforcement (GS2) requirements is also 60 days after disposition of property.

Regarding retention of the evidence itself, some statutes currently safeguard the evidence in cases where DNA is or may be present (e.g., § 925.11, Fla. Stat., Post-sentencing DNA testing) but most retention statutes appear to concern “post-conviction” cases and not evidence obtained or seized during a criminal investigation for which an arrest has not been made or for which charges have not been filed. However, these statutes are relatively new (appearing in the 2000s) and in 1990 there does not appear to have been any statutory or departmental requirement to keep evidence for any case that was unsolved.

Various portions of the Florida Rules of Criminal Procedure also reference public records and evidence retention, but these also appear to involve post-conviction cases. It appears that each law enforcement agency set its own timeframe for retention of evidence and associated files for non-prosecuted or unresolved cases based on agency-driven issues, such as storage space (including space in refrigerators or freezers), legal requirements (statutory requirements, lawsuits, and other court directives), and best practices for evidence management. This audit does not address what might have been best practices in 1990, as no documents have been located that contain such guidelines. It appears that this department utilized the General Records Schedule GS2

2023 STAFF INSPECTION FOR CASE MP9000052779

for Law Enforcement, Correctional Facilities and District Medical Examiners (GS2) as its guide for retention, as no other document has been located to establish another internal guide to records retention.

Regarding department policies and procedures that could not be located from the 1990 timeframe, the “Recommended Retention” in the Directives, Policies and Procedures section of the BC-2 (p. 29, #57) is “...until obsolete, superseded or administrative value is lost provided applicable audits have been released; prior to destruction, offer to the Florida State Archives.” Therefore, although the department may have copies of the policies referenced in this audit, it was not required to keep them once an updated or new policy was issued (or rescinded) by the Chief of Police.

INTERVIEWS

Sergeant Steve Lyon, Sr.

Mrs. Bullock, the current Property and Evidence Unit Manager, joined Sergeant DeCaro for an interview with retired Sergeant Steve Lyon, Sr. on 07/27/2023 at the main police department building (650 N. Apollo Boulevard). Sergeant Lyon was hired in 1974, became an Evidence Technician around 1976, and was promoted to sergeant at an undetermined time in the 1980s (Sergeant Lyon did not recall exact dates). Sergeant Lyon retired in 2003 as the Property and Evidence Unit Manager after 20 years working in the unit, and was the Property and Evidence Unit Manager in 1990 when this case was initiated.

Sergeant Lyon did not recall this case, but when he reviewed the original case file, he pointed out that two forms were missing: the laboratory transmittal from when the evidence was submitted to FDLE, and the laboratory return showing that the evidence was returned to the Department’s custody. Sergeant Lyon said that most capital or life felony offense case evidence would have been retained until the statute of limitations expired, or the post-conviction retention period, which he recalled as “75 years”.

When asked about the reasons evidence might have been legitimately disposed, including for this case, Sergeant Lyon said he was not sure because members of CID made those decisions, but said that evidence such as semen would not generally have been destroyed during his tenure because it might have been revisited at a later time for DNA testing. DNA testing was becoming more widely available to law enforcement in the late 1980s and Sergeant Lyon recalled the first Department case resolved through DNA testing occurred in 1989 on a previously unsolved

2023 STAFF INSPECTION FOR CASE MP9000052779

homicide. Although testing was expensive, he said the Department was slowly revisiting cases in which DNA may provide the necessary evidence for identifying and prosecuting offenders.

Sergeant Lyon said that a disposal record would have been stored after the evidence was disposed for a case that included prosecution. Mrs. Bullock told Sergeant Lyon that there was not a disposal record for this case, to which Sergeant Lyon described a group of file cabinets in the evidence room that contained such files during his tenure. The disposal documentation he referred to was a compilation of the property receipt on which disposal was noted and any paperwork associated with the case that provided legal opportunity to dispose of the evidence.

Sergeant Lyon reviewed the printed information retrieved from the Access software (exhibit A2) he implemented during his tenure. Sergeant DeCaro asked about disposal procedures in 1990 and Sergeant Lyon said that he created a unit standard operating procedure (SOP) which noted that disposal of evidence had to be documented. Sergeant Lyon recalled court orders, detective approval, and State Attorney approval as requirements for most evidence before disposal occurred. He discussed the disposal procedure from 1990, which was very similar to current processes, including the 2-person witness requirement, with both signatures required on the disposal form (property receipt). The disposal method for biological evidence was incineration which required traveling to a company in north Florida, where he and another Department member would witness the disposal and sign the form(s). Disposal records were maintained by the Property and Evidence Unit, which is still the practice today.

Sergeant Lyon said the practice during his tenure was to turn over the original evidentiary processing paperwork to the Records Section when the Property and Evidence Unit received it, and for the Property and Evidence Unit to keep a copy. Lab results could have been received during the FDLE laboratory trips each week when evidence was delivered/retrieved, or when the reports were mailed to the Department at a later time. Sergeant Lyon said it was common for processing of sexual assault cases to take more than one year (the results for this case were received 11 months after submission). Sergeant Lyon could not recall how a detective was notified when laboratory results were received for a case. Sergeant Lyon did not recall a department policy or procedure that discussed or directed notification. When asked if it was possible that Detective Nichols never received the laboratory results for this case, Sergeant Lyon said it was possible.

2023 STAFF INSPECTION FOR CASE MP9000052779

Sergeant Dennis Nichols Interview

Sergeant DeCaro conducted an interview with Sergeant Dennis Nichols on 08/30/2023 at the main police department building (650 N. Apollo Boulevard). Sergeant Nichols was hired in January 1984 and retired as a CID Sergeant in January 2014. He was promoted in 1996 and left his CID detective position to take a patrol operations supervisor role.

Like Sergeant Lyon, Sergeant Nichols did not [even after reviewing the original incident report file] recall this investigation. Sergeant Nichols said that he needed to review his detective notes to refresh his memory about the case because he does not remember responding to the residence or to the hospital to retrieve the sexual assault exam kit. Sergeant Nichols said that he clearly did respond to at least the hospital because his signature is on the property receipt as the submitting person for the sexual assault examination kit.

Sergeant DeCaro explained to Sergeant Nichols that boxes PD339 and PD340 were located containing some of his previous investigative files in them, and he asked where the investigative file for this case was? After explaining that the file was not located, Sergeant Nichols described that detective case files were previously stored in the locked storage closet at the north side of the police department where the detective's cubicles existed (which for internal reference is where the patrol sergeants' cubicles are today in the 650 N. Apollo Boulevard building).

Sergeant Nichols recalled that his homicide investigations files involving suspect James Barnes had been moved from that closet after he left CID and returned to patrol. He described the facts that led him to return to the CID file closet (650 N. Apollo Boulevard) with a CID supervisor (he does not recall who it was) so he could retrieve the original case file(s). However, Sergeant Nichols said the file cabinets that had once contained all of the detective case files and the files containing the homicide investigation had been moved. Sergeant Nichols recalled this because he needed the files to continue the investigation due to receiving new information from Mr. Barnes about the crime. The supervisor eventually located the investigations boxes for him, but Sergeant Nichols does not know from where the supervisor retrieved them, and the case against Mr. Barnes was successfully concluded and prosecuted. The disposition of the investigative files from the closet remains unknown, although given the documentation in the Records Section off-site storage files log, it is possible that some files were referred to off-site storage, and some files may have been relocated to the CID storage closet.

2023 STAFF INSPECTION FOR CASE MP9000052779

Sergeant DeCaro discussed the organization of the files in the PD339 and PD340 boxes with Sergeant Nichols. When asked if a supplement report would have been written for this or any case when the investigation was not finished, Sergeant Nichols said not necessarily, and recalled that supplement reports in that time were often generated to close cases, not necessarily to document investigative activity up to a point (the way they are today).

Sergeant Nichols spent a while during his interview reviewing the case file that Sergeant DeCaro provided to him while explaining that he did not believe he had ever seen the FDLE laboratory results before this interview. He specifically identified that in the report semen was described as being present on some of the evidence. Sergeant Nichols said that if he had been notified of the FDLE report, his investigative protocol would have included a request for DNA testing of the semen.

When asked what the procedure was for notifying a detective when lab results were received, Sergeant Nichols said he did not recall one, but did recall that the Evidence Technicians assigned to the case generally received the lab results first (they were employees of the Property and Evidence Unit at the time), and then shared the results with the detectives. Sergeant Nichols did not recall ever seeing a written requirement for laboratory results to be delivered to the investigating detective. Sergeant Nichols also discussed that the lab transmittal form (which was not in the file) should have included a detailed account of the incident. When asked about submitting the evidence for testing, he said the Evidence Technician would have conferred with him because the technician would need details about the investigative activities for the lab transmittal narrative.

When discussing the five days that passed between the incident and the request for lab testing, Sergeant Nichols could not recall what investigative activity may have taken place. He also did not recall whether the Health and Human Rehabilitative Services (HRS) Department (the agency that is now the Department of Children and Families) was conducting forensic interviews of children in 1990, but said if they were then he would have requested that interview be conducted within a day or so after the incident. When asked about consulting with the State Attorney's Office, Sergeant Nichols said that a case of this nature generally would not have required consultation with an assistant state attorney.

Sergeant Nichols did not recall how cases were assigned to detectives in the 1990s and was not familiar with the Case Status Report or how it was used. Sergeant Nichols did not recall seeing

2023 STAFF INSPECTION FOR CASE MP9000052779

any kind of list or documentation about case assignments prior to his own tenure as a detective supervisor (the electronic RMS system was implemented before he became a detective supervisor).

Sergeant Nichols recalled how disposal worked in the Property and Evidence Unit, and he described how he accompanied Sergeant Lyon several times as a second person/witness to dispose items. Sergeant Nichols said this event was an overtime opportunity for sworn members because of the limited number of full-time employees in the Property and Evidence Unit at that time. Sergeant Nichols recalled that he and Sergeant Lyon would both sign the property receipt at the time of disposal, and that if items were being disposed at the disposal vendor in north Florida by Sergeant Lyon, he would accompany Sergeant Lyon to that location to witness the disposal.

Post-interview note: The written content on the Request for Examination of Evidence form (lab transmittal), which was dated five (5) days after the initiation of the investigation, included a statement from the Evidence Technician: "Subject named by victim but as of yet we have been unable to locate him. NOTE, when suspect is in custody, samples will be taken from him for hair, blood and DNA comparisons." This statement appears to indicate ongoing investigative activity at that time.

Assistant State Attorney (ASA) Michael Hunt Interview

Sergeant DeCaro conducted an interview with ASA Michael Hunt on 09/01/2023 at the State Attorney's office in Viera, FL. ASA Hunt was unfamiliar with this case and reviewed the case file, including the request for capias filed in January 2023 by Detective Frost. Later that day, ASA Hunt forwarded the written decision not to file the case (exhibit A1) to me, which was shared with the Records Section and Detective Frost.

ASA Hunt confirmed that he was the Department's felony intake attorney in 1990, and said that he had very few issues with the completeness of case files when they reached his desk, and rarely did he have trouble securing a supplemental report from the involved members. ASA Hunt said that he does not recall ever having been consulted about this case, which would not have been unusual.

ASA Hunt assisted Sergeant DeCaro with obtaining copies of the sexual battery statute (§ 794.011, Fla. Stat.) effective in 1990, which came from a 1989 statute book publication, and also a copy of the 1991 statute (exhibit A5). ASA Hunt said that in that time the statute books were updated every other year, instead of yearly like they are today, and the gap year would consist of an update book (called the Supplement to Florida Statutes). A copy of the supplement for the

2023 STAFF INSPECTION FOR CASE MP9000052779

sexual battery statute was also obtained and did not contain changes to the statute that would have changed the criminal charge in 1990. The statute is largely the same as the 2023 version. Sexual battery by a person over 18 years of age on a child under 12 years of age was a capital felony in 1990, which means that there was no statute of limitations about prosecution at the onset of the case, provided that the investigation continued to progress over time when there was a named suspect. The amount of time was circumstance-dependent.

ASA Hunt described the statute (§ 775.15, Fla. Stat., Time limitations) regarding prosecution of a case when there is a known offender (exhibit A5). In 1990, the Department must have continued to make a “diligent effort” to pursue the facts of the case when the offender became known. ASA Hunt said that while there are some evidentiary considerations like DNA for identifying or confirming an offender’s involvement in a case, generally those cases are a result of an agency actively pursuing the investigation over time. In this case, because documentation that confirms the investigation continued after the FDLE laboratory results were received is no longer available, over time the case would have become unable to be prosecuted.

Ms. Antoinette Rao Interview

Sergeant DeCaro conducted a telephone interview with former Property and Evidence Manager Ms. Antoinette Rao on 09/25/2023, as Ms. Rao currently resides out-of-state. Ms. Rao began working with the Department in the 1980s and was a Property and Evidence Unit Technician in 1990, and she worked for Sergeant Lyon when this case was initiated. Ms. Rao became the Property and Evidence Unit Manager around 2010 upon Sergeant Randy Young’s retirement, and was the Property and Evidence Unit Manager until her own retirement in late 2015 or early 2016.

Because this interview was not in-person, Sergeant DeCaro did not share any of the printed case file with Ms. Rao, but did discuss some of the information contained within it. Ms. Rao did not recall this case or what happened to the evidence for it. Like Sergeant Lyon, Ms. Rao said that none of the disposal records inside the unit were disposed by her or were authorized by her to be disposed. Ms. Rao also explained the same procedure recalled by Sergeant Lyon for disposal, except that she did not recall traveling to the biological waste disposal center in north Florida.

Ms. Rao explained that the file cabinets Sergeant Lyon described to Mrs. Bullock and Sergeant DeCaro as having contained all disposal records were eliminated in favor of new, larger file cabinets during her tenure. All files from the old file cabinets were moved into the new ones. Ms. Rao said that, at the time, there was a separation of “active” files from “dead” files. Active

2023 STAFF INSPECTION FOR CASE MP9000052779

files were cases in which retention of the evidence was required for an extended period because of a prosecution effort or other statute requiring retention of the evidence. The “dead” files were cases that had been declined prosecution by the State Attorney’s Office, were cases in which prosecution was not being sought, or were cases in which the statute of limitations had expired and the evidence was no longer required to be retained. Ms. Rao said that none of the Property and Evidence disposal records were sent to off-site storage.

Ms. Rao recalled the retention schedule for sexual battery evidence in a prosecuted case as being “99 years”, and also recalled the 90-day and 60-day retention of items that were safekeeping or found property (§ 705.101, § 705.105, and § 705.103, Fla. Stats., respectively). Ms. Rao recalled that sexual assault exam evidence was stored in the refrigerator and had no explanation for the exam kits located during the audit that were returned to the dry shelves after evidence processing was completed by FDLE. However, Ms. Rao recalled that there was very little storage space for property and evidence and that disposal was necessary to create space. Ms. Rao said she continued the two-person disposal method Sergeant Lyon described, including the requirement for detective or detective supervisor permission to dispose of any evidence in cases where prosecution was not being sought. Ms. Rao said she would make a note on the paperwork to document permission to dispose of evidence for cases not needed by the State Attorney.

Ms. Rao did not recall any requirement for her staff to notify the investigating detective of received laboratory results. Ms. Rao recalled that her staff would make a copy of the results and either deliver them to the CID supervisor or the detective’s internal mailbox, but she did not recall which. Ms. Rao said she does not recall providing the Evidence Technicians with laboratory results.

Ms. Rao recalled that she and her staff never completed supplemental reports for evidence handling or receipt of evidence slides from FDLE. Ms. Rao said her staff would accept the slides and place them into the freezer, but did not include them as a separate item in the inventory or use the RMS barcode system to identify them as being in the evidence inventory.

Ms. Rao explained the “control number” system implemented in the 1980s by Property and Evidence Unit management at the time, which included a paper list of numbers beginning with one and continuing from there to whatever the numbers were when she retired. Ms. Rao said she did not know why this system was created or what its purpose was, but that she kept it going while she was manager. The system worked as such:

2023 STAFF INSPECTION FOR CASE MP9000052779

- Control numbers were written at the top of the property receipt – either in the middle or on the upper right corner
- The control number was noted in a log, but not necessarily associated with the case number (those logs do not appear to have been retained)
- The property receipt was filed in case number order until it became a “dead” file (the property was disposed or set for disposal), and then it was removed and stored in “control number” order

OBSERVATIONS

Evidence Search

During the months of June and July 2023, Sergeant DeCaro and Property and Evidence Unit Manager Jessica Bullock conducted a diligent evidence search for evidence in this case. The search was negative except for evidence added to this case by Detective Jennifer Frost during her investigation in 2022 (exhibit A1). The following paragraphs are a description of the search methods and observations.

The first phase of the search included a 100% accounting of evidence in the permanent storage freezers and refrigerators. Mrs. Bullock used the FileOnQ software audit function to document each piece of evidence via scanning the barcode. This portion of the audit included a review of more than 1,100 items.

The next phase of the search included a complete review of evidence associated with sexual assault cases between January 1989 and December 1991 that were not part of a homicide investigation. The purpose in covering the years 1989 and 1991 when this case occurred in 1990 was to be thorough and ensure that evidence wasn't misplaced by case number among the adjoining years. This portion of the audit included approximately 400 items. An important observation about this evidence is that all of the retained items appear to have been part of a prosecution effort for which the defendant was convicted.

The former Access software (where the evidence for this case was documented) utilized to document Property and Evidence acceptance, retention, transfer, and disposal for the Department during the 1990s was inconsistent at best. Randomly, some items listed as disposed were located in evidence, and other items listed as evidence had been disposed. Some items were listed as disposed but did not have an accounting of who disposed them, or when. Additionally, Mrs. Bullock explained that two other electronic evidence systems had been used before the Access

2023 STAFF INSPECTION FOR CASE MP9000052779

software was implemented by the City's Information Technology staff in the 1990s. One software was a beta test software from the Harris Corporation (during an unknown timeframe) which was returned to that business without the records having been extracted, and the other software was located on a stand-alone computer whose hard drive failed and the data was not able to be recovered by the City's Information Technology Department staff in the early 2000s.

Both software programs stored evidence documentation that was ultimately lost. Thus, there is an inconsistent electronic property and evidence records history for the department between 1990 and approximately 2006 when the current records management system (RMS) was implemented and until the transition to the FileOnQ software in 2017. It is unknown if electronic records during that time were created to replace some or all of the property receipt and case file documentation maintained by the Property and Evidence Unit. Existing RMS records were transferred to the FileOnQ software in 2017. Disposal records included a pattern of noting "disposed" or "destroyed" on the property receipt for some, but not all of the items that were disposed. This is similar to the electronic record in the Access software for this case, which has a code of "7" (meaning disposed) but no initials, ID number, or date of disposal (exhibit A2).

During October 2023, Sergeant DeCaro conducted a diligent search of 1989-1991 property receipts, and a cursory search of all paper property receipts maintained by the Property and Evidence Unit, in an attempt to find the original property receipt and disposal information for this case. The search included a review of thousands of paper property receipts among two different systems of storage. Storage systems included a "control number" system, and a logical case number-based system organized by Mrs. Bullock following her hire in 2016.

Problems associated with the control number system included that the property receipts for each case were removed from case file number order and redistributed them to different numerically ordered places within the control number system. Thereby removing the ability for the entire case file to be located with ease. This system persisted despite the implementation of the RMS barcoded evidence control system, and ended after Mrs. Bullock's hire in 2016. The control numbers written at the top of property receipts for this case were 7177 and 7178. They were not located among any of the paper property receipts, including the many remaining in control number order.

2023 STAFF INSPECTION FOR CASE MP9000052779

Disposal Practices

During the property receipt file review conducted by Sergeant DeCaro, the following was observed:

- Many prosecuted cases included the required research about the case disposition, lawsuits, court orders, and other requirements that might have affected retention of evidence.
- Inconsistent (if any) documentation of permission to dispose of items not related to a criminal trial. Supervisor or detective permission was *not* documented on any of the property receipts reviewed from the 1990s through 2010, despite that this information should be with the disposal paperwork.
 - The current FileOnQ software houses attachments, including all property receipts received by the unit, processing requests and results, emails pertaining to retention or permission to dispose, etc.
 - Current practice is to store the email with permission to dispose from the detective or detective supervisor to dispose in the FileOnQ software as an attachment.
- Inconsistent documentation of two-person disposals from the early 2000s until 2016, following Mrs. Bullock's hire. Most of the disposals were single signature, and some were two ink-stamped names instead of handwritten signatures.
 - The current FileOnQ software captures electronic signatures of the involved members at the time of disposal.
- Single person disposal signature by non-Property and Evidence Unit members.
 - Currently, Mrs. Bullock does not permit non property and evidence employees to dispose of property/evidence, but any competent employee may witness the disposal as the second party.
- Disposal was only documented by writing "disposed" or "destroyed" on the property receipt. There was no indication of the method of disposal, or of any third-party disposal beyond notations like "BCSO" (Ms. Rao described a required a typed list of case numbers and gun descriptions for firearm disposal with BCSO – the Brevard County Sheriff's Office).

2023 STAFF INSPECTION FOR CASE MP9000052779

- Current practice is similar, although typically manifests are created and signatures of accepting third parties are obtained.

No record was located that explained the decision to dispose, or who authorized the disposal, of evidence and evidence paperwork for this case. Interviews with prior Property and Evidence Managers (retired) Sergeant Steve Lyon and Antoinette Rao revealed that they each claim disposal paperwork was never eliminated during their respective tenures (see the interviews section for interview details).

Records Section and CID File Searches

Following the evidence search, a diligent records search was conducted for this audit during the months of August and September, 2023. The search included a review of all files located inside the computer aided dispatch and automated reporting systems (CAD/ARS) for this case (exhibit A1), Criminal Investigations Division (CID) “cold case” storage, the secure and limited access CID “cold case room”, and also all sexual assault “permanent” investigation records for the years 1989-1991.

A review of disposal records and off-site storage documentation for the Records Section revealed two boxes (numbered PD339 and PD340) that were labeled as containing case files from 1993 for (Detective) Dennis Nichols, who was the initial responding detective for this case. Both boxes were located inside the CID storage closet, and inside the boxes cases from 1988-1995 were observed. Each case file was well-organized, with detailed case notes, forensic information, interview information, and case progress notes for each of the cases Detective Nichols investigated. During an interview with (retired) Sergeant Nichols, he confirmed that all of his unresolved case files were submitted to the CID supervision when he was promoted and left the division, as was the practice when detectives left the division. Sergeant Nichols said he did not put the files in boxes PD339 and PD340 himself (see the interview section for interview details). Some of the CID files:

- Contained Original Records Section files
- Contained Original investigator notes
- Were organized in individual banker’s style boxes with the detective’s name on them
- Contained closed/solved homicide documentation
- Contained unsolved homicide documentation

2023 STAFF INSPECTION FOR CASE MP9000052779

Every box was reviewed and a search of the files was conducted in an attempt to locate the investigative file for this case, which was not located. All detective case files from the storage closet in CID were transferred to the Records Section to comply with current records retention practices.

Following the CID records search, a diligent search of all “permanent” sexual assault case files (not involving homicides) was conducted. A review of these cases revealed a pattern of records storage that is notable for this audit. Each sexual assault case that was prosecuted or submitted for prosecution (meaning an arrest was made, arrest warrant was obtained, or request for *capias* was submitted) appears to include a full investigative case file. The cases in the permanent file that included a prosecution effort generally included:

- Incident report (original)
- Witness statements (“Statement of Facts”)
- Interview transcripts
- Property receipts (documenting sexual assault evidence, cassette and VHS tapes of interviews, and other items)
- HRS abuse reports
- Child Protection Team (CPT) forensic interview and medical reports
- “Interview Sheet” (which appears to be a written Miranda acknowledgement of rights for interviews with suspects)
- Crime Scene Report (completed by the Crime Scene Investigator)
- Crime Scene Investigator supplement narrative/report
- Florida Department of Law Enforcement (FDLE) forensic reports
- Arrest paperwork

Infrequently observed items inside the case files included:

- “Case Status Report” (internal document apparently meant to notify the Records Section about which detective had been assigned the case)
- DNA reports
- Laboratory transmittals (“FDLE Request for Examination of Physical Evidence”)
- Arrest warrant
- Case supplement with a case closure due to lack of victim (or parent) cooperation

2023 STAFF INSPECTION FOR CASE MP9000052779

With exception to cases in which the parent refused cooperation or declined prosecution for their child's sexual assault investigation, almost none of the non-prosecuted cases included a closing supplemental report or an investigative file containing any of the items from the bulleted list. The information collected during the interview with Sergeant Nichols, the review of detective case files in CID, and the information contained within the Records Section files appears to confirm that the Records Section did not maintain detective case files for investigations which had not been resolved. The Records Section file for this case did not contain a Case Status Report, or an investigative file, possibly indicating that the case was unsolved/unresolved, or that prosecution was not being sought. Without the investigative file for any case of that time period, the reason(s) a case may not have resulted in an arrest, or was otherwise closed, would not be known.

Incident Reports

Research indicates that the first electronic CAD system was implemented on or around January 1990. Prior to that, dispatchers used cards with information written on them about the incoming complaint. The original electronic CAD record for this case is not available due to the change in software vendors over the years, which included transferring information from one software to another. Communication Center Supervisor Cary Sergeant provided the Records Management System (RMS) electronic records transfer information, which documents some of the information from the original CAD entry. The original incident report for this case was located in both the Records Section permanent sexual assault cases files, and in the ARS electronic file where Detective Frost completed her supplement report, respectively. (Exhibit A1)

Department of Children and Families

A public records request was made to the Department of Children and Families (DCF) inquiring about any reports received or investigated by the Health and Human Rehabilitative Services (HRS) in 1990 for [REDACTED] [REDACTED] or the residence at [REDACTED] Melbourne to determine if the agency was involved in this investigation. In September 2023, DCF responded (exhibit A3) that there were not any investigations referred to their agency for Ms. [REDACTED] or the address in 1990. However, they did confirm two cases reported to their agency in 1995 for child neglect (drug use and home conditions) by [REDACTED] [REDACTED] and a paramour.

Policies and Procedures

Prior to 2006, there appears to have been few procedural requirements for evidence collection, packaging, submission, short- and long-term storage, transfer, and disposition or

2023 STAFF INSPECTION FOR CASE MP9000052779

destruction, submission, and testing. A Records Section policy was unable to be located prior to 2002 and none of the previous employees interviewed recalled any policies about the operation of the Records Section.

The Report Writing General Order (DGO 1511) issued in 1988 by Chief Chandler does not appear to have been updated until 2004, making the 1988 policy effective in 1990 (exhibit A9). The 1988 policy required written incident reports for sexual offenses, but did not address investigative activity or required follow-up reports beyond the initial investigative report.

The 1988 version of the Property Submissions and Handling General Order (DGO 1055) issued by Chief Chandler was the effective document controlling property and evidence submissions in 1990 (exhibit A6). The policy addresses marking packaging containing biological agents, but does not specifically refer to storage of those items, and also addresses trace evidence collection and handling, but does not refer specifically to sexual assault investigations. The policy directs members to review the FDLE Evidence Submission Manual for evidence submission requirements.

A year 2000 copy of a version of the former Property and Evidence SOP that Sergeant Lyon referred to was located in a file cabinet during the search for the original case property receipts (exhibit A7). However, this would not have been the controlling document for the unit when Ms. Rao was manager, as she confirmed during her interview with Sergeant DeCaro that an SOP was not effective during her tenure as manager.

Instead of the SOP having been maintained, the department's Evidence/Property Collection & Submission General Order (DGO 83.1) became the effective controlling document for the unit's operations, including retention and disposal practices. The earliest copy of DGO 83.1 retained appears to be from 2007 (exhibit A8), and the header indicates that it replaced DGO 1055's 1992 version.

CONCLUSION

The evidence, evidence documentation once stored by the Property and Evidence Unit, and the investigative case file once stored by the CID supervision were not located. Without disposal records there is no way to know when, why, or who authorized disposal of the evidence for this case. Similarly, without the investigative case file there is no way of knowing:

- what investigative activity took place beyond the receipt of the evidence analysis,
or

2023 STAFF INSPECTION FOR CASE MP9000052779

- if the investigating detective ever received the laboratory results, or
- if a CID supervisor assigned Detective Nichols, another detective, or any detective, to investigate this case beyond the receipt of the initial investigation.

The department currently has many policies that specifically guide evidence collection, handling, storage, testing, and destruction procedures, including the Property and Evidence Unit Policy, and Property and Evidence Submission Guide. Additionally, there are several policies outlining control of records, report writing guidelines, supplemental and follow-up procedures for various divisions and investigation types, including detailed CID Standard Operating Procedures, and other written directives that ensure members of the department are well-informed regarding practices for handling many types of cases, including sexual assault cases. However, recommendations for this staff inspection include that command staff:

- Consider implementing an internal evidence and evidence records retention schedule and procedure for capital and life felony cases
 - additional consideration should be given to these records being maintained by the Records Section
- Consider revising CID case assignment procedures, and possibly require a short supplemental report by the assigned detective to show a case was formerly assigned to them for investigation – particularly for capital and life felony cases, as historically there has not been a procedure for ensuring these cases were assigned
- Revisit the CID SOP and ensure there is a written requirement for detectives to submit all investigative files to the Records Section
- Review policies affecting the Records Section to ensure a requirement for receipt and maintenance of all detective case files is included (update the policy if necessary)

Finally, because the criminal investigative file was not retained, this staff inspection is inconclusive and unable to determine the timeline for tracking and disposing of the evidence for this case once it was returned by FDLE.