



Ohio Attorney General's Office
Bureau of Criminal Investigation
Investigative Report



2023-0228

Officer Involved Critical Incident - 18697 Bagley Rd., Cleveland, OH
44130, Cuyahoga County

Investigative Activity: Witness Interview – RN Jessica Herman
Activity Date: March 16, 2023
Activity Location: BCI - Richfield
Authoring Agent: SA Matthew Armstrong #146

Narrative:

On March 16, 2023, at approximately 1530 hours, Ohio Bureau of Criminal Investigation (BCI) Special Agent (SA) Matthew Armstrong (Armstrong) and SA Nick Valente (Valente) met with and interviewed Registered Nurse (RN) Jessica Herman (Herman). RN Herman was a staff nurse in the Emergency Department at Southwest General Medical Center. She was identified as an individual who witnessed and/or had some level of involvement in the October 18, 2022 incident surrounding the death of patient Bryan Bailey (Bailey). The interview took place at the BCI Richfield office and was audio recorded.

The following is a summary of the information deemed by the author to be of the most relevance to the investigation and does not purport to contain all questions and answers from the interview. The information was placed in a chronology to aid the reader's overall understanding of the information elicited during the interview and may not be reflective of the actual sequencing of questions. It is suggested that the full recording be reviewed to clarify any content or contextual questions regarding the information from the interview. Time references made through this report correlate to the audio recording.

Throughout the interview, RN Herman provided the following information:

RN Herman has been employed at Southwest General Medical Center as a Registered Nurse since May of 2022. She completed a Bachelor's degree in Nursing at Cleveland State University. When working, RN Herman wore blue scrubs, a t-shirt with the Southwest General logo on it and a name tag identifying her as an RN. RN Herman was also equipped with a radio and a pair of scissors, pens, and a stethoscope. RN Herman believed she was well represented as a staff member or nurse while working in the Emergency Department.

RN Herman was not involved in the physical restraint of Bailey. She did assist with the documentation of the Advanced Cardiac Life Support (ACLS) protocol. When the incident occurred, RN Herman was training with RN Robert Cogar (Cogar).

RN Herman was in another patient room when she heard screaming. She heard the patient screaming out in general then the nurse yelled he needed some help. She went to check what was

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going on and when she arrived at the exam room, she observed RN Jeffrey Rubel (Rubel) and patient Bryan Bailey in a struggle. Bailey was lying across the bed on his back and RN Rubel was holding Bailey down because Bailey was trying to leave. She explained Bailey couldn't leave the emergency department because he was "pink slipped" (72-hour psychological evaluation). When she saw the struggle, she called for other people to come help because she knew based on her size she would not be able to help with anything. Other staff and police then came to the room to help.

When she first arrived, she saw Bailey lying on his back on the bed. His body was perpendicular to the sides of the bed and RN Jeffrey Rubel was knelt down holding Bailey around the upper torso. Bailey was screaming but not saying anything. She did not remember RN Rubel saying anything to Bailey but he was calling for help. She did not go into the room initially because she knew there was nothing she could do to help. Other staff and 4 or 5 police officers then arrived. She did not know the officers' names but identified the other responding medical staff as RN Juan, Medic Brandon, RN Tyler, PCA Maddie, and Dr. Harris.

Medical staff and the officers then struggled to restrain Bailey. While they tried to restrain him, Bailey was spitting and thrashing his arms and legs. The officers got kicked a couple of times and she thought Bailey kneed one of the officers in the groin. He was also trying to bite staff. RN Herman said it was a struggle to get the restraints on Bailey because of how much he was fighting with the staff. At one point, while RN Herman was handing the officers restraints, Bailey kicked her on her right thigh and knocked her back against the wall. She was not injured from the kick.

During the struggle, she went to get Dr. Harris so they could get medication to calm Bailey down. Between the time she first arrived and when the medication was administered, Bailey continually fought staff and officers while they tried to restrain him. She overheard that Bailey was urinating and she saw one of the officers punching Bailey on the inner leg. She explained the officer was sitting on top of Bailey straddling Bailey's legs and hips when he struck Bailey. When she saw the punches, she thought "is that really necessary to be doing that" (21:36). RN Herman was asked if the strikes to Bailey's thigh were before he was restrained or afterward. She indicated the strikes were performed while they were trying to restrain Bailey and that Bailey's legs were still free and kicking when the officer struck Bailey's thigh.

It took police and staff approximately 5 minutes to get Bailey restrained. She was not sure if anyone was injured during the incident. Throughout the entire incident she was afraid and very scared. When she first saw RN Rubel holding Bailey down she thought she would definitely get

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hurt because Bailey was so much bigger than her. She said RN Rubel was a stronger guy and he was struggling to restrain Bailey. She described the incident as the scariest encounter she ever had with a patient and Bailey was the worst she has seen a patient act since becoming an RN in November 2021.

After the medications were administered, the medical staff realized Bailey had become unresponsive and did not have a pulse. RN Herman estimated that Bailey became unresponsive within 1 minute of the medication being administered. RN Rubel was in the room initially and then he disappeared. Medical staff then began ACLS protocol. While Bailey was administered lifesaving care, she looked around outside of the exam room for RN Rubel but she did not see him anywhere.

During the ACLS protocol, RN Herman completed the documentation and code sheet because RN Rubel was not present. After Bailey was deceased she sat with RN Rubel and went over the code sheet with him. During that time RN Rubel was crying and "pretty shaken up." She believed his cry was genuine. The family even tried to console him. RN Herman explained everyone was shaken up afterward because the outcome was not expected. RN Herman said she felt like RN Rubel possibly felt responsible for what happened. RN Herman was asked if she believed he felt responsible because he did something wrong. She responded saying "Maybe, maybe. It's hard to say. Like, whenever something goes wrong like, your first thought is what, what did I miss. You know. You never want anything terrible to happen to your patients so you're always like running through like, did I miss an allergy, did I miss an assessment piece, did I like forget to do something and I feel like that's always something that you go through in your head once you sorta like calm down and like look at everything" (16:45).

RN Rubel never indicated to RN Herman where he disappeared to during the ACLS protocol. She said one of his other patients was also screaming at that time so she wasn't sure if he was dealing with that patient but it didn't make sense why he disappeared.

RN Rubel told RN Herman the incident began when he went into the exam room to obtain urine from Bailey. She could not remember when exactly he provided that information. She said it could have been when she first went into the room, or after the incident when she was going over the code sheet with Rubel.

RN Herman believed Bailey had an IV and ripped it out prior to the incident with RN Rubel. They had to start a new IV during the ACLS protocol. She explained patients present for

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psychologic evaluations generally have an IV established for the purpose of administering fluids or medications if necessary.

RN Herman was asked if she believed anything could have been handled differently. RN Herman believed RN Rubel could have handled the situation differently. She believed RN Rubel matched Bailey's aggressiveness and dominance and that perpetuated Bailey's behavior. She thought if RN Rubel could have been less aggressive it may have been better but she explained she was not sure what happened prior to her arrival at the exam room.

When RN Herman saw RN Rubel holding Bailey in a bear hug around his chest, she did not think that was appropriate but said she did not know what happened that led to that situation. She believed RN Rubel could have just let Bailey walk out of the room rather than trying to stop him and keep him in the room. She believed it was not his job to stop Bailey. RN Herman said she would have let Bailey leave and called the police because that's the officer's job not hers.

RN Herman had no previous encounters with Bailey.

Attachments:

2023-03-16 Interview - Jessica Herman