

## Public Affairs Bureau



### **Sheriff Hunter's Position Statement on Identification process**

Nov. 18 story in the Naples Daily News about the Collier County Sheriff's Office's decision not to release the name of a man who was shot after he pointed a gun at deputies implies CCSO is deliberately withholding releasable information from the public. The various articles published to date are testaments to the fact that we are not withholding information that can be released.

The headline on the story in the online edition goes as far as to say the man's identity "remains a closely guarded secret."

Neither could be further from the truth.

The fact is the man's identity is not a secret; it's just unverified. We are working with Immigration and Customs Enforcement and foreign authorities to make determinations of identity and establish contact with relatives. Our source of possible information till today has been a foreign passport. Our experience with foreign nationals and passports is limited but sufficient to cause us caution in adopting the name printed in the foreign documents. In fact there have been circumstances in our interaction with the criminal alien population in which individuals have used more than 20 different names on different occasions in our contacts with them. Prudence dictates that we authenticate names. This is our practice. Some authentication processes require greater amounts of time than others.

We also discovered a checkbook with the same name as found on the passport. The checkbook suggests significant assets in his personal account yet he was traveling by bicycle. Traveling by bicycle is not uncommon for foreign nationals illegally present who cannot obtain a Florida driver's license. Again, our experience with foreign nationals who may not be lawfully present is that in order for them to remain present

in the U.S. they may establish fluid identities. We are also concerned that persons who do not have the subject's best interests in mind may present themselves as his legal representative and perhaps damage his personal assets.

Tuesday we were permitted to finger print the subject after removing legal impediments imposed on us and we now have those prints as an additional tool in verifying his identity and determining his criminal and administrative history, if any.

To release an assumed but wrong identity would be irresponsible as well as upsetting to the man's family members should any incorrect information be released.

The NDN article of the 19th attempts to further challenge our position by stating that we applied for and received a warrant in the name of the subject's suspected identity. Given this fact, it is alleged, we must have known the subject's identity. Again, although we had a possible identity we had not verified that identity. Using the possible identity rather than applying for a "John Doe" warrant, which we also do, is preferred when a putative name is available.

We also take great exception to speculation by an out-of-state professor who is not familiar with our Agency, the Collier County community, our investigative practices or Florida statutes that the Sheriff's Office is possibly covering up something in not releasing the subject's name or certain details about the shooting. We remind the reporter and the headline writer that we are working with the Florida Department of Law Enforcement on this case, as is our practice, to insure the public's interests. The Daily News is sensationalizing this investigation and the reckless implication extends to both agencies and their members. The "experts" that were contacted were similarly reckless in not demanding more information before stating their uninformed positions.

Because there are active dual investigations into the incident (criminal and internal) we are prohibited by law from commenting on investigative information being gathered.

Once the investigations are concluded, the findings will be published as a public record for public inspection as is our practice and policy.

## Man shot by Collier sheriff's deputies charged with assault

By AISLING SWIFT (Contact)

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NAPLES — A 30-year-old man shot by Collier County sheriff's deputies on Friday has been charged with aggravated assault and remained in critical condition Tuesday, shackled to his bed.

"It's my understanding he's been literally handcuffed to his bed," said Naples defense attorney David Agoston, who was retained Tuesday by the aunt of the suspect, Jose David Giracca. "... Although he's hospitalized, he's in the custody of law enforcement."

Warrants show that the Sheriff's Office charged Giracca with aggravated assault, but records don't show whether the charge is a third-degree felony, or if he's charged with aggravated assault on a law enforcement officer, a second-degree felony punishable by up to 15 years in a state prison.

Karie Partington, a spokeswoman for Sheriff Don Hunter, said she could not confirm the man's identity after the Daily News asked about the existence of a warrant.

Deputies have said Giracca was shot at 12:51 a.m. at the Gulfgate Plaza at the intersection of U.S. 41 East and Bayshore Drive after he rode up to three deputies on his bicycle while they conducted an unrelated traffic stop.

When deputies asked why he was there, they said Giracca reached into his backpack, got off his bicycle and pulled out what appeared to be a handgun. Deputies said they repeatedly told him to drop it, but he didn't, so Cpl. Christopher D. Swarthout, Cpl. Jose A. Lopez and Deputy David J. Whitt fired multiple times. Officials later learned that Giracca was holding a pellet gun.

"He was severely injured," Agoston said, adding, "I'm not certain the extent of his injuries."

A Lee Memorial Hospital spokeswoman said Giracca is in critical condition in the surgical intensive care unit.

Agoston had not yet been provided with reports on the incident or other details.

"I can assure you that I have as many questions regarding the legitimacy of this case and the shooting as you do," he said.

The motorist in the traffic stop, a woman stopped due to an expired tag, was not charged and was released, according to Undersheriff Tom Storrar, who declined to provide her name because she is a witness to the shooting.

Swarthout, 41, was hired in 1995; Lopez, 40, has been with the office since 1988; and Whitt, 37, joined the force in 2006. They were placed on administrative leave while the Sheriff's Office conducts an internal investigation to determine if their actions met the agency's policy involving use of force.

Sheriff's officials have refused to release Giracca's name, which was obtained Monday by the Daily News through other sources and verified through hospital officials. On Tuesday, Sheriff Don Hunter

released a statement condemning the newspaper's coverage, which cited law enforcement experts who called the refusal to release the name unusual.

Hunter's statement said deputies had not verified Giracca's name. Yet sheriff's records show the arrest warrant, listing his full name and birth date, was issued Friday.

"The fact is the man's identity is not a secret; it's just unverified," Hunter's statement says, noting that illegal aliens often use many aliases. "We are working with Immigration and Customs Enforcement and foreign authorities to make determinations of identity and establish contact with relatives."

Until Tuesday, Hunter said, investigators only had a foreign passport and a checkbook as sources for his identity, but obtained the man's fingerprints Tuesday and plan to use them to confirm his identity.

Due to active criminal and internal investigations, officers are barred from commenting on information they've been gathering, Hunter's statement says, noting, "Once the investigations are concluded, the findings will be published as a public record for public inspection as is our practice and policy."

Agoston has asked deputies to refrain from questioning Giracca, who regained some consciousness Tuesday and was able to see his aunt, although he was not fully coherent.

"It's my desire that his condition improve so I can have a decent conversation with him," Agoston said.

"My primary concern at the moment is that no statement be obtained from him until he's not under the influence of sedation or medication," Agoston added. "What is vitally important at this time is that he invoke his right to remain silent."

*Staff reporter Tracy X. Miguel contributed to this report*

## Identity of man shot by deputies remains closely guarded secret

### *Collier County Sheriff's Office continues to withhold information days after man shot multiple times*

By ELYSA BATISTA (Contact), LESLIE WILLIAMS (Contact)

Originally published 9:31 p.m., Monday, November 17, 2008

Updated 10:17 p.m., Monday, November 17, 2008

#### **COLLIER DEPUTIES SHOOT MAN 'MULTIPLE TIMES' AFTER HE POINTED A WEAPON AT THEM**

NAPLES — Collier County sheriff's officials continued Monday to withhold the name of a man shot by three deputies, four days after he was seriously injured in East Naples.

Sheriff's officials said they had only a tentative identification of the man said to be under watch by deputies at Lee Memorial Hospital in Fort Myers since he was shot early Friday.

Sheriff's officials wouldn't release that name because they are "waiting for confirmation prior to releasing the name," a spokeswoman said Monday.

A Lee Memorial spokeswoman said a man named Jose David Giracca was admitted to the Fort Myers hospital Friday, and he still was in the surgical intensive care unit Monday afternoon. Hospital staff wouldn't release his condition Monday.

The shooting occurred while deputies were making an unrelated traffic stop at about 12:50 a.m. Friday, sheriff's officials have said.

When the man rode up on his bicycle, deputies have said, he pulled a gun out of his backpack.

Sheriff's Chief of Investigations Jim Williams said Friday that the man was repeatedly told to drop the weapon and get on the ground, but didn't. That's when deputies opened fire on the man, hitting him "multiple times," according to the Sheriff's Office. It wasn't until later that the deputies learned that the weapon was a pellet gun. The deputies have been placed on administrative leave.

Responding to further questions Monday from the Daily News, sheriff's spokeswoman Karie Partington said the commands given by the deputies to the man that morning were only in English.

Department officials have refused to answer questions about how many times and where on his body he was shot. The department also has refused to release any information about the man or his medical condition.

Late Monday, Undersheriff Tom Storrar said the Sheriff's Office is not releasing many of the details because the incident is still under investigation. He said the agency is close to confirming the man's identity, but wants to make sure they have the right information before releasing it to the public.

Storrar also defended the three deputies involved in the incident, saying that they followed the agency's rules regarding a person holding a weapon.

"Our officers reacted per our policy," he said. "You have to be put in their shoes. What they observed was an individual that had a handgun pointed at them, and they fired. ... When they made the determination that the threat had been lessened, they proceeded to render first aid."

The Daily News report on [naplesnews.com](http://naplesnews.com) elicited a comment about Friday's shooting, identifying the man deputies shot as "David" and insisting the Sheriff's Office knows who he is, despite what the agency was telling the media.

The person posting the comment, identified as InnocentVictHelp, implored readers to share information about defense attorneys or citizens rights advocates who might help them by e-mailing [InnocentVictHelp@aim.com](mailto:InnocentVictHelp@aim.com).

"David has no immediate family here so Collier County thinks they can get away with this," InnocentVictHelp wrote on the comment Saturday. "I need help QUICKLY. David is in critical condition and he is being denied legal access."

Monday, Partington responded to Daily News inquiries submitted by e-mail, stating: "At this time CCSO cannot verify any relatives living in the U.S., and if a relative is identified, hospital visitation rules would apply."

She also wrote that the department has made a "tentative identification," and will not release the name until confirming it.

Professor John Eck, with the University of Cincinnati's Center for Criminal Justice Research, said Monday the lack of information released by the Collier County Sheriff's Office isn't a normal response for a law enforcement agency in such circumstances.

"It does seem kind of odd," said Eck, whose areas of research include crime prevention, crime displacement, criminal investigations and the investigation of police misconduct.

He added that typically law enforcement officials would at least release basic information about a person shot within 24 hours afterward.

David Harris, a professor specializing in constitutional and criminal law at the University of Pittsburgh, agreed, but said policy can vary among organizations.

"It's very uncommon to not release an identity unless it is consistent with some policy," Harris said. "Do they have a policy of never releasing identity unless they know for sure who it is? If not, they're just making it up as they go along."

Generally, he said, an agency would hold off on making a public identification, particularly in the case of a death, if it hadn't yet located the family.

However, he said, if the department is having trouble verifying someone's identity, they would typically release a few details to the public in an effort to learn more. That can mean details as simple as an age, a physical description or a place of employment.

"There is some reason they don't want to identify him, and that lack of transparency raises the possibility that something — I don't know what or why — is being covered up," Harris said. "We don't know if that's true. We don't have enough facts to tell us that's true."

In response to the expert's claim that something is possibly being covered up at the Sheriff's Office, the undersheriff said that Sheriff Don Hunter has never hidden anything as long as he has known him.

"I have been with him for over 30 years, and he has never done that," Storrar said.

However, it is clear someone knows something about the man whom officials refuse to identify.

"David is a sweet, sweet young man who worked two jobs, sent money home to his mother and sister, played guitar and drums, wrote love songs, and watched old movies," InnocentVictHelp wrote on [naplesnews.com](http://naplesnews.com). "He came for the American dream."

Even in the absence of concrete details, Harris said, it would benefit everyone involved for an agency to provide as much information as available.

"It's very important, in order that people have confidence in the police department and that the community have good relationships with the police, that the greatest amount of information possible is released," Harris said. "It should only be withheld for compassionate purposes or for the purpose of an identification."