

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MANUEL R. DOMINGUEZ, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 01-3877  
 )  
 EVERETT S. RICE, PINELLAS )  
 COUNTY SHERIFF, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice a formal administrative hearing was held in this case on December 5, 2001, in Clearwater, Florida, before William R. Cave, Administrative Law Judge, Division of Administrative Hearings. The case was reassigned to Administrative Law Judge Susan B. Kirkland for the purpose of rendering a recommended order.

APPEARANCES

For Petitioner: William M. Laubach, Esquire  
Pinellas County Police Benevolent  
Association  
14450 46th Street, Suite 115  
Clearwater, Florida 33762

For Respondent: Keith C. Tischler, Esquire  
Powers, Quaschnick, Tischler,  
Evans & Dietzen  
1669 Mahan Center Boulevard  
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

Whether Petitioner violated Rules and Regulations of the Pinellas County Sheriff's Office, 3-1.1(002), 3-1.3(066), and 3-1.3(067), and, if so, whether Petitioner should be terminated from his position with the Pinellas County Sheriff's Office.

PRELIMINARY STATEMENT

On September 27, 2001, Respondent, Everett S. Rice, Sheriff of Pinellas County (Rice), notified Petitioner, Manuel R. Dominguez (Dominguez), that Dominguez was being terminated from his position as a deputy sheriff with the Pinellas County Sheriff's Office (Sheriff's Office).

Administrative Law Judge William R. Cave conducted the final hearing. At the final hearing, Petitioner testified in his own behalf and called Jay D. Morey as his witness. Petitioner's Exhibits 1-4 were received in evidence. Respondent called the following witnesses: Manuel R. Dominguez, MaryEllen Ruvolo, Renee Herrington, Lydia Wardell, Kelvin E. Franklin, Timothy Pelella, James LaBonte, John D. Bolle, and James Coats. Respondent's Exhibits 1, 3, 4, 7-27, 29, 30, and 37-39 were admitted in evidence. Official recognition was taken of Section 877.03, Florida Statutes.

On December 17, 2001, Respondent filed a motion to disqualify Administrative Law Judge Cave from rendering a recommended order. The motion was granted on December 31, 2001.

The case was reassigned to Administrative Law Judge Susan B. Kirkland to issue a recommended order.

#### FINDINGS OF FACT

Based on a review of the case file, the Transcript of the final hearing, and the exhibits entered into evidence, the following Findings of Fact are found.

1. On July 13, 2001, Dominguez was assigned to foot patrol at the K-Mart store in South Pasadena, Florida, as a community police officer. At that time he had been employed by the Pinellas County Sheriff's Office for approximately sixteen and one-half years.

2. On the evening of July 13, 2001, Dominguez was standing outside K-Mart talking to an employee of K-Mart, Renee Herrington (Herrington). While talking to Herrington, Dominguez observed a white van and a black sport utility vehicle (SUV) parked in front of K-Mart next to a yellow curb. The area in which the vehicles were parked was marked by a faded "no

3. Dominguez observed the vehicles for a time and when no one moved the vehicles, he decided to cite both vehicles for parking violations. He issued a citation to the white van and then proceeded to the black SUV.

4. The SUV had been parked in front of K-Mart by Maryellen Ruvolo (Ruvolo) while she and her niece went into K-Mart to make

a purchase. Ruvolo left the vehicle running, and her sister and two nephews remained in the vehicle.

5. Dominguez went to the rear of the SUV and began writing the ticket. Ruvolo's sister, Eugenia Quinn (Quinn), got out of the SUV and asked Dominguez to not issue the ticket and allow her to move the vehicle. Dominguez refused her requests and gave the ticket to Quinn. Dominguez started walking in the direction of Herrington, who was sitting on a bench approximately 30 yards away from the vehicles.

6. When Ruvolo returned to the vehicle, Quinn gave her the ticket and told her that Dominguez would not let her move the SUV. Ruvolo turned in the direction of Dominguez and shouted, "Have a nice day, you fucking fat bastard." Dominguez turned around and went back to where Ruvolo was standing. He wanted to confront her about her comment. Ruvolo started to yell after Dominguez went up to her. He arrested her, handcuffed her, and put her in his patrol car. The charge was disorderly conduct.

7. During the confrontation between Dominguez and Ruvolo, none of the members of the public became involved in the dispute and Ruvolo did not incite any members of the public to participate in the dispute. She never physically or verbally threatened Dominguez. Ruvolo's actions did not invade the right of others to pursue their lawful activities. Herrington went

back inside K-Mart and other members of the public were not disrupted in their entering and leaving K-Mart.

8. Quinn asked Dominguez why he was arresting her sister and he told her that he did not get paid enough to put up with what Ruvolo had said.

9. While he was arresting Ruvolo, Dominguez had requested assistance from another deputy sheriff, Kelvin Franklin. When Deputy Franklin arrived on the scene the confrontation was over. Dominguez asked Franklin to go inside K-Mart and get the address of Herrington, who had witnessed the incident. Dominguez did not request Franklin to take a statement from Herrington.

10. On the way to the jail, Ruvolo apologized to Dominguez, and he told her to shut up. Prior to reaching the jail, Ruvolo stopped for a few minutes in a parking lot and met with his supervisor to get some in-service papers.

11. When they reached the jail, Dominguez was advised that there were six persons to be processed ahead of Ruvolo. Dominguez got out of the patrol car and turned off the ignition. He did some paperwork on the trunk of his patrol car while waiting. He left Ruvolo in the patrol car without air conditioning and the windows rolled up for approximately six or seven minutes. He returned to the vehicle and turned on the ignition and waited to be called to take Ruvolo inside the

jailhouse. They waited approximately 20 minutes from the time they got to the jail until they entered it.

12. Ruvolo spent approximately five hours in jail and was required to post bail before she could be released.

13. After arresting Ruvolo, Dominguez prepared his incident/offense report and complaint/arrest affidavit. Dominguez admitted during his testimony that neither the arrest report nor the arrest affidavit set forth facts to establish the elements for the offense of disorderly conduct, the crime for which he arrested Ruvolo. Dominguez told the Administrative Review Board (ARB) that he felt that Herrington's peace had been disturbed. Dominguez did not talk with Herrington between the time he heard Ruvolo make her remarks to him and the time he arrested Ruvolo. When asked why he had not included any statements from Herrington in his report, he replied, "Laziness." During the ARB hearing, Dominguez stated that he had no excuse for not completing a thorough report and detailing the elements of the crime. He acknowledged the position that he placed the Sheriff's Office in when he did not do a complete and thorough report.

14. Ruvolo and Quinn made complaints to the Pinellas County Sheriff's Office about Dominguez's actions. The complaints alleged that Dominguez was rude, intimidating, and

unprofessional in his behavior during the July 13, 2001, incident. Ruvolo also alleged her arrest to be false.

15. As a result of the complaints, Sergeant Tim Pelella (Pelella) of the Administrative Investigations Division of the Pinellas County Sheriff's Office conducted preliminary interviews of Ruvolo and Quinn. During the course of the interview, Ruvolo recognized that she would have to pursue her false arrest claim through the courts. Pelella referred the matter to the commander of the road patrol division for investigation of the non-arrest components of the complaints.

16. The complaints were referred to Sergeant Jay Morey (Morey), Dominguez's immediate supervisor. Sergeant Morey talked to Dominguez and Herrington, but did not talk to either Ruvolo or Quinn. Morey concluded that he would not sustain the complaint, but his conclusion was never finalized or reduced to writing.

17. The arrest for disorderly conduct was referred to the State Attorney's Office for prosecution. The arrest report and arrest affidavit were reviewed by Assistant State Attorney Lydia Wardell, who concluded that neither the report nor the affidavit set forth sufficient facts to prosecute the case. As a result, a No Information was filed by the State Attorney's Office disposing of the charges against Ruvolo, stating: "The facts and circumstances revealed do not warrant prosecution at this time."

18. As a result of the decision not to prosecute, the Administrative Investigation Division of the Sheriff's Office retrieved the complaints from Morey and began its investigation of the false arrest complaint. It is the policy of the Sheriff's Office not to investigate allegations of false arrest until such time as the State Attorney's Office makes a decision on whether to prosecute.

19. Dominguez was notified that an investigation was being initiated. Dominguez gave a sworn statement to the investigators assigned to the case. Ruvolo and other witnesses also gave sworn statements.

20. After the investigation was completed, Dominguez was given an ARB hearing. In accord with General Order 10-2 of the Sheriff's Office, at least one member of Dominguez's chain of command sat on his ARB hearing. Prior to the hearing, the ARB members are given a copy of the investigation conducted by the Administrative Investigation Division. At the hearing Dominguez was permitted to offer a statement, to respond to questions, and to present additional evidence.

21. The ARB made the following determination:

On July 13, 2001, Manuel Dominguez, #52303, while on duty in Pinellas County, Florida; did violate the Pinellas County Sheriff's Civil Service Act Laws of Florida, 89-404 as amended by Laws of Florida 90-395, Section 6, Subsection 4, by violations of the provisions of law or the rules, regulations



and operating procedures of the Office of the Sheriff.

1. Violate Rule and Regulation of the Pinellas County Sheriff's Office, 3-1.1 (Level Five Violation), 002, relating to Loyalty, to wit: Members shall maintain their loyalty to the Sheriff's Office and it's [sic] members as is consistent with law and professional ethics as established in General Order 3-2.

Synopsis: On July 13, 2001, you failed to abide by the PCSO Code of Ethics, to wit: You acted officiously or permitted personal feelings, prejudices, animosities or friendships to influence your decisions while in the performance of duty as a deputy sheriff.

2. Violate Rule and Regulation of the Pinellas County Sheriff's Office, 3-1.3 (Level Three Violation), 066, relating to Performance of Duty, to wit: All members will be efficient in their assigned duties.

Synopsis: On July 13, 2001, you failed to accurately document an incident that resulted in the arrest of a citizen of this county.

3. Violate Rule and Regulation of the Pinellas County Sheriff's Office, 3-1.3 (Level Three Violation), 067, relating to Performance of Duty, to wit: All members will be effective in their assigned duties.

Synopsis: On July 13, 2001, you effected an arrest which the State Attorney's Office could not prosecute because you were ineffective in your assigned duties.

22. The violations resulted in a cumulative point total of 75 points. A Level Five violation is given a point value of 50 points. A Level Three violation is given a point value of 15

points. The ARB assigned a total of 25 points for the two Level Three violations and 50 points for the Level 5 violation. There were no previous discipline points added. The discipline range for 75 points is from a ten-day suspension to termination. The ARB recommended the maximum penalty of termination.

23. General Order 10-2 of the Pinellas County Sheriff's Office deals with disciplinary procedures. It provides that the termination procedure to be followed is the same as that of a member who is suspended without pay with certain additional procedures. Only the sheriff has the authority to terminate a member of the Sheriff's Office. A member can only be terminated "subsequent to an Administrative Investigation Division investigation supported by findings and disciplinary action recommended by a Administrative Review Board, and at the instruction of the Sheriff" that the member be terminated.

24. At the time that the ARB made its recommendation that Dominguez be terminated, Rice, the Pinellas County Sheriff, was out of the state. He had discussed Dominguez's disciplinary case with Chief Deputy Coats (Coats) prior to leaving the state. Rice had specifically authorized Coats to impose discipline, including termination, upon Dominguez that was consistent with the ARB's recommendations. Coats advised Rice of the findings and recommendations of the ARB. Rice told Coats that he had no problem with terminating Dominguez. Coats signed the inter-

office memoranda for Rice, advising Dominguez of the findings and recommendations of the ARB and advising of the decision to terminate Dominguez from employment with the Sheriff's Office. Coats was instructed by Rice to terminate Dominguez. In his deposition, Rice stated that Dominguez should have been terminated and that it was his decision to approve Dominguez's termination.

25. Dominguez did not know the elements of the offense of disorderly conduct when he arrested Ruvolo. He felt that he could arrest her for her inappropriate comments to him. At the final hearing, Dominguez admitted that based on his long career in law enforcement that he should have known what constituted disorderly conduct.

26. Dominguez was insulted by Ruvolo's name-calling and felt that her words were a challenge to the uniform of a deputy sheriff. Dominguez allowed his personal feelings to influence his decision to arrest Ruvolo.

#### CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. Sections 120.569 and 120.57, Florida Statutes.

28. The burden is on the party asserting the affirmative of an issue in an administrative proceeding. Department of

Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). Respondent is required to prove the allegations against Petitioner by a preponderance of the evidence.

28. Chapter 89-404, Section 6, Laws of Florida, authorizes the Sheriff to suspend, dismiss, or demote classified employees for certain offenses and provides:

(4) Cause for suspension, dismissal, or demotion, shall include, but not be limited to: negligence, inefficiency, or inadequate job performance; inability to perform assigned duties, incompetence, dishonesty, insubordination, violation of the provisions of law or the rules, regulations, and operating procedures of the Office of the Sheriff, conduct unbecoming a public servant, misconduct, or proof and/or admission of the use of illegal drugs. . . .

(5) The listing of causes for suspension, demotion, or dismissal in this section is not intended to be exclusive. The Sheriff may, by departmental rule, add to the listing of causes for suspension, dismissal, or demotion.

29. Chapter 89-404, Section 2, Laws of Florida, authorizes the Sheriff to adopt rules and regulations as are necessary to implement and administer this section. Pursuant to this authority, the Pinellas County Sheriff has adopted rules and regulations and policies that establish the standard of conduct,

which must be followed by all employees of the Sheriff's Office. These rules are contained in General Order 3-1.

30. Rule and Regulation of the Pinellas County Sheriff's Office 3-1.1(002) provides: "Members shall maintain their loyalty to the Sheriff's Office and its members as is consistent with law and professional ethics as established in General Order 3-2." A violation of Rule and Regulation 3-1.1(002), is a Level Five violation, the most serious category of violations.

31. General Order 3-2 of the Pinellas County Sheriff's Office establishes a Code of Ethics for all sworn members of the Sheriff's Office. Section 3-2.1 requires all sworn members to abide by the Law Enforcement Code of Ethics which provides:

I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately . . . .

31. Respondent has alleged that Dominguez violated Rule and Regulation 3-1.1(002) of the Pinellas County Sheriff's Office. Respondent has established by a preponderance of the evidence that Dominguez permitted his personal feelings to influence his decision to arrest Ruvolo for disorderly conduct when the elements for such crime were not present at the time of the arrest.

32. Ruvolo's remarks to Dominguez were constitutionally protected and did not constitute disorderly conduct. In 1976, the Florida Supreme Court upheld the constitutionality of Florida's disorderly conduct statute, Section 877.03, Florida Statutes, but placed a limiting condition on the extent to which the statute could be utilized to arrest persons for mere words used as a tool of communication. In White v. State, 330 So. 2d 3, 7 (Fla. 1976), the court stated:

We hold that mere words, used as a tool of communication, are constitutionally protected. The protection fails only when 1) by manner of their use, the words invade the right of others to pursue their lawful activities, or 2) by their very utterance, they inflict injury or intend to incite an immediate breach of the peace.

33. Respondent has alleged that Dominguez violated Rule and Regulation 3-1.1(066), which provides that "All members will be efficient in their assigned duties." Respondent has established by a preponderance of the evidence that Dominguez violated Rule and Regulation 3-1.1(066) of the Pinellas County Sheriff's Office. Dominguez did not accurately document the arrest report and arrest affidavit concerning the arrest of Ruvolo. He failed to include a statement from Herrington and failed to set forth facts that constitute the elements of the crime of disorderly conduct.

34. Respondent alleged that Dominguez violated Rule and Regulation 3-1.1(067) of the Pinellas County Sheriff's Office, which provides that "All members will be effective in their assigned duties." Respondent has established by a preponderance of the evidence that Dominguez violated Rule and Regulation 3-1.1(067) of the Pinellas County Sheriff's Office. As a result of Dominguez's improper arrest of Ruvolo and his failure to document the elements of disorderly conduct in the arrest report and arrest affidavit, there was no case against Ruvolo. The State Attorney's Office could not prosecute the case and filed a No Information.

35. Dominguez argues that the disciplinary procedures of the Sheriff's Office were not followed because the Chief Deputy Sheriff signed the termination memorandum, the Sheriff had determined that he would go along with the recommendation of the ARB prior to the ARB hearing, and no progressive discipline measures were taken.

36. The Sheriff was familiar with the case file before he left the state and before the ARB hearing was convened. He authorized Coats to terminate Dominguez. Coats advised Rice of the recommendations of the ARB, and Rice approved the decision to terminate Dominguez. Whether Coats signed the memoranda on behalf of Rice, is immaterial because Rice made the decision to terminate Dominguez and instructed Coats to do it.

37. The progressive discipline section of the Pinellas County Sheriff's Office General Order 10-2 deals with the use of retaining points toward future disciplinary actions. No previous discipline points were added to the total points assigned by the ARB. The ARB utilized the Progressive Discipline Worksheet as required by Section 10-2.6F of the Pinellas County Sheriff's Office Disciplinary Procedures. Based on the Discipline Level and Point Scale contained in the disciplinary procedures, the ARB could have assigned 15 points for each Level Three violation, but chose to reduce the total 30 points to 25 points. There was no violation of the progressive discipline procedures of the Pinellas County Sheriff's Office.

38. The discipline range for 75 points is from a ten-day suspension to termination. Given the seriousness of Dominguez's violations, it was not an abuse of discretion to terminate Dominguez.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Civil Service Board of Pinellas County Sheriff's Office enter a Final Order finding Manuel R. Dominguez guilty of violating the Rules and Regulations of the Pinellas County Sheriff's Office as set forth in September 27, 2001, inter-office memorandum and upholding the termination of



Manuel R. Dominguez from his employment as a deputy sheriff with the Pinellas County Sheriff's Office.

DONE AND ENTERED this 1st day of April, 2002, in Tallahassee, Leon County, Florida.

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SUSAN B. KIRKLAND  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of April, 2002.

COPIES FURNISHED:

William M. Laubach, Esquire  
Pinellas County Police Benevolent  
Association  
14450 46th Street, North  
Suite 115  
Clearwater, Florida 33762

B. Norris Rickey, Esquire  
Pinellas County Attorney's Office  
315 Court Street  
Clearwater, Florida 34756

Keith C. Tischler, Esquire  
Powers, Quaschnick, et al.  
1669 Mahan Center Boulevard  
Post Office Box 12186  
Tallahassee, Florida 32317-2186

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.