

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MICHAEL E. HUGHES, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-3204  
 )  
 PINELLAS COUNTY, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice a formal administrative hearing was held in this case on December 3, 2002, in St. Petersburg, Florida, before Lawrence P. Stevenson, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Kenneth J. Afienko, Esquire  
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For Respondent: Keith C. Tischler, Esquire  
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STATEMENT OF THE ISSUES

The issues for determination are: (1) Whether Petitioner, Deputy Michael Hughes, violated the Pinellas County Sheriff's Office

Civil Service Act by engaging in conduct unbecoming a public servant; and (2) Whether Petitioner violated Rules and Regulations of the Pinellas County Sheriff's Office, General Order 3-1.1.

PRELIMINARY STATEMENT

By inter-office memorandum dated August 3, 2002, Deputy Michael Hughes was notified by the Pinellas County Sheriff's Office (the "Sheriff's Office") that the Administrative Review Board had determined that Deputy Hughes had violated the Pinellas County Sheriff's Office Civil Service Act and Rules and Regulations of the Pinellas County Sheriff's Office. As a result, Petitioner was notified that disciplinary action in the form of a seven-day suspension, without pay, would be imposed. Deputy Hughes challenged the Administrative Review Board's determination that he had violated that portion of General Order 3-1.1 relating to the treatment of persons in custody. On August 14, 2002, the Sheriff's Office forwarded the matter to the Division of Administrative Hearings for assignment of an Administrative Law Judge and the conduct of a formal evidentiary hearing. The case was originally scheduled for hearing on October 29-30, 2002. Petitioner's motion for continuance due to witness unavailability was granted, and the case was rescheduled for and held on December 3, 2002.

At the final hearing, Deputy Hughes testified on his own behalf and presented the testimony of Sheriff's Office employees

Lieutenant John Bocchichio and Major Rodney Steckel; former Deputy Alphonso Gwyn; and Gregory DiFranza, an expert of issues involving use of force by law enforcement officers.

Petitioner's Exhibits 1 through 5 and 7 Through 9 were admitted into evidence. Respondent presented the testimony of Deputy Hughes, and of Deputy Mark Shorter, Sergeant Timothy Pelella, Major Clinton Vaughan, and Captain John Bolle, all employees of the Sheriff's Office. Respondent's Exhibits 1, 2, 17, 19 through 23, and 25 Through 27 were admitted into evidence.

The Transcript of the proceeding was filed on December 11, 2002. At the hearing, the parties stipulated that their proposed recommended orders would be filed within 30 days of the filing of the Transcript. Both parties timely submitted Proposed Recommended Orders.

#### FINDINGS OF FACT

Based upon the testimony and evidence received at the hearing, the following findings are made:

1. At all times pertinent to this case, Deputy Hughes was employed by the Sheriff's Office as a deputy sheriff. At the time of hearing, Deputy Hughes had over eighteen years' experience with the Sheriff's Office.

2. On January 12, 2002, Deputy Hughes was working as a deputy sheriff and as a Field Training Officer in the Field

Training Section of the Pinellas County Sheriff's Office. He was accompanied throughout his shift by a trainee, Deputy Mark Shorter.

3. At approximately 2:55 a.m. on January 12, 2002, Deputies Hughes and Shorter responded to 5125 Betty Street in St. Petersburg to assist Deputies Michael Pulham and Vance Nussbaum, who were already on the scene of a traffic stop where the driver was suspected of having active warrants for his arrest. Deputies Hughes and Shorter had already responded to two calls at 5125 Betty Street, both involving complaints by neighbors that persons in the house were causing a public disturbance.

4. After the traffic stop, the deputies noticed yet another disturbance occurring in the residence at 5125 Betty Street. The four deputies entered the residence. As the deputies walked in, one of the occupants, later identified as Donald Hillebrand, punched Deputy Hughes in the mouth with his closed fist. The deputies attempted to place Mr. Hillebrand under arrest for battery upon a law enforcement officer.

5. A melee ensued between the four deputies and several occupants of the residence. Donald Hillebrand was subdued, handcuffed, and arrested. Two women who participated in the fight were also arrested.

6. Mr. Hillebrand was then escorted to Deputy Hughes' cruiser and placed in the rear seat, without the use of a seat belt. Two other arrestees, Lisa Ruthven and Barbara Metzler, were placed in the rear of the Pulham/Nussbaum cruiser for transport. Because several other people were coming out of the residence and the situation remained volatile, the deputies decided they would regroup at a more secure location a short distance from the Betty Street residence to complete their paperwork on the arrests.

7. From the time he was placed in the back of the cruiser, Mr. Hillebrand spewed a stream of racial invective at Deputies Hughes and Shorter in the front. Mr. Hillebrand is white. Deputies Hughes and Shorter are black.

8. Lt. John Bocchichio, the shift commander, met the four deputies at the secure location. He noted that Mr. Hillebrand was screaming "nigger this and nigger that" from the rear of Deputy Hughes' cruiser. While Deputies Hughes and Shorter completed their paperwork at the rear of their cruiser, Lt. Bocchichio opened the door of the cruiser, leaned into the car, and attempted to speak to Mr. Hillebrand in an effort to calm him. Mr. Hillebrand continued yelling and screaming, and eventually spit at Lt. Bocchichio, who gave up and closed the door of the cruiser. Lt. Bocchichio did not tell Deputy Hughes that Mr. Hillebrand spit at him, but he thought Deputy Hughes

might have seen the spitting through the rear window of the cruiser.

9. Alex Metzler, another participant in the brawl at the Betty Street residence, rode up to the secure location on a bicycle. He claimed he was merely riding to a store, but the deputies believed he was there to interfere with them. The deputies arrested him, handcuffed him, and placed him in the rear of Deputy Hughes' cruiser along with Mr. Hillebrand. Mr. Metzler was seated on the passenger's side, and Mr. Hillebrand was seated on the driver's side of the back seat. Both men were handcuffed with their hands behind their backs. The cruiser had a plexiglass shield behind the driver's side of the front seat, and a steel cage behind the passenger's side of the front seat.

10. Deputies Hughes and Shorter, with Shorter driving the cruiser, commenced their travel to the Pinellas County Jail facility, located at 144th Avenue and 49th Street in Clearwater. Mr. Hillebrand continued his tirade at both Deputy Hughes and Shorter, calling them "niggers," inviting them to "suck his dick," and offering to perform various sex acts on their mothers.

11. While the cruiser was traveling on 49th Street approaching 144th Avenue, Mr. Hillebrand leaned over to

Mr. Metzler's side of the police cruiser and spit through the steel cage into the face of Deputy Hughes.

12. Deputy Hughes instructed Deputy Shorter to stop the vehicle. Deputy Shorter stopped the cruiser in the left-hand turn lane at the intersection of 49th Street and 144th Avenue, within sight of the jail.

13. After the cruiser was stopped, Deputy Hughes exited the vehicle, walked around the rear of the vehicle and opened the rear driver's side door. Mr. Hillebrand was lying on the back seat across Mr. Metzler. Deputy Hughes admitted that he was angry at being spat upon, but maintained that his purpose in stopping and exiting the vehicle was to prevent Mr. Hillebrand from spitting on him a second time by securing his seatbelt.

14. Deputy Hughes reached into the back seat of the vehicle in an attempt to make Mr. Hillebrand sit up on his side of the seat. Mr. Hillebrand resisted. Deputy Hughes noted that Mr. Hillebrand was on top of the seat belt buckle and decided that he needed to remove Mr. Hillebrand from the vehicle. Mr. Hillebrand continued to resist, lying back on the seat and using his legs and feet to prevent his removal from the vehicle. Deputy Hughes leaned into the vehicle in order to grasp Mr. Hillebrand's shoulders to gain hold of him. At this point, Mr. Hillebrand agreed to cooperate. He sat up, turned to sit

sideways in the vehicle and placed his feet on the ground outside of the vehicle.

15. Mr. Hillebrand then stood up outside the cruiser. Deputy Hughes testified that he thought Mr. Hillebrand was attempting to head-butt him, though he admitted that Mr. Hillebrand's actions were also consistent with the moves that a handcuffed person would have to employ to exit a vehicle. In response to the perceived head-butt, Deputy Hughes struck Mr. Hillebrand in the chest with a forearm strike and followed with a knee strike to the abdomen. Deputy Hughes briefly pinned Mr. Hillebrand against the rear quarter panel of the cruiser, then returned him to the back seat and attempted to fasten Mr. Hillebrand with the seat belt. Deputy Hughes was unable to fasten the seat belt because the buckle had worked its way under the back seat. Deputy Hughes looped the shoulder harness portion of the seat belt over Mr. Hillebrand's chest and tucked the end of it underneath the seat to give Mr. Hillebrand the impression that the seat belt was properly fastened.

16. Deputy Hughes closed the rear door of the vehicle and returned to his own seat in the cruiser. Deputy Shorter resumed the drive to the Pinellas County Jail, which took no more than two minutes. Mr. Hillebrand was turned over to corrections officers without further incident and charged with two counts of battery on a law enforcement officer (one for punching Deputy



Hughes and one for spitting on Deputy Hughes) and one count of resisting an officer with violence.

17. Deputy Hughes admitted that he did not prepare a use of force report as to this incident. His arrest report detailed the brawl at the Betty Street residence, but made no mention of the subsequent stop after Mr. Hillebrand spit on him.

18. After the incident, Mr. Hillebrand's mother filed a complaint alleging the physical abuse of Donald Hillebrand during the course of the arrest. The complaint triggered an investigation by the Inspections Bureau of the Sheriff's Office regarding the incidents leading to the arrest of Mr. Hillebrand and the use of force by Deputy Hughes and the other deputies involved.

19. At the conclusion of the investigation, an Administrative Review Board reviewed the allegations and evidence compiled by the Inspections Bureau and determined that Deputy Hughes had violated the Pinellas County Civil Service Act and the rules, regulations and operating procedures of the Sheriff's Office.

20. The Administrative Review Board's memorandum, dated August 3, 2002, set forth the following specific violations:

1. Violate Rule and Regulation of the Pinellas County Sheriff's Office, 3-1.1 (Level Five Violation), 5.15 relating to the Custody of Arrestees/Prisoners, to-wit: Arrestees/Prisoners shall be kept secured

and treated humanely and shall not be subjected to physical abuse. The use of physical force shall be restricted to circumstances specified by law when necessary to accomplish a police task.

Synopsis: On January 12, 2002, you removed a secured prisoner from the rear of your cruiser while enroute [sic] to the jail and subjected him to physical force, which was not specified by law or necessary to accomplish a police task.

2. Violate Rule and Regulation of the Pinellas County Sheriff's Office, 3-1.3 (Level Three Violation), 3.20, relating to the Use of Force Reporting, to wit: Whenever a member either on or off duty, is required to use physical force against another person, the member shall immediately notify a supervisor of the action taken and complete the necessary documentation for review.

Synopsis: On January 12, 2002, you used physical force against another person, but failed to complete the necessary Use of Force Report for review.

21. The Administrative Review Board did not conclude that Deputy Hughes pulled Mr. Hillebrand out of the cruiser for the purpose of abusing him, or that Deputy Hughes used such force as would constitute a violation of state law or the United States Constitution. The Board unanimously concluded that the force utilized with regard to Mr. Hillebrand was unnecessary and served no legitimate law enforcement purpose, thereby violating General Order 3-1.1 (Level Five violation), 5.15, relating to Custody of Arrestees/Prisoners.

22. The Board found that Deputy Hughes' actions toward Mr. Hillebrand were inappropriate, given that his reason for stopping the car and commencing the chain of events that led to his use of force was to prevent Mr. Hillebrand from spitting on him again. The Board found that Deputy Hughes could have avoided being spit on without pulling Mr. Hillebrand out of the vehicle, and thus that there was no legitimate law enforcement purpose served by his use of force.

23. The Board noted several factors to support its finding. Deputy Hughes stopped the cruiser less than two minutes from the jail, where corrections officers could have taken Mr. Hillebrand out of the cruiser without the use of force. Deputy Hughes could have found something in the cruiser, such as a rain slicker, to place over the cage behind him and block any further spit from the rear of the vehicle. Once the prisoner was secure and in custody, Deputy Hughes' primary duty was to transport him safely to jail without exposing the prisoner, the law enforcement officers, or the public to the risk of further injury. By stopping the vehicle and opening the rear of the caged and locked police cruiser, Deputy Hughes exposed himself, his partner, both prisoners, and possibly the general public to an unnecessary risk of injury. Deputy Hughes' actions created the situation that resulted in the need to use

force on Mr. Hillebrand, and those actions were not necessary to accomplish the primary police task of transporting Mr. Hillebrand safely to the jail without further incident or injury. In short, the Board found that Deputy Hughes used appropriate force for the situation, but found that he violated regulations by allowing the situation to develop in the first place.

24. Sheriff's Office General Order 10-2 provides guidelines for imposition of discipline by an Administrative Review Board, including a point system based on the number and severity of violations. The violations found against Deputy Hughes resulted in a cumulative point total of 65 points: 50 points for the violation of General Order 3-1.1 (Level Five violation), 5.15, relating to Custody of Arrestees/Prisoners and 15 points for the violation of General Order 3-1.3 (Level Three violation), 3.20, relating to use of force reporting.

25. Sheriff's Office General Order 10-2 provides that the point total accumulated by Deputy Hughes allows for discipline ranging from a seven-day suspension to termination of employment. Deputy Hughes received the minimum seven-day suspension.

26. Deputy Hughes appealed only the finding with regard to the violation of General Order 3-1.1 (Level Five violation), 5.15, relating to Custody of Arrestees/Prisoners. Deputy Hughes

did not contest the finding that he violated General Order 3-1.3 (Level Three violation), 3.20, relating to use of force reporting.

27. Deputy Hughes contended that he acted in self-defense to prevent Mr. Hillebrand from continuing to spit on him. This contention was illogical. By opening the rear of the vehicle and manhandling his prisoner, Deputy Hughes made it easier for Mr. Hillebrand to spit on him again. Further, the self-defense contention was beside the point, as the Sheriff's Office did not allege that Deputy Hughes had no right to protect himself. Rather, the Administrative Review Board found that Deputy Hughes chose the worst of several possible methods to prevent Mr. Hillebrand from spitting on him. The essential finding was that Deputy Hughes used poor judgment, not that he used excessive force.

28. Deputy Hughes also contended that the Sheriff's Office was at fault for not equipping his cruiser with restraints designed to prevent prisoners from spitting. Whatever the value of such restraints, their absence did not prevent Deputy Hughes from improvising a protective device from the materials available in his cruiser.

29. Finally, Deputy Hughes pointed to the fact that the Sheriff's office has no rule or regulation prohibiting a deputy from attempting to seat belt a prisoner in the rear of the

vehicle to prevent him from spitting through the open portion of the cage. It defies reason to contend that the Sheriff's Office must develop a rule or regulation for every possible condition that may occur in the field, or that an experienced deputy may abandon common sense in the absence of a rule or regulation covering a situation in which he finds himself.

30. The evidence presented at the hearing fully supported the findings of the Administrative Review Board and the penalty imposed upon Deputy Hughes for the violation of General Order 3-1.1 (Level Five violation), 5.15, relating to Custody of Arrestees/Prisoners.

#### CONCLUSIONS OF LAW

31. 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.

32. 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). The Sheriff's Office is required to prove the allegations against Deputy Hughes by a preponderance of the evidence.

33. 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.

34. 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.

35. General Order 3-1.1 (Level Five violation), 5.15 provides: "Arrestees/prisoners shall be kept secured and treated humanely and shall not be subjected to physical abuse.

The use of physical force shall be restricted to circumstances specified by law when necessary to accomplish a police task."

36. The Sheriff's Office has alleged that Deputy Hughes violated General Order 3-1.1 (Level Five violation), 5.15. The Sheriff's Office has established by a preponderance of the evidence that Deputy Hughes failed to keep Mr. Hillebrand secured and used physical force beyond that necessary to accomplish a police task. The proximity to the jail, the availability of other means to avoid a second spitting incident, the fact that Mr. Hillebrand was securely handcuffed in the rear seat of a caged and locked vehicle, and the risk created to Deputies Hughes and Shorter, to both prisoners, and to the general public as a result of the actions of Deputy Hughes, all lead to the conclusion that Deputy Hughes acted inappropriately. Deputy Hughes' actions created a situation that resulted in a use of force that was not necessary to accomplish the police task of transporting Mr. Hillebrand safely to the jail without further incident or injury.

37. The progressive discipline section of 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 Administrative Review Board. The Board utilized the Progressive Discipline Worksheet as required by Section 10-2.6F of the Pinellas County Sheriff's



Office Disciplinary Procedures. The discipline range for 65 points is from a seven-day suspension to termination. Given that Deputy Hughes had no record of prior discipline and that his actions were found not to constitute physical abuse or inhumane treatment, it was proper that he received the minimum discipline prescribed.

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 Michael E. Hughes guilty of violating the Rules and Regulations of the Pinellas County Sheriff's Office as set forth in the August 3, 2002, inter-office memorandum and upholding the suspension of Michael E. Hughes from his employment as a deputy sheriff with the Pinellas County Sheriff's Office for a period of seven days.

DONE AND ENTERED this 28th day of February, 2003, in Tallahassee, Leon County, Florida.

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LAWRENCE P. STEVENSON  
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Filed with the Clerk of the  
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this 28th day of February, 2003.

COPIES FURNISHED:

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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.