

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SHEILA CHRISTIAN, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 05-1509  
 )  
 PINELLAS COUNTY SHERIFF, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on July 7 and 8, 2005, in Largo, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James A. Sheehan, Esquire  
341 Third Street, South  
St. Petersburg, Florida 33701

For Respondent: Keith C. Tischler, Esquire  
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STATEMENT OF THE ISSUES

Whether there was cause to suspend Petitioner for ten days and place Petitioner on probation for 12 months for alleged violations of the provisions of law, rules, regulations, and

operating procedures of the Office of the Pinellas County Sheriff.

PRELIMINARY STATEMENT

By memorandum dated April 15, 2005, Petitioner, Detention Sergeant Sheila Christian (Christian), was notified by Respondent, Pinellas County Sheriff, that it had been determined by the Administrative Review Board that she had violated "Pinellas County Sheriff's Office General Order 3-1.1, Rule and Regulation 5.4 - Duties and Responsibilities," involving the relocation of an inmate, Larry Germonprez, on March 11, 2003. Christian filed an appeal with the Civil Service Review Board, and the case was forwarded to the Division of Administrative Hearings for assignment of an administrative law judge to conduct the final hearing.

The final hearing was scheduled for June 9 and 10, 2005, but was continued at the request of Respondent and rescheduled for July 7 and 8, 2005.

The parties filed a Pre-Hearing Stipulation and admitted to certain facts contained in Section C of the Pre-Hearing Stipulation. Those facts are incorporated into this Recommended Order.

At the final hearing, Christian testified in her own behalf and called Mark A. Fletcher as her witness. Petitioner submitted Petitioner's Exhibits 1, 2, 3, and 7, which were

admitted in evidence. Petitioner's Exhibits 4, 5, and 6 were proffered.

At the final hearing Respondent called the following witnesses: Shelia Christian, William M. Johnson, Walter O. Kelly, Paul L. Papasergi, Adrian Nenu, Will Williams, Kirk P. Brunner, Dennis E. Fowler, and Timothy A. Slaughter. Respondent's Exhibits 6, 9, 10, 12, 18 through 20, 29, 32, 37 through 39, 41 through 43, 45, and 47 through 49 were admitted in evidence.

The three-volume Transcript was filed on July 13, 2005, and the parties timely filed their proposed recommended orders, which have been considered in rendering this Recommended Order.

#### FINDINGS OF FACT

1. Respondent is a constitutional officer for the State of Florida, responsible for providing law enforcement and correctional services within Pinellas County, Florida.

2. At all times material to this case, Christian was employed by Respondent as a detention deputy, holding the rank of sergeant. Christian is responsible for directing and instructing other detention deputies in the confinement, care, custody, and restraint, when necessary, of inmates. She has some latitude in carrying out these duties.

3. Larry Germonprez (Germonprez) was admitted to the Pinellas County jail in March 2003. After he was initially

admitted to the jail, he began to exhibit odd behavior, including undressing himself and walking around his cell unclothed. As a result of his odd behavior, Germonprez was transferred from the C Wing of the jail to the Bravo Wing, which provides for closer observation of inmates in need of observation for medical reasons, including mental health problems.

4. Christian participated in Germonprez's transfer to the Bravo Wing. She observed that his conversation was not making any sense.

5. Germonprez was placed in Isolation Cell 3, in the Bravo Wing. Subsequently, Germonprez began to kick the door to Isolation Cell 3 and babble in an unintelligible manner. Medical staff requested that Germonprez be transferred to an observation cell in South-6 because they believed that Germonprez's behavior was due in part to claustrophobia. The door in Isolation Cell 3 was a solid metal door with a small window for observation and a slot for food service on the lower portion. The door on the South-6 cell consisted of metal bars, making the cell appear larger and less confining. Additionally, South-6 had cameras, which could be used to monitor the inmates on a 24-hour basis.

6. On March 11, 2003, as part of her responsibilities as a sergeant, Christian supervised the relocation of Germonprez from

Isolation Cell 3 to South-6. Detention Deputies Walter Kelly (Kelly) and Paul Papasergi (Papasergi) were assigned to make the transfer.

7. When Christian, Kelly, and Papasergi arrived at Isolation Cell 3, Christian advised Germonprez that he was going to be relocated to another cell and ordered him to place his hands against the wall. Germonprez did not verbally respond to Christian, but obeyed her order by placing his hands on the cell wall.

8. Kelly and Papasergi proceeded to enter the cell after Germonprez placed his hands on the wall. When they opened the door, Germonprez turned and charged at the detention deputies. A struggle ensued, and the detention deputies wrestled Germonprez to the ground. The deputies encountered continued resistance and struggled to gain control of the situation.

9. Christian was present during the time the detention deputies were using force to restrain Germonprez and was the officer in charge of the scene. Christian did not give the detention deputies wrestling with Germonprez any instructions to use pain compliance techniques, such as pressure points or knee strikes. She did not use her radio to call her superior, Lieutenant Will Williams (Williams) or to call for the response team. The response team consists of eight to 12 detention deputies, who are assigned to respond to incidents throughout

the jail. Once members of the response team receive a request for assistance, they immediately proceed to the scene to assist.

10. Germonprez continued to struggle with the detention deputies, who were at this point attempting to handcuff Germonprez behind his back. After Christian and the detention deputies realized handcuffing Germonprez behind his back at that time was not possible, Christian instructed the detention deputies to handcuff Germonprez with his hands in front of his body. Frontal handcuffing provides less control of the inmate, limits the detention deputies in options available to exercise control, and provides the inmate a weapon and the opportunity to swing his arms, to engage in choking maneuvers, or to grab someone or something.

11. General Order 14-1.3 of the Pinellas County Sheriff's Office provides that when a prisoner is violent or gives an indication of belligerence or when a prisoner may cause injury to himself or others that handcuffs shall be used in accordance with maximum safety procedures, which includes the following procedure:

Persons in custody shall be handcuffed with hands behind the back, palms outward, prior to searching. With keyholes facing outwards, the single strands of the handcuffs should be placed against the prisoner's wrist, below the wrist bone, and pressed forward until snug-fitting, yet not tight enough to cause physical discomfort or harm.

Exception: The safety of deputies, the public and the prisoners shall be considered in following the procedure. An arrestee who resists or is likely to resist arrest should be handcuffed as quickly as possible without regard to the prescribed procedure. If sufficient back-up units are available and the prisoner can be safely controlled, the handcuffs should be re-applied in accordance with the prescribed procedure.

12. The policies of the Pinellas County Sheriff's Office required Christian to contact her supervisor after a use of force had been instituted and to have the medical staff assess an inmate against whom a use of force had been initiated. Christian did neither after the detention deputies' use of force against Germonprez in Isolation Cell 3 and prior to transporting him to South-6.

13. After the detention deputies handcuffed Germonprez, he calmed down and no longer struggled. Christian decided it was safe to transfer Germonprez to South-6 and instructed the detention deputies to continue the transfer while Germonprez was still handcuffed with his hands in front of his body. Christian did not instruct the detention deputies to re-adjust the handcuffs so that Germonprez would be handcuffed with his hands behind his back.

14. Christian called the only other detention deputy assigned to Bravo Wing, William Johnson (Johnson), to come and assist in the transfer of Germonprez to South-6. Christian's

request of assistance from Johnson left the other inmates in the Bravo Wing unsupervised.

15. The four detention deputies, Kelly, Papasergi, Johnson, and Christian proceeded to escort Germonprez down the hall to South-6, which was a short distance away from Isolation Cell 3. Johnson and Papasergi were on each side of Germonprez, holding Germonprez's arms at the elbows. Christian and Papasergi were a few feet behind Germonprez and the other detention deputies.

16. During the course of the transfer to South-6, Germonprez pulled away from Kelly and Johnson and grabbed the control box with his hands. The control box is a device which allows detention deputies to open and close the cell doors remotely. Most likely, Germonprez would not have been able to pull away from the Kelly and Johnson if Germonprez had been handcuffed with his hands behind his body. Using minimal force, Kelly and Johnson released Germonprez's grip on the control box and continued down the hall to South-6.

17. Upon arriving at South-6, Kelly and Johnson entered the cell with Germonprez with the intention of removing the handcuffs and leaving Germonprez in the cell. Papasergi was stationed at the control box and was awaiting authorization to close the cell door. Christian was outside the cell door.



18. Once in South-6, Germonprez resisted the detention deputies' efforts to remove the handcuffs. Kelly and Johnson forced Germonprez face down on the cell bunk, but Germonprez continued to struggle. Christian called for Papasergi to go into the cell to help the others restrain Germonprez. Christian also called the lieutenant in charge, Williams, and advised him of the situation.

19. When Williams arrived at the scene, Kelly, Johnson, and Papasergi were holding the struggling Germonprez down on the bunk. Williams called the response team and also requested the restraint chair.

20. A restraint chair is used to control a violent inmate. The chair has grooves in the back so that an inmate can put his arms in the grooves after being handcuffed from behind. Additionally, the inmate would be strapped across the chest, waist, and feet. Prior to the use of a restraint chair, an inmate must be checked by medical staff, and the placement of the inmate in the restraint chair is required to be video taped.

21. After Williams arrived on the scene, the detention deputies were able to put leg shackles on Germonprez and reposition the handcuffs with Germonprez's hands behind his back. By this time, Germonprez's resistance had lessened.

22. Because force had been used to restrain Germonprez, the jail's medical staff was called to check Germonprez prior to

putting him in the restraint chair. The nurse arrived and found that Germonprez was not conscious and called a Code 99.

Christian told the detention deputies to leave the cell. The medical staff attempted to revive Germonprez, but were unsuccessful, and he died.

23. The autopsy of Germonprez revealed that he died as a result of blunt force trauma to the chest, resulting in asphyxiation. Germonprez had several injuries, including 17 rib fractures, bruising, cuts, and an injury to the head. Some, but not all the rib fractures, might have been sustained as a result of the use of CPR or other life saving measures. At no time prior to entering the South-6 cell did Germonprez present to Christian or the other detention deputies any indication that he was injured.

24. When a death of an inmate occurs at the jail, a special investigation into the incident is conducted by the Administrative Inspections Division. Sergeant Mark Fletcher (Fletcher) conducted a special investigation of the death of Germonprez. Fletcher was charged with the responsibility to review the incident, determine what happened, and to determine if the policies in place at the time of the incident were effective. As part of the investigation, in August 2003, Fletcher interviewed Christian and the other detention deputies involved in the incident. Because the investigation was not a

disciplinary investigation, Fletcher did not advise Christian that she had a right to be represented by counsel.

25. On February 16, 2005, Christian was notified that she would be the subject of a disciplinary investigation conducted by the Inspections Bureau, Administrative Inspections Division relating to the incident involving the death of Germonprez. Pursuant to the disciplinary investigation, Fletcher took a sworn statement from Christian and advised her of her right to counsel prior to the taking of the statement.

26. The Administrative Review Board subsequently reviewed the allegations and evidence compiled by the Inspections Bureau, Administrative Inspections Division and determined Christian had violated the Pinellas County Civil Service Act and the rules, regulations, and operating procedures of the Office of the Sheriff for Pinellas County. Specifically, the alleged violations and the conduct upon which those violations were based were:

a. Violation of Pinellas County Sheriff's Office Civil Service Act, Laws of Florida, 89-404, as amended by Laws of Florida, 90-395, Section 6, subsection 4: violations of the provisions of law or the rules, regulations, and operating procedures of the office of the Sheriff;

b. Violation of General Order of the Pinellas County Sheriff's Office, 3-1.1, Rule and Regulation 5.4 (Level Five violation), relating to duties and responsibilities.

27. By memorandum to Christian dated April 15, 2005, Respondent advised her that the determination of the violations was based on the following:

On March 11, 2003, you were charged with supervising the relocation of Inmate Larry Germonprez from Isolation cell 3 to South 6 on B-Wing in the Pinellas County Jail. Prior to attempting the relocation of Inmate Germonprez, you did not effectively address visible factors that you knew or should have known, could adversely effect the attempted relocation of Inmate Germonprez. You declined to notify the Shift Commander of the potential adverse situation and take proper precautions prior to attempting to relocate Inmate Germonprez from isolation cell 3 to South 6. When Inmate Germonprez attempted to physically defeat staff's efforts at relocating him, you again failed to notify the Shift Commander and take proper precautions prior to continuing the relocation of Inmate Germonprez. Staff under your direction, failed to establish and maintain the necessary physical control of Inmate Germonprez required for his successful relocation. The attempted relocation ended in the death of Inmate Germonprez who was under your care, custody, and control.

28. As a result of the recommendation of the Administrative Review Board, disciplinary action in the form of a ten-day suspension and probation for 12 months was imposed upon Christian by Respondent.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to Chapter 89-404, Section 8, Laws of Florida, as amended by Chapter 90-395, Section 8, Laws of Florida.

30. Chapter 89-404, Section 6, Laws of Florida, authorizes Respondent to suspend, dismiss, or demote classified employees for cause and provides:

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 the law or rules, regulations, and operating procedures of the Office of the Sheriff, conduct unbecoming a public servant, misconduct, or proof and/or admission of use of illegal drugs.

31. Chapter 89-404, Section 2, Laws of Florida, authorizes Respondent to adopt rules and regulations as are necessary to implement and administer this section. Pursuant to this authority, Respondent has adopted rules, regulations, and policies which establish the standard of conduct which must be followed by all employees of the Pinellas County Sheriff's Office. Among the general orders and rules and regulations adopted by Respondent is General Order 3-1. Respondent has

alleged that Christian violated General Order 3-1.1, Rule and Regulation 5.4, which provides:

Duties and Responsibilities - The primary responsibility of all Sheriff's Office personnel is to be aware of their assigned duties and responsibilities. Certified personnel are always subject to duty and are responsible for taking prompt and effective action within the scope of their duties and abilities whenever required.

32. Respondent alleged that Christian failed to address visible factors that could have affected the relocation of Germonprez, failed to notify her shift commander of the potential adverse situation with Germonprez, failed to take proper precautions in attempting to transport Germonprez, and failed to establish and maintain proper physical control of Germonprez during the relocation.

33. Unless otherwise provided by statute, the burden of proof 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). Thus, Respondent has the burden to establish the allegations against Christian by a preponderance of the evidence. Dalem v. Department of Corrections, 720 So. 2d 575, 576 (Fla. 4th DCA 1998); Department of Agriculture and Consumer Services v. Edwards, 654 So. 2d 628, 631 (Fla. 1st DCA 1995).

34. Respondent did establish by a preponderance of the evidence that Christian failed to follow General Order 14-1.3 relating to the maximum safety requirements for the use of handcuffs. It was clear that the use of handcuffs in accordance with the maximum safety requirement was required after Germonprez charged the detention deputies in Isolation Cell 3 and struggled with the detention deputies. Although the detention deputies had to secure Germonprez with frontal handcuffing in order to handcuff him as quickly as possible, Christian should have ordered the detention deputies to reapply the handcuffs in accordance with the prescribed procedures once Germonprez had calmed down. Her failure to follow the correct handcuffing procedures, resulted in the lack of physical control of Germonprez as he was being escorted down the hall to South-6 and after he was placed in South-6.

35. Respondent did establish by a preponderance of the evidence that Christian should have notified her supervisor Williams after the use of force in Isolation Cell 3 and should have called for medical staff to assess Germonprez before transporting him to South-6 and that she failed to do either.

36. Christian's failure to order the repositioning of Germonprez' handcuffs prior to transferring him to South-6, her failure to timely notify her supervisor of the use of force in Isolation Cell 3, and her failure to get the medical staff to

assess Germonprez after the use of force in Isolation Cell 3 were violations of General Order 3-1.1, Rule and Regulation 5.4, a level five violation. A violation of one level-five offense results in the employee being assessed 50 disciplinary points, which allows for discipline from a five-day suspension to termination.

37. As a supervisor, Christian is held accountable for her exercise of discretion and judgment. While her decisions regarding the Germonprez incident do not appear to be malicious or reflective of a deliberate indifference to the needs of Germonprez, they do reflect serious lapses in judgment. Thus, the ten-day suspension and 12 months of supervisory probation are within the range of permissible discipline and are proper for the circumstances.

38. Christian argues that the disciplinary investigation violated General Order 10-1, which provides that every attempt should be made to complete the investigation within 45 days and that a continuation of the investigation beyond the 45-day period requires the approval of the Sheriff. There were two investigations, the first investigation was into the death of Germonprez to determine the circumstances surrounding his death. The investigation began shortly after Germonprez's death in 2003. The second investigation was a disciplinary investigation of various personnel involved in the transfer of Germonprez to



South-6 on March 11, 2003. The disciplinary investigations began after the various employees, including Christian, were notified in mid-February 2005 that they were being investigated. The investigation was completed. The Administrative Review Board reviewed the investigation, and Christian was notified of the findings of the Administrative Review Board and of her suspension and probation on April 15, 2005. The record is not clear on the exact date that the investigation concluded; however, the record is clear that 58 days elapsed from the time Christian was notified of the investigation and the time she was notified of her suspension. General Order 10-2.4J requires that the investigative file be delivered to the Administrative Review Board at least five calendar days prior to the convening of the board; thus, the investigation would have been completed by April 9, 2005, at the latest.

39. The 45-day investigation period is not jurisdictional; the Sheriff could extend the 45-day period. See Hernandez v. Kissimmee Police Department, 901 So. 2d 420, 421 (Fla. 5th DCA 2005). Christian has not demonstrated that any failure to complete the investigation within 45 days prejudiced her defense in anyway or denied her due process.

40. Christian also argues during Fletcher's interview of her in 2003, that he failed to advise her of her rights prior to interrogating her. At the time of the interview in 2003,

Christian was not the subject of the investigation because it was not a disciplinary investigation. Therefore, Fletcher was not required to advise her of her rights or allow her to be represented by counsel. When Christian was interviewed in 2005, she was advised of her rights and afforded an opportunity to be represented by counsel because she was the subject of the disciplinary investigation.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that a final order be entered finding that Christian violated General Order 3-1.1, Rule and Regulation 5.4; suspending her for ten days; and placing her on supervisory probation for 12 months.

DONE AND ENTERED this 10th day of November, 2005, in  
Tallahassee, Leon County, Florida.

*Susan B. Harrell*

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Filed with the Clerk of the  
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