

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PINELLAS COUNTY SHERIFF'S OFFICE,

Petitioner,

vs.

Case No. 20-1350

ROY HARPER,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by Zoom video teleconference on July 2, 2020, before the Division of Administrative Hearings by its designated Administrative Law Judge Linzie F. Bogan.

APPEARANCES

For Petitioner: Paul Grant Rozelle, Esquire  
Pinellas County Sheriff's Office  
10750 Ulmerton Road  
Largo, Florida 33778

For Respondent: Kyle J. Lee, Esquire  
1971 West Lumsden Road, Suite 303  
Brandon, Florida 33511

STATEMENT OF THE ISSUE

Whether cause exists to terminate Respondent's employment.

PRELIMINARY STATEMENT

On or about March 6, 2020, Petitioner, Pinellas County Sheriff's Office (Petitioner or PCSO), issued written notification to Respondent, Roy Harper (Respondent), informing him that the PCSO intended to terminate his employment for failing to comply with PCSO General Order 3-01.1, Rule 5.4,

Duties and Responsibilities. On or about March 9, 2020, Respondent filed his Notice of Appeal and request for Civil Service Board review. In accordance with the Pinellas County Sheriff's Civil Service Board Rules of Procedure, the Civil Service Board, on or about March 11, 2020, forwarded this matter to the Division of Administrative Hearings for review and entry of a Recommended Order.

The final hearing was noticed for video teleconference scheduled to commence on May 28, 2020. Following the granting of "Respondent's Unopposed Motion to Continue Status Conference," the instant matter was noticed for Zoom video teleconference, and the hearing commenced on July 2, 2020.

At the final hearing, Sheriff Bob Gualtieri testified on behalf of Petitioner. Respondent testified on his own behalf. Joint Exhibits 1 through 21 are the only exhibits admitted into evidence.

A single-volume Transcript of the final hearing was filed on July 20, 2020. Respondent filed a Proposed Recommended Order on July 30, 2020, and Petitioner did the same on August 4, 2020. The Proposed Recommended Orders submitted by the parties have been considered by the undersigned.

#### FINDINGS OF FACT

##### A. Stipulated Facts

1. Bob Gualtieri is the duly-appointed sheriff of Pinellas County, Florida.
2. Sheriff Gualtieri is in command of the operations of the PCSO and is responsible for providing law enforcement and corrections services within Pinellas County, Florida.
3. Sheriff Gualtieri is authorized to impose discipline in accordance with the Civil Service Act, upon PCSO members/employees who are found to have

violated rules or regulations of the PCSO.

4. During all times pertinent to this case, Respondent was employed by the PCSO as a Deputy Sheriff, and had been so for the preceding nine years. As a Deputy Sheriff, Respondent is charged with the responsibility of complying with all applicable state laws and PCSO rules, regulations, general orders, and standard operating procedures.

5. Respondent is familiar with the rules, regulations, general orders, and standard operating procedures of the PCSO.

6. Respondent has been employed by the PCSO for approximately nine years, and has worked exclusively in the bureau of arrestee/prisoner (inmate) corrections and detention, where his primary responsibility is to ensure the care, custody, and control of inmates.

7. Sergeant Bronson Taylor is assigned to the PCSO Administrative Investigations Division.

8. Sergeant Kimon Koungras is assigned to the PCSO Administrative Investigations Division.

9. Sergeants Taylor and Koungras investigated a complaint of misconduct that was filed against Respondent on or about December 16, 2019.

10. The complaint of misconduct alleged that on December 10, 2019, Respondent violated General Order 3-01.1, Rule and Regulation 5.4, Duties and Responsibilities.

11. In his sworn statement given during the investigation and in appearing before the Administrative Review Board, Respondent admitted that he and an inmate accidentally bumped into each other during the distribution of commissary.

12. In his sworn statement given during the investigation and in appearing before the Administrative Review Board, Respondent admitted that he pulled out the 911 tool – which is a knife – from his tool belt, walked up to the inmate, and spoke to him.

13. In his sworn statement given during the investigation and in appearing before the Administrative Review Board, Respondent admitted that doing so was “a bad decision.”

14. Respondent told the Administrative Review Board that he made a “poor decision bringing out the 911 tool as we had that interaction.”

15. In his sworn statement given during the investigation, Respondent admitted that his conduct on December 10, 2019, violated rule 5.4.

16. Pursuant to PCSO General Orders, the Administrative Review Board met, reviewed the disciplinary file, questioned Respondent, gave Respondent an opportunity to make a statement, and determined that based on the preponderance of the evidence, Respondent had violated the Sheriff’s rules.

17. The Administrative Review Board sustained the violation of rule 5.4.

18. Pursuant to Petitioner’s progressive discipline policy, the Sheriff is solely responsible for all disciplinary decisions. The determination of disciplinary action is reserved exclusively to the Sheriff.

19. In reviewing evidence from the Administrative Investigation and the findings of the Administrative Review Board, the Sheriff sustained the rule 5.4 charge.

20. PCSO General Order 10-2 covers discipline and ranks certain offenses.

21. PCSO General Order 10-2 ranks offenses from Level 1 to Level 5.

22. Level 1 offenses are the least severe; Level 5 offenses are the most severe.

23. A violation of rule 5.4 is a Level 5 violation.

24. The General Orders set forth a procedure for assigning points for each sustained violation.

25. According to the number of points, there is a corresponding table that indicates the range of punishment.

26. The point total for the sustained violation found in Respondent’s case is 50.

27. Under PCSO General Order 10-2, the range of discipline for a 50 point violation is a minimum five-day suspension through termination of employment.

28. As a result of the findings of the Administrative Review Board, the Sheriff imposed discipline on Respondent.

29. Specifically, the Sheriff terminated Respondent from his employment with PCSO.

B. Additional Findings of Fact

30. Paragraph 12 of the stipulated facts set forth herein, is further illuminated by the video evidence showing Respondent's interaction with the inmate in question. The video shows that Respondent, while positioned with his back to the inmate, was having a moment of levity with a co-worker when the inmate, while walking past Respondent, appears to inadvertently make contact with Respondent's left hand.

31. Upon being touched by the inmate, Respondent's demeanor instantly changes from laughing and mirthful, to authoritarian and confrontational.

32. The video of Respondent's interaction with the inmate does not contain audio. However, the video shows that words were exchanged between Respondent and the inmate. The video also shows that within seconds of speaking to the inmate, Respondent removed his 911 tool from his belt holster with his left hand, and then placed the tool in his right hand where he flicked his wrist so as to cause the 911 tool to snap to the fully open position. Respondent then walked towards the inmate and gestured with the 911 tool towards the inmate's upper torso. Respondent then retracted the bladed portion of the 911 tool, smiled briefly in the direction of the inmate, and then stepped away from the inmate while re-holstering the 911 tool.

33. The 911 tool used by Respondent is a single-edged knife, and is capable of causing bodily injury.

34. Neither the inmate that Respondent threatened with the 911 tool, nor other witnesses to the incident, testified during the final hearing. Petitioner

did, however, offer into evidence the sworn statements of the inmate and witnesses to the incident that were prepared as part of the internal investigation conducted by the PCSO. In the context of this proceeding, these hearsay statements have little, if any, evidentiary value for reasons including factual inconsistencies contained in the statements, and the inability of the fact-finder to meaningfully evaluate the credibility of the witnesses.

#### CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. § 120.65(6), Fla. Stat. (2019).

36. "The burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." *Balino v. Dep't of HRS*, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). Petitioner is asserting that Respondent violated PCSO General Order 3-01.1, rule 5.4, and therefore Petitioner, as the party asserting the affirmative, carries the burden of proving by a preponderance of the evidence that Respondent committed the alleged violations.

37. A preponderance of the evidence is defined as "the greater weight of the evidence" or evidence that "more likely than not" tends to prove a certain proposition. *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000).

38. Chapter 89-404, Laws of Florida, as amended by chapter 08-285, section 6, Laws of Florida, authorizes the PCSO to take certain disciplinary action against classified employees. Chapter 89-404 also authorizes the PCSO to adopt rules and regulations as are necessary to carry out the sheriff's functions. Pursuant to this authority, the PCSO has adopted policies, procedures, general orders, rules, and regulations which establish a standard of conduct which must be followed by employees of the sheriff's office.

39. General Order 3-01, of which agency rule 5.4 is a part, provides that "[t]he primary responsibility of all Sheriff's Office personnel is to be aware of their assigned duties and responsibilities, [and that] [a]ll 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.”

40. The preponderance of the evidence establishes that Respondent violated General Order 3-01.1, rule 5.4, as charged.

41. Respondent’s defense against the instant action is threefold. Respondent’s first and second defenses are interrelated and are premised on Respondent’s belief that the 911 tool is incapable of causing bodily harm. According to Respondent, since the 911 tool is incapable of inflicting bodily harm, then it was objectively unreasonable for the inmate to become fearful when confronted by Respondent. Second, Respondent asserts that he was only “joking” with the inmate when he approached him with the 911 tool, and that his claim of “joking” with the inmate is bolstered by the fact, once again, that the 911 tool is incapable of causing bodily injury.

42. The premise upon which Respondent builds his first and second defenses is faulty because the greater weight of the evidence establishes that the 911 tool is capable of causing bodily injury. Furthermore, while Respondent may have, in his mind, been “joking” when he approached the inmate with the 911 tool, it was objectively reasonable, based on the credible evidence before the undersigned, including consideration of the capability of the 911 tool to cause bodily injury, for the inmate to have felt intimidated and fearful when confronted by Respondent. The charge of being entrusted with the care, custody, and control of inmates is an obligation that is not to be undermined by irresponsible and dangerous acts of silliness and horseplay.

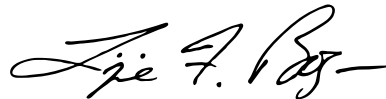
43. Respondent’s third defense is grounded in his belief that the Sheriff’s decision to terminate his employment is excessive when compared to other employment-related disciplinary action taken by the Sheriff against deputies under factually similar circumstances. Respondent offered no credible evidence establishing that the Sheriff’s disciplinary action in the instant case is inconsistent with past practices.

44. Petitioner has met its burden of proving that Respondent, in violation of General Order 3-01.1, rule 5.4, acted outside of the scope of his duties by threatening, without justification, bodily harm towards the inmate in question.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Pinellas County Sheriff's Office, enter a final order finding that Respondent, Roy Harper, violated General Order 3-01.1, rule 5.4, and terminating his employment.

DONE AND ENTERED this 19th day of August, 2020, in Tallahassee, Leon County, Florida.



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LINZIE F. BOGAN  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of August, 2020.

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.