



Department of Public Protection

Report of Incident

TO: Joseph E. Pozzo, Director
Department of Public Protection

FROM: David Vanis, Captain
Public Protection Administration
Internal Affairs

DATE: February 12, 2021

SUBJECT: IA 2020-03 VCDC Officer David Hottenstein

References:

1. Surveillance video (Dated March 15, 2020).
2. VSO Incident Report case number 200013564 (Closed date December 2, 2020).
3. VCDC surveillance video (Dated July 30, 2020).
4. Inmate Lawrence Walker interview transcript (Dated July 30, 2020).
5. Sergeant Glenn Lee witness interview transcript (Dated July 30, 2020).
6. Sergeant Matthew Miller witness interview transcript (Dated July 30, 2020).
7. State Attorney's Office memo (Originally dated November 30, 2020).
8. Request for internal affairs investigation (Dated April 3, 2020).
9. Officer David Hottenstein subject interview transcript (Dated January 27, 2021).

Complaint:

On July 30, 2020, Director Flowers was notified that Ofc. David Hottenstein had struck an inmate while escorting the inmate to first appearance. Dir. Flowers reviewed the video surveillance of the incident and determined the strike was unwarranted and requested VSO criminally investigate the incident. Ofc. Hottenstein was placed on administrative leave pending the outcome of this, and the VSO investigation, on the same date. Dir. Flowers received incident reports from Sergeants Miller and Lee, who were both present for the incident.

Sgt. Lee indicates he was escorting inmates to first appearance with several other officers. Sgt. Lee indicates Ofc. Hottenstein was behind the group escorting I/M Lawrence Walker who was walking slowly. Sgt. Lee specified Ofc. Hottenstein was being "courteous with the inmate and not rushing." Sgt. Lee stated I/M Walker became "verbally abusive" toward Ofc. Hottenstein. Sgt. Lee heard I/M Walker

state "you guys think your all tough, if you were tough you would be real cops." Ofc. Hottenstein instructed the inmate to be quiet and continued walking. Sgt. Lee stopped to ensure compliance from the inmate and heard I/M Walker state "I could beat your ass." Sgt. Lee then stated the following:

Ofc. Hottenstein then raised his right hand in the direction of the inmate and said "just be quiet." It appeared his hand made contact with the inmate, but I am unsure if it was Ofc. Hottenstein's intentions. Inmate Wakler's reaction was going to the ground.

It should be noted that I/M Walker was referred to as "Wakler" in the reports associate with this case due to an error in his JMS profile. Sgt. Lee stated the inmate was assisted to a standing position, handcuffed, and escorted to medical for evaluation. He was later escorted to first appearance. Sgt. Lee notified his chain of command of the incident.

Sgt. Miller's report was similar to Sgt. Lee's. He indicated Ofc. Hottenstein was escorting I/M Walker behind the rest of the group and overheard I/M Walker make threats toward Ofc. Hottenstein. He specified he heard I/M Walker say "If you guys are so tough you should be a cop, fuck you" and "I'll beat your ass." Sgt. Miller stopped escorting the main group of inmates to assess the situation with Ofc. Hottenstein and I/M Walker. Sgt. Miller briefly turned away from Walker and when he turned back, I/M Walker was lying on the ground holding his face. As he approached the inmate, Walker told him "the officer (Hottenstein) just hit me." I/M Walker was then assisted to his feet, handcuffed, and escorted to medical for evaluation. Sgt. Miller notified his chain of command of the incident.

I reviewed the surveillance video of the incident and concur with what was described by Sergeants Lee and Miller. Ofc. Hottenstein was walking with I/M Walker behind the main group of inmates going to first appearance. It appears there is some sort of verbal exchange between Ofc. Hottenstein and Walker. Ofc. Hottenstein then raises his open right hand toward I/M Walker's face and the back side of his fingers make contact with I/M Walker's left eye or forehead. I/M Walker then falls to the ground and grabs his face. I/M Walker is then escorted to the medical clinic.

The video and reports regarding this incident were turned over to VSO Major Crimes. VSO conducted interviews with I/M Walker, Sgt. Lee, and Sgt. Miller on July 30, 2020.

Sgt. Lee reiterated what he had previously stated in his report when interviewed by VSO. He added that he did not observe any obvious injuries to I/M Walker after the incident. Sgt. Lee also stated he had been working with Ofc. Hottenstein since May 2020 and had not seen any unjustified behavior from Ofc. Hottenstein during this time period.

Sgt. Miller reiterated what he had previously stated in his report during his interview with VSO.

VSO Detectives conducted a sworn interview with I/M Walker who advised he had been arrested early that morning for a vehicle theft and coming down from a methamphetamine high. He added that he felt sick and had "DT's (Delirium tremens)" He felt like the VCDC staff had been "disrespectful" towards him since he arrived at VCBJ. While walking to first appearance, the officers were asking him to "walk

faster” but he was not fast enough. He explained he still felt ill from the methamphetamine high. I/M Walker admitted to stating antagonistic thing to the officer such as “weren’t real cops.” The officer called him a “tough guy” and to “shut the fuck up before you get slapped.” The officer then struck him with a closed fist on his eye. Walker told the detectives he was 100% certain he used a closed fist. Walker stated he never touched the officer nor did he react in a violent manner after he was struck.

The VSO report indicates they did not observe any injuries to I/M Walker’s face at the time of their interview. Pictures were taken of Walker’s face and added to this case file and the VSO case file.

I provided VSO with Ofc. Hottenstein’s contact information. They contacted him regarding an interview on August 3, 2020. Ofc. Hottenstein advised he was in the process of retaining legal counsel on the same date and would contact them later about the interview. On August 11, 2020, the VSO detective spoke with Ofc. Hottenstein’s attorney who denied the request due to not being able to review the surveillance video of the incident.

VSO turned the completed case over to the state attorney’s office on August 12, 2020 for review. VSO documented they received a memo from the state attorney’s office regarding their review of the case. The memo in its entirety reads as follows:

Our office received a complaint alleging a charge of misdemeanor battery concerning Corrections Officer David Hottenstein from the Volusia County Sheriff's Office. The case file consisted of reports, interviews, and a video from the Volusia County Branch Jail. The evidence shows the Defendant Hottenstein making a swiping motion toward the victim's head, making de minimis contact above the victim's left ear. Following the contact, the victim went to the ground covering his face. The Victim, who is currently housed in the Marion County jail on a no-bond warrant, was uninjured. Due to the nature of this charge, the thorough review of evidence, the defendant's otherwise clean personnel record, the unlikely participation in a criminal prosecution by the victim, and the totality of the circumstances, the appropriate outcome is a deferred prosecution agreement. The agreement would require the completion of anger management classes. Further, this agreement does not impact the County of Volusia's Internal investigation into the matter that may result in agency disciplinary measures. Upon receipt of proof of successful completion of the terms of the deferred prosecution agreement, no further action will be warranted by this office.

VSO closed their case on the same date. I received the state attorneys memo on January 13, 2021 and provided it to Dir. Flowers for review. Dir. Flowers subsequently requested this internal investigation on January 20, 2021. Ofc. Hottenstein was served notice of this investigation and interview on January 22, 2021.

Officer David Hottenstein:

I conducted a sworn and recorded interview with Ofc. Hottenstein at VCEMS Post 1 on January 27, 2021. IUPA Business Agent Greg Cook was also present for this interview as Ofc. Hottenstein's union representative. Prior to the interview, Ofc. Hottenstein was provided time to review the documents and media associated with this case. Ofc. Hottenstein advised he has been a CO since March 2018. He advised he was assigned to Unit 3 on July 30, 2020 which was his normally assigned post.

Ofc. Hottenstein confirmed he was escorting inmates to first appearance on July 30, 2020 as he normally does during his tour of duty. He told me he remained behind the main group because I/M Walker was walking slowly, leaning on the wall, and being somewhat belligerent. He told me they will often separate inmates like this from the rest of the group to avoid creating bigger problems with the larger group of inmates. Ofc. Hottenstein waited with I/M Walker while the rest of the group passed and started escorting him behind the main group. According to Ofc. Hottenstein, as they walked toward first appearance, I/M Walker "would not stop talking at all." Ofc. Hottenstein advised he asked the inmate several times to "Please just stop talking. We're just trying to get you up to court. Stand up and walk. Let's just get this over with." He advised this was his standard practice when escorting difficult inmates. Ofc. Hottenstein advised this was mostly said in a calm talking voice and not yelling or shouting. He did advise that he may have "elevated" when he told I/M Walker to "Just stop talking." Ofc. Hottenstein confirmed I/M Walker made the statements "You're not a real cop," "You think you're a tough guy," and "I could beat your ass." When I/M Walker told him "If you didn't have that badge on, I would kick your ass," Ofc. Hottenstein admitted he reacted by striking I/M Walker with the back side of his hand. He explained he did not plan to strike the inmate but he became angry at the comment stated by Walker and reacted. He confirmed it was like a reflex. He advised there was very minimal contact but the inmate fell the floor and was then escorted to the medical clinic. Ofc. Hottenstein confirmed that I/M Walker did not pose a threat to his safety but was verbally abusive toward him. Ofc. Hottenstein denied he told I/M Walker to "You need to shut the fuck up, unless you want to get slapped" as indicated by I/M Walker. He further denied he struck I/M Walker with his closed fist as the inmate alleged.

When asked if he would have done anything different in this situation with the benefit of hindsight, Ofc. Hottenstein told me he would have handcuffed I/M Walker as soon as he became belligerent and escorted him to court with another officer or sergeant.

Ofc. Hottenstein confirmed he had already attended the anger management class required by the state attorney's deferred prosecution agreement.

Conclusion:

Based on his own admission, Ofc. Hottenstein struck I/M Walker with the back side of his open hand on the inmates face. While he didn't use much force in this situation, I/M Walker did not provide resistance that rose to the level of pain compliance of strikes. Ofc. Hottenstein indicated this strike was reactionary or reflex and acknowledges it was improper. Based on his own description, Ofc. Hottenstein committed

battery on I/M Walker in violation of FSS 784.03.

Findings:

This case was presented to Director Joseph Pozzo, Deputy Director Mark Swanson, and VCDC Director Mark Flowers. Director Pozzo determined the following allegations are SUSTAINED:

Volusia County Merit Rules and Regulations. Sec. 86-453. Reasons for disciplinary action. Any of the following violations may be sufficient grounds for disciplinary action ranging from oral reprimand to dismissal, depending on the seriousness of the offense and other circumstances related to the situation. These offenses are illustrative and not all-inclusive.

(8) Criminal or illegal conduct (regardless of the filing of criminal charges or lack thereof or the absence of a criminal conviction or adjudication) that interferes with effective job performance or has an adverse effect on the county.

(12) ... unsatisfactory performance of duties.

(14) Any conduct, on or off duty, that reflects unfavorably on the county as an employer.

(21) Any other conduct or action of such seriousness that disciplinary action is considered warranted.

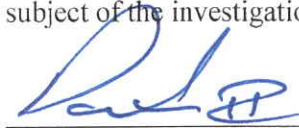
Volusia County Division of Corrections Policies and Procedures:

102.09 (H) *COs shall refrain from using unnecessary force or violence and shall not strike any prisoner except when necessary for self-defense or to overcome physical resistance to a lawful and understood order, or to restore order in the event of a disturbance, or prevent an escape.*

Concluding Statement:

Unless otherwise directed, this investigation is considered closed, and is submitted for review and action as deemed appropriate. The original attachments of interviews and other documents pertaining to this investigation remain on file with the Internal Affairs Unit.

"I, the undersigned, do hereby swear, under penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived, or allowed another to deprive, the subject of the investigation of any of the rights contained in ss.112.532 and 112.533, Florida Statute."



Captain David Vanis

1/5/24
Date

Approved

Date