



Department of Public Protection

Report of Incident

TO: George Recktenwald, Director
Department of Public Protection

FROM: David Vanis, Captain
Public Protection Administration
Internal Affairs

DATE: January 29, 2015

SUBJECT: Case # IA 2014-330, Senior Officer Jason Moore, Volusia County Division of
Corrections

References:

1. Memo from Director Recktenwald ordering investigation DPP14-133 (Dated December 22, 2014).
2. Notice of internal investigation (Dated December 23, 2014).
3. Volusia County Division of Corrections incident reports (Dated November 21, 2014).
4. Surveillance video (Dated November 21, 2104).
5. South Daytona Police Department Case number 141100152 (Dated November 21, 2014).
6. Lieutenant Michael Gallenkamp witness interview transcript (Dated December 29, 2014).
7. Officer Carlos Stoneking witness interview transcript (Dated December 29, 2014).
8. Captain Rodney Prince witness interview transcript (Dated January 5, 2015).
9. Senior Officer Jason Moore subject interview transcript (Dated January 12, 2015).
10. Lieutenant Ralph Seltz witness interview transcript (Dated January 12, 2015).

Background:

Reports submitted by VCDC staff on November 21, 2014 indicate that Frank Esoff was brought into VCBJ by South Daytona Police. He was described as intoxicated and belligerent by the staff members. A review of Mr. Esoff's charging affidavit for driving under the influence indicated that his BAC was 0.258, 0.279, and 0.249; more than three times the legal limit. Although belligerent, he was complying with staff orders to remove articles of clothing. While taking off his socks, he threw one at Sro. Jason Moore, striking him in the chest according to reports. Sro. Moore stated in his report that he directed the inmate back into the wall. His hand inadvertently slid up his chest and onto the inmate's neck while redirecting. Lt. Michael Gallenkamp writes that he needed to direct Sro. Moore to disengage from the inmate's neck. The inmate was then restrained by Sro. Moore, Ofc. Stoneking, and Lt. Gallenkamp until he was compliant with staff orders. Once compliant, Sro. Moore completed the search of the inmate without further incident. I/M Esoff was evaluated by medical staff who reported that he did not sustain any injuries during the incident.

After the reports were submitted in reference to the use of force against I/M Esoff, Captain Rodney Prince conducted a supervisory review of the incident by comparing the written accounts of the incident to the video surveillance. Capt. Prince determined that "The force used in this incident was unnecessary and the incident should have been handled differently." Capt. Prince stated "I found the force used in this incident not reasonable and excessive." In addition to Sro. Moore's actions during the incident, Capt. Prince noted that Ofc. Stoneking attempted "to establish control of I/M Esoff by putting his arms around I/M Esoff's head and neck area." Capt. Prince noted that Ofc. Stoneking and Sro. Moore's actions violated VCDC Policy 400.10 B (5) which states "In the utilization of non-deadly force, the use of headlocks, choke holds, or any similar holds, which are lethal in nature, are not permitted."

Capt. Prince also noted that Sro. Moore's written account of the incident was inconsistent with the video. Sro. Moore indicated in his report that his hand impacted I/M Esoff's chest and "slid up toward I/M Esoff's neck area." Capt. Prince noted that at no point during his review of the video did Sro. Moore contact the inmate's chest; his hand went straight to the inmate's neck.

Complaint:

The basis for this investigation is to determine whether the force applied by Sro. Moore during the incident involving I/M Esoff on November 21, 2014 was excessive and to determine whether Sro. Moore intentionally wrote a report inconsistent with the facts. Director Recktenwald instructed me to conduct the administrative investigation on December 22, 2014.

Information:

The Division of Corrections provided me with all associated documentation and video surveillance relating to this incident. The video shows I/M Esoff entering the ID/Rec area where he is directed to a yellow outlined box. Once in the box, Sro. Moore appears to give instructions to the inmate to remove his outer garments as described in the reports. Although no audio is available in the video, it appears that the inmate is speaking to the officers in the immediate

vicinity. After I/M Esoff removes his right sock and tosses it onto the floor, he removes his left sock and tosses it toward Sro. Moore; striking Sro. Moore's waist area. Sro. Moore appears to catch the sock with his right hand, immediately throws the sock to the floor, and lunges toward I/M Esoff. As Sro. Moore approaches Esoff, he places his right hand on the inmate's neck and his left hand on Esoff's upper right arm. Sro. maintains his grip on the inmate's neck for less than four seconds until Ofc. Stoneking and Lt. Gallenkamp gain control of the inmate's arms. It should be noted that when Ofc. Stoneking first engaged the inmate; he began to initiate a headlock on I/M Esoff. Prior to gaining control of the inmate's head or neck, Ofc. Stoneking disengaged and gained control of the inmate's right arm without ever applying a headlock. After a brief dialogue between Esoff and the officers, Sro. Moore completed his pat search while Ofc. Stoneking and Lt. Gallenkamp stood to either side of the inmate. I did not observe any other force utilized by VCDC staff during the rest of the video.

Sro. Moore's incident report indicates that his hand impacted the inmate's chest prior to his hand sliding up to his neck. However, after reviewing the video several times, I was unable to see Sro. Moore's hand impact the upper portion of I/M Esoff's chest at any time prior to his contact with Esoff's neck. This is consistent with Capt. Prince's review of the incident.

Lt. Michael Gallenkamp:

I conducted a sworn interview with Lt. Gallenkamp at VCBJ on December 29, 2014.

On November 21, 2014, Lt. Gallenkamp was assigned as the Administrative Lieutenant. While in the area of Identification/Receiving (ID/Rec), he overheard radio traffic from one of the officers in ID/Rec requesting Lieutenant Seltz respond to their location for an uncooperative inmate. Due to his proximity and knowing that Lt. Seltz was doing a head count at the time, Lt. Gallenkamp stopped to assist Officers Stoneking and Moore. Lt. Gallenkamp explained that it is standard practice to request a supervisor for unruly inmates due to the supervisors having chemical agent (pepper spray) and a higher level of experience which may calm the inmate.

As Lt. Gallenkamp approached the officers, he saw Sro. Moore and Ofc. Stoneking interacting with I/M Esoff. He stood behind the officers waiting to see if his assistance was needed. Lt. Gallenkamp described I/M Esoff's demeanor as "loud and obnoxious" and believed that he was under the influence of alcohol or some type of narcotic. While standing by, Lt. Gallenkamp observed Sro. Moore lunge forward toward I/M Esoff and push him against the wall. As Lt. Gallenkamp moved to the side to see what was occurring, he observed Sro. Moore's hand on I/M Esoff's throat. Lt. Gallenkamp stated that he took control of the inmate's left hand and instructed Sro. Moore to "disengage from the throat." Once Sro. Moore disengaged, I/M Esoff completed the booking process while Lt. Gallenkamp continued verbal dialogue with the inmate. Lt. Gallenkamp told me that he did not receive a complaint from I/M Esoff regarding the incident but while the officers were trying to gain control of Esoff he stated something like "Get your hands off me. What are you doing? There are cameras everywhere."

Lt. Gallenkamp told me that, at the time of the incident, he did not see what I/M Esoff did to provoke the response from Sro. Moore. Lt. Gallenkamp later reviewed the video surveillance and saw that I/M Esoff had tossed a sock at Sro. Moore prior to the response. Lt. Gallenkamp told me

that he did not observe Sro. Moore contact I/M Esoff's chest at any point during his review of the video; only the throat. Lt. Gallenkamp explained that the inmate tossing a sock can be perceived as a distracter. Lt. Gallenkamp told me that the inmate can assault the officer or another staff member while their attention is focused on the distraction. The proper response to a distracter would be to move out of reach of the inmate or to "vertically pin" the inmate up to the wall and give clear verbal instructions.

This interview was transcribed and added to the case file as item 6.

Officer Carlos Stoneking:

I conducted a sworn interview with Ofc. Stoneking at VCBJ on December 29, 2014.

Ofc. Stoneking was assigned to intake on November 21, 2014. He was working with Sro. Moore on this shift. Ofc. Stoneking told me that when I/M Esoff was brought into intake that he was intoxicated and shouting obscenities at the South Daytona Police Officer who brought him in. Ofc. Stoneking told me that once I/M Esoff was placed into the yellow box for a pat search, he (Esoff) began directing his anger toward Ofc. Stoneking and Sro. Moore. I/M Esoff told the Corrections Officers "Fuck you guys. I don't need this shit. This is bullshit. I'm gonna have your jobs." Ofc. Stoneking explained that this type of behavior from inmates is not unusual in intake. Ofc. Stoneking felt that Esoff was "trying to push our button;" which again is not unusual behavior from inmates. Based upon the behavior exhibited by I/M Esoff, Ofc. Stoneking requested Lt. Seltz response in accordance with VCDC policies.

As Sro. Moore began his pat search, Ofc. Stoneking stood by in case the situation escalated. Ofc. Stoneking told me that he looked away for a second and the next thing he knows is Sro. Moore has I/M Esoff against the wall with his (Moore) hand on Esoff's throat. Ofc. Stoneking grabbed the inmate's arm but I/M Esoff was still fighting and actively resisting the officer's commands. When I/M Esoff pulled his arm away from Ofc. Stoneking, he grabbed the first thing he could, which was I/M Esoff's head to initiate a head toss. As Ofc. Stoneking was reaching for the inmate's head; Sro. Moore told him "No, we've got this. We don't need to take him down. Just go back." At this point, Sro. Moore had moved his hand from Esoff's neck to the upper portion of his chest. After the brief struggle, I/M Esoff complied with the remaining instruction although still verbally abusive.

Ofc. Stoneking told me that at the time of the incident, he did not know what prompted Sro. Moore's response. Afterward, he learned that the sock had been thrown at Sro. Moore during the pat search. Ofc. Stoneking explained, just as Lt. Gallenkamp had, his training regarding distracters.

This interview was transcribed and added to the case file as item 7.

Captain Rodney Prince:

I conducted a sworn interview with Capt. Rodney Prince on January 5, 2015 at VCBJ.

Capt. Prince was assigned the use of force review in reference to the incident in ID/Rec on November 21, 2014 involving I/M Frank Esoff. Capt. Prince was not present nor working on the shift the day the incident occurred. Capt. Prince conducted his review by comparing the documentation of the incident to the surveillance video of the incident.

Through Capt. Prince's review of the video surveillance, he determined that Sro. Moore's "hand went directly to the throat of the inmate pinning him against the wall." This was contrary to Sro. Moore's statement in his report of the incident stating that his hand slid up the inmate's chest to I/M Esoff's neck area. Capt. Prince stated that "his hand went directly to the front of the throat area of Inmate Esoff, which is the use of a choke hold." Capt. Prince explained that the use of choke holds are not permitted in non-lethal force situations and described choke holds as lethal force. Capt. Prince described I/M Esoff's tossing of the sock toward Sro. Moore as active resistance. However, once Sro. Moore caught the sock, the threat no longer remained or "was rescinded at that point." Capt. Prince ultimately determined that the response by Sro. Moore provided to I/M Esoff tossing a sock at him was not reasonable.

This interview was transcribed and added to the case file as item 8.

Senior Officer Jason Moore:

I conducted a sworn interview with Sro. Moore on January 12, 2015 at VCBJ. He was accompanied by his chosen representative, VCDC Sgt. Michael Reyes. Sro. Moore acknowledged that he had reviewed all documentation, video, and interviews pertaining to this investigation prior to this interview. Sro. Moore has been a Volusia County Corrections Officer for more than fourteen years. During that time, he told me that he has been assigned to ID/Rec for the majority of his career. He has been certified as a defensive tactics instructor for approximately six months.

Sro. Moore told me that I/M Esoff was brought into the jail by SDPD. Once entering intake, I/M Esoff was clearly under the influence of drugs and/or alcohol. He was agitated, but not aggressive, with the transporting officer. Upon seeing the inmate's demeanor, Ofc. Stoneking contacted Lt. Seltz to respond to the area. Sro. Moore explained that even though Lt. Seltz didn't immediately respond, he (Moore) continued with the pat search since the inmate did not display any aggression. As Sro. Moore conducted the pat search, I/M Esoff continued to be verbally abusive toward him but was still not aggressive. During the pat search, I/M Esoff told him "I'll kick your ass...stuff like that." Sro. Moore told me that as I/M Esoff was taking off his shoes and socks, that he (Esoff) threw a sock at the officer. Sro. Moore told me:

Not knowing what the inmate's next actions were going to be, we're taught in defensive tactics about distracters used. I immediately and spontaneously reacted to his actions and attempted to pin the inmate to the wall, trying to de-escalate the situation or I guess control the situation, control the inmate. I didn't want to get hit and didn't know what the inmate's intentions were.

Sro. Moore explained that he intended to pin the inmate up against the wall with an open hand to the inmate's chest; but instead missed his target and hit the inmate's neck. Sro. Moore explained

that he realized his hand placement was improper and disengaged from the inmate's neck once Ofc. Stoneking and Lt. Gallenkamp had control of the inmate's arms. He told Ofc. Stoneking that it was not necessary to take the inmate to the ground, as reported by Ofc. Stoneking. He also told me that, due to the heated situation, he did not hear Lt. Gallenkamp tell him to disengage from the neck but did so once the inmate was controlled.

Sro. Moore acknowledged that a chokehold is considered lethal force and not authorized in this type of situation but he contended that this contact with the inmate's neck was not a chokehold. Sro. Moore told me "...a chokehold is also defined as grasping or squeezing, and I did neither. It's obstructing blood flow and oxygen, and I did neither." Sgt Reyes added that Webster's dictionary defines a chokehold as "a method of holding someone by putting your arm around that person's neck." I reviewed the video of the incident with Sro. Moore. When the video is at 08:29:21 and asked Sro. Moore if he was applying any force to I/M Esoff's neck at this point. Sro. Moore replied that he was pushing on the neck at that point of the incident because he needed to apply force to push the inmate up to the wall in order to control him. Sro. Moore maintained his hand position on I/M Esoff's neck, knowing that his placement was incorrect until the inmate's arms were controlled by the other officers. Sro. Moore still did not believe the maneuver was a chokehold since he did not "squeeze" I/M Esoff's neck.

Sro. Moore told me that he never reviewed the surveillance video as he normally would have after a use of force situation and wrote that his hand slid up the inmate's chest to his neck because that is what he believed had occurred. After reviewing the video surveillance of the incident I had provided him at the onset of this investigation, Sro. Moore agreed that his hand never touched I/M Esoff's chest and went straight to his neck. Sro. Moore explained that normally he would have reviewed the surveillance but in this situation had not for an unknown reason. Had he reviewed the video, his report would have accurately reflected what had occurred. Sro. Moore told me that he was instructed by Lt. Seltz approximately one hour after the incident that he needed to write an incident report regarding the use of force. While he was not offered to watch the video, Sro. Moore stated that he knows that he has the ability to view the surveillance prior to writing his report and did not do so.

I asked Sro. Moore if he believed he violated the allegations listed on his notice of internal investigation. The following were his responses:

Yes *Volusia County Division of Corrections Policy and Procedure: 102.09 (C): All staff shall make or cause to be made accurate, complete and truthful reports and official records.*

- 1. No staff member shall knowingly make or cause to be made any false report or falsify any official record.*
- 2. No staff member shall make or cause to be made any inaccurate, misleading, contradictory, or improper record/official record.*

No *Volusia County Division of Corrections Policy and Procedure 400.10, (B-5): In the utilization of non-deadly force, the use of headlocks, choke holds, or any similar holds, which are lethal in nature, are not permitted*

No Volusia County Merit Rules 86-453 (8): Criminal, dishonest, or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service.

Yes Volusia County Merit Rules 86-453 (10): Incompetent or unsatisfactory performance of duties.

No Florida Administrative Code 11b-27.0011(4)(c)1 Moral Character: Excessive use of force, defined as a use of force on a person by any officer that is not justified under Section 776.05 or 776.07, F.S., or a use of force on an inmate or prisoner by any correctional officer that would not be authorized under Section 944.35(1)(a), F.S. The Recommended Response to Resistance and Levels of Resistance, form CJSTC-85, revised February 7, 2002, hereby incorporated by reference, is a reference tool to evaluate use of force. Form CJSTC-85 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615.

With regards to VCDC Policy 102.09 (c) Sro. Moore indicated that the report reflected inaccurate information but that it was unintentional.

This interview was transcribed and added to the case file as item 9.

Lieutenant Ralph Seltz:

I conducted a sworn interview with Lt. Seltz on January 12, 2015 at VCBJ. The interview was conducted following Sro. Moore's interview to address whether or not Sro. Moore had reviewed the video surveillance of the incident.

Lt. Seltz advised that he was aware of the use of force but was not present during the altercation. He arrived to the location right after the force had been applied. Lt. Seltz could not recall if he instructed Sro. Moore to complete a report on the use of force or if he had reviewed the report once it was completed. Lt. Seltz could not recall if he had reviewed the video surveillance or if he had provided the video to Sro. Moore to review prior to or while he was writing his report.

This interview was transcribed and added to the case file as item 10.

Conclusion:

On November 21, 2014 at approximately 0830 hours, Frank Esoff was brought to the ID/Rec area at VCBJ. He had been arrested by South Daytona Police and charged with driving under the influence, DUI Property damage, and driving while his license was suspended. The charging affidavit submitted by SDPD indicated that, at the time of his arrest, the three breath samples he provided had a BAC of 0.258, 0.279, and 0.249; all over three times the legal limit. As I/M Esoff entered the jail it was clear to Sro. Moore and Ofc. Stoneking that he was under the influence and could potentially be non-compliant during the booking process. Due to I/M Esoff's demeanor,

Ofc. Stoneking requested a supervisor's response to stand by while I/M Esoff was processed. While Sro. Moore was preparing to conduct a pat search on I/M Esoff, the inmate threw a sock toward the officer's waist. Sro. Moore quickly discarded the sock and attempted to gain control of the inmate due to the possibility that the sock was a distracter for a potential act of violence toward one of the staff members. Sro. Moore told me that he intended to place an open hand against the inmate's chest to pin him up against the wall but missed his target and contacted the inmate's neck. Although Sro. Moore knows that the use of chokeholds are prohibited by the division, he maintained his forward pressure on the inmate's neck until the inmate's arms were controlled by Ofc. Stoneking and Lt. Gallenkamp. Once control of the arms was attained, Sro. Moore disengaged from the inmate's neck and completed the pat search without further issues. The hold on the inmate's neck lasted less than four seconds. A medical screening was conducted following the application of force and no injuries were reported or documented as a result of the interaction. After interviewing the officers and supervisors involved in the incident, I/M Esoff never complained or alleged misconduct as a result of the interaction with the officers.

Following the use of force, Sro. Moore and the other officers completed incident reports documenting the application of force as required by VCDC policy. Although Sro. Moore states that he usually reviews the video surveillance of any uses of force that he is involved in while documenting, he did not in this incident. Sro. wrote that his hand slid up the inmate's chest onto his neck during the incident as he believed that was what had occurred at the time. After reviewing the video provided during the course of this investigation, Sro. Moore acknowledged that his hand never contacted the inmate's chest and went directly to the throat. Sro. Moore told me that had he reviewed the video, his report would have indicated the correct information. Sro. Moore told me that the error in reporting was unintentional and apologized for his actions.

Sro. Moore indicated that he does not believe that the maneuver used against I/M Esoff was a chokehold because he did not squeeze the neck. However, during the interview, Sro. Moore did admit that he was applying forward pressure to I/M Esoff's neck while he was pushing him against the wall. Although the inmate did not have any injuries, any type of pressure against the throat or neck can cause a lack of blood flow or impaired breathing.

Sro. Moore is authorized to apply some level of force in this situation to control I/M Esoff's non-compliant behavior. While the use of a chokehold is prohibited in situations such as these, there is no evidence to suggest the chokehold applied by Sro. Moore was intended to cause harm or unwanted pain to I/M Esoff. This is evident by Sro. Moore relinquishing his hold on I/M Esoff's neck once the inmate is controlled by other, more proper, means.

Findings:

Based upon witness testimony, documentation, and video surveillance, I recommend the following allegations are **sustained** against Senior Officer Moore:

Volusia County Division of Corrections Policy and Procedure 400.10, (B-5): In the utilization of non-deadly force, the use of headlocks, choke holds, or any similar holds, which are lethal in nature, are not permitted

Volusia County Merit Rules 86-453 (10): Incompetent or unsatisfactory performance of duties.

Based upon witness testimony, documentation, and video surveillance, I recommend the following allegations are **not sustained** against Senior Officer Moore:

Volusia County Division of Corrections Policy and Procedure: 102.09 (C): All staff shall make or cause to be made accurate, complete and truthful reports and official records.

1. *No staff member shall knowingly make or cause to be made any false report or falsify any official record.*
2. *No staff member shall make or cause to be made any inaccurate, misleading, contradictory, or improper record/official record.*

Volusia County Merit Rules 86-453 (8): Criminal, dishonest, or other conduct which interferes with effective job performance or has an adverse effect on the efficiency of county service.

Florida Administrative Code 11b-27.0011(4)(c)1 Moral Character: Excessive use of force, defined as a use of force on a person by any officer that is not justified under Section 776.05 or 776.07, F.S., or a use of force on an inmate or prisoner by any correctional officer that would not be authorized under Section 944.35(1)(a), F.S. The Recommended Response to Resistance and Levels of Resistance, form CJSTC-85, revised February 7, 2002, hereby incorporated by reference, is a reference tool to evaluate use of force. Form CJSTC-85 can be obtained at the following FDLE Internet address: <http://www.fdle.state.fl.us/Content/CJST/Publications/Professionalism-Program-Forms.aspx>, or by contacting Commission staff at (850) 410-8615.

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



Date



INTER-OFFICE MEMORANDUM
Department of Public Protection
125 West New York Ave., Suite 183
DeLand, FL. 32720
386-740-5120 – FAX 386-740-5283

TO: Senior Corrections Officer Jason Moore
Division of Corrections – Branch Jail

DATE: March 27, 2015

FROM: George Recktenwald, Director
Department of Public Protection

FILE NO: DPP15-031

SUBJECT: Notice of Suspension Without Pay

REFERENCE: DPP15-023 NOIS
Improper use of Force &
Unsatisfactory Performance

Purpose: The purpose of this memorandum is to provide you with notice of suspension without pay for four (4) work days, which equates to 49 hours (four 12.25-hour shifts). This action is the result of your improper use of force and unsatisfactory performance of duties. The dates of your suspension without pay are Wednesday, April 15, 2015, Thursday, April 16, 2015, Monday, April 20, 2015 and Tuesday, April 21, 2015. You will return to work on Friday, April 24, 2015.

You received my notice of intent to suspend on Friday, March 13, 2015. You have not contacted this office to provide any information that would alter my decision. Therefore, I am proceeding with the intended action. The suspension days are to be served as noted above, and you are advised that there shall be no voluntary overtime allowed in this pay period to make up the time.

Background Information: On November 21, 2014 force was used on Inmate Frank Esoff during his intake processing by you. You reacted to an intoxicated inmate with an unauthorized non-lethal force.

On November 21, 2014 you were assigned to work ID/Receiving at the Branch Jail. In the course of your duties you encountered Inmate Frank Esoff (#9238454). At the time of entry, Esoff was described as intoxicated. Your written report indicates that Esoff was belligerent, but that he also followed your commands prior to the pat search.

During the intake process, Inmate Esoff threw one of his socks towards you. In your written report, you state that Esoff's sock struck you. You report responding by first striking Esoff in his chest area with your right hand in order to direct him against the wall and to gain control, but that then your right hand slid up toward Inmate Esoff's neck area in your attempt to control him.

Captain Rodney Prince was the investigating supervisor for this use of force. He reports reviewing the video footage (Ocularis) as part of his investigation. Captain Prince determined that he could not "find the point where your right hand struck the chest of Inmate Esoff. He did find that your right hand went directly on the front of Inmate Esoff's throat area." Captain Prince concluded that the use of a choke hold on the throat of Esoff was not a reasonable response to the threat you perceived.

The senior managers assigned to review this use of force were Warden William McClelland, Assistant Director Mark Flowers, and Division Director Marilyn Chandler Ford. Based on the discrepancies that each of them observed independently of one another, Warden Matthew Reinhart was also asked to review all the materials. He also concurred with Captain Prince's assessment that the use of force was not

(Continued)

justified by the manner in which it occurred, and that your written account of your response to Esoff was not consistent with the video record of what happened.

Owing to the seriousness of the alleged misconduct, I directed an internal investigation be conducted by the Public Protection Department's Internal Affairs Investigator, Captain David Vanis. Captain Vanis conducted the IA, interviewing Captain Prince, Lieutenant Gallenkamp, Lieutenant Seltz, Officer Stoneking, and yourself; he additionally reviewed the institutional video (Ocularis) and all written reports of the incident. The witnesses provided descriptions and assessments of your misconduct as described previously.

In your interview you advised Captain Vanis that you never reviewed the Ocularis video prior to submitting your report. You admitted that you normally review the video in the course of preparing your report, but for some unknown reason in this incident, you had not done so. After reviewing the video you agreed that had you reviewed the video, your report would have accurately reflected that your hand went directly to the inmate's neck and it did not slide from an initial point of contact on his chest, as you recollected it had. You told Captain Vanis that your error in reporting was unintentional. You acknowledged that you had violated Division of Corrections policy on making an accurate report and the County Merit Rules on unsatisfactory performance of your duties, but you disagreed that you violated Corrections Division policy on non-deadly force.

Your conduct in this incident violated the following Volusia County Merit Rules and the Division of Corrections policies:

1. **Volusia County Merit Rules 86-453 (10):** *Incompetent or unsatisfactory performance of duties.*
2. **Volusia County Division of Corrections Policy and Procedure 400.10, (B-5):** *In the utilization of non-deadly force, the use of headlocks, choke holds, or any similar holds, which are lethal in nature, are not permitted.*

A review of your personnel file reveals the following past corrective and disciplinary actions:

11/13/2003	Suspension - 1 day – <i>Inattentive while on hospital duty</i>
07/09/2004	Written Reprimand – <i>Improper handling of inmate in ID – used force to drag inmate who was passive resistive</i>
12/22/2005	Suspension - 3 days – <i>Insubordination – Called out during County emergency and did not provide physician's excuse as instructed</i>
08/21/2006	Negative EPN – <i>Defaced phone as a prank</i>
02/02/2011	Negative EPN – <i>Failed to maintain unit logbook of shift's activities</i>
03/24/2011	Written Reprimand – <i>Insubordination – Failed to provide physician's note for absence and admitted did not go to doctor</i>
06/22/2011	Suspension - 3 days – <i>Excessive Absenteeism</i>
11/29/2012	Written Reprimand – <i>Poor judgment and call out on mandatory overtime</i>
10/30/2013	Negative EPN – <i>Excessive Absenteeism</i>
05/14/2014	Negative EPN – <i>Excessive Absenteeism</i>
10/02/2014	Suspension - 1 day – <i>Excessive absenteeism</i>

As a Corrections Officer with 14 years tenure, you have the knowledge and experience to perform your duties. Your prior disciplinary history is relevant as it informs how you meet job performance expectations. Overall, your performance record is less than exemplary.

(Continued)

Senior Officer J. Moore
Notice of Suspension Without Pay
March 27, 2015
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Your failure to follow correctional practices regarding use of force is extremely concerning. You used an unauthorized technique (choke hold) when responding to a non-compliant inmate. You did not exercise sufficient care in preparing your report of the incident by not reviewing the video of the incident. Your previous discipline history shows a pattern of sloppiness: e.g. excessive absenteeism, failure to maintain unit logbook... Your actions are not acceptable, they set a poor example for other officers, and they do not meet this organization's standards for acceptable performance.

Conclusion: Due to the seriousness of your misconduct, and consistent with the recommendations of the supervisors in your chain of command, I am issuing you this notice of suspension without pay for four (4) working days, which equates to 49 hours (four 12.25-hour shifts). The dates of your suspension without pay are Wednesday, April 15, 2015, Thursday, April 16, 2015, Monday, April 20, 2015 and Tuesday, April 21, 2015. You will return to work on Friday, April 24, 2015. The suspension days are to be served as noted above, and you are advised that there shall be no voluntary overtime allowed in this pay period to make up the time.

Please be advised that further violations of Division and/or County policy may result in more severe discipline up to, and including dismissal. If there is anything I or Dr. Ford can do to assist you to improved performance, please let me know.

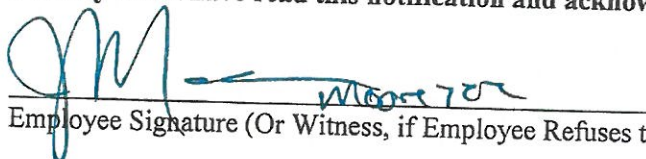
Action: In accordance with section 86-485 (a)(3) of the Merit System Rules and Regulations you have ten (10) working days from receipt of this notification (or effective date of the suspension) to appeal this action through the County Personnel Board. Should you decide to exercise your right to appeal, submit your written request to the County Personnel Office, 230 N. Woodland Blvd., Suite 262, DeLand, FL 32720.

Pursuant to Merit Rule 86-455, the Legal Department and the Human Resources Director have reviewed this notice and concur with the proposed action.

GR/tb

cc: ___ Terry Sanders, Deputy Director, Public Protection
___ Marilyn Chandler Ford, Corrections Director
___ Tom Motes, Human Resources Director
___ Tammy King, EEO Coordinator
___ County Attorney's Office

I certify that I have read this notification and acknowledge receipt of the original copy.


Employee Signature (Or Witness, if Employee Refuses to Sign)

03/27/15
(Date of Signature)