

**VOLUSIA COUNTY SHERIFF'S OFFICE  
INTERNAL AFFAIRS**

**REPORT OF INVESTIGATION**

**REPORT NUMBER: IA-13-004**

**PERIOD COVERED:** February 17, 2013  
**DATE REPORTED:** February 17, 2013  
**SUBJECT(S) NAME:** Deputy Joel Hernandez #1651  
**INVESTIGATING OFFICER:** Sergeant Thomas Tatum #2405

**BASIS FOR INVESTIGATION:**

On February 17, 2013, Sergeant Shon McGuire conducted a supervisory investigation into a use of non-deadly force incident that occurred at the intersection of W. Calvin St. and W. Florida Ave in Deland, FL. Deputies Joel Hernandez and John Szabo were attempting to arrest Mr. Daniel Rockmore who was resisting the efforts to be handcuffed. Sergeant Tatum read Sgt. McGuire's response to resistance report which stated Deputy Hernandez intentionally kicked Mr. Rockmore in the face as a distraction and pain compliance maneuver. The kick caused minor injury to Mr. Rockmore who was attended to by EVAC and Fire Rescue. Mr. Rockmore was not transported to the hospital and did not require any further medical assistance. *(See Tab C for Response to Resistance report)*

Sergeant Tatum received and reviewed the supplement report prepared by Deputy Hernandez which also read that he intentionally kicked Mr. Rockmore in the face as a distraction and pain compliance maneuver. *(See Tab C for supplement report)*

**OFFENSE(S):**

**26.2.102 Excessive Force Resulting in Injury** - Deputies shall not use excessive force resulting in injury to another. *(Violation subject up to dismissal.)*

**INVESTIGATIVE SUMMARY:**

On February 20, 2013, Chief Deputy Mike Coffin assigned the above investigation to the Internal Affairs Unit. Sergeant Thomas Tatum served Deputy Joel Hernandez with the Notice of

Investigation and provided him with a copy of the Law Enforcement Officer Bill of Rights. The following is a summary of the investigation conducted by Sergeant Thomas Tatum. *(See Tab B for Notice of Investigation)*

### **Deputy John Szabo**

On March 7, 2013, Sergeant Tatum and Lieutenant Erik Eagan conducted a sworn recorded interview with Deputy John Szabo at the District 2 Office in Deland, FL. The following is a summary of the interview.

Deputy Szabo advised on February 17, 2013, at approximately 2235 hrs., he was stationary at the corner of Carter St. and Florida Ave. and observed a black male (later identified as Daniel Rockmore) screaming, "Hey the police are on the corner." Deputy Szabo stated he exited his patrol car and made contact with Mr. Rockmore. Deputy Szabo said he thought it was around midnight when he made contact with Mr. Rockmore. Deputy Szabo explained that Mr. Rockmore then began to yell at him saying, "You're giving me problems because I'm a black man (unintelligible) Nutter Butter you racist cop." Deputy Szabo asked Mr. Rockmore for his identification and he produced a homeless coalition card and handed it to him. Deputy Szabo said he went back to his patrol car when Mr. Rockmore placed his hands in his pockets then took them out and began getting "crazy." Deputy Szabo stated he called out on the radio with Mr. Rockmore and Deputy Hernandez pulled up from around the corner. Deputy Szabo explained that Mr. Rockmore continued to place his hands in his pockets after being instructed to stop. Deputy Szabo stated Mr. Rockmore then rolled up his sleeves and took a fighting stance with his fists in front of his face. Deputy Szabo stated he felt a physical confrontation was eminent and attempted to take Mr. Rockmore to the ground. Deputy Szabo said Mr. Rockmore landed on his back and began flailing around. Deputy Szabo explained that Deputy Hernandez approached and kicked Mr. Rockmore in the face. Deputy Szabo explained that the kick to the face was enough to distract Mr. Rockmore and he was able to roll him on his stomach and get one handcuff on him as he continued to resist efforts to be placed in custody. Deputy Szabo stated he disengaged and Deputy Hernandez deployed his Taser striking Mr. Rockmore in the back. Deputy Szabo said Mr. Rockmore continued to resist by kicking and flailing his arms. Deputy Szabo stated he grabbed Mr. Rockmore by the feet and Deputy Hernandez utilized a drive stun to the stomach of Mr. Rockmore. Deputy Szabo said Mr. Rockmore attempted to grab Deputy Hernandez's Taser and at that point Deputy Hernandez struck Mr. Rockmore in the face with the Taser. Deputy Szabo stated Mr. Rockmore was not responding to the commands to stop resisting, but once Deputy Hernandez struck him in the face, it was enough of a distraction to secure him in handcuffs. Deputy Szabo stated he spoke with Deputy Hernandez after the incident who told him his finger hurt because Mr. Rockmore grabbed his Taser when he was drive stunning him.

Deputy Szabo stated he could smell the odor of an alcoholic beverage being emitted from Mr. Rockmore's breath. Deputy Szabo could not say with certainty that Mr. Rockmore was under the influence of alcohol or drugs. Deputy Szabo said Mr. Rockmore was acting irrationally by calling him a racist, then telling him how much he appreciates law enforcement. Deputy Szabo stated he notified his shift supervisor Sergeant Shon McGuire who arrived on scene. *(See Tab D for complete transcript)*

### **Sergeant Shon McGuire**

On March 7, 2013, Sergeant Tatum and Lieutenant Eagan conducted a sworn recorded interview with Sergeant Shon McGuire at the District 2 Office in Deland, FL. The following is a summary of the interview.

Sergeant McGuire advised on February 17, 2013, at approximately 2235 hrs., he heard Deputy Szabo on the radio when he called out with a subject at the corner of Carter St. and Florida Ave. Sergeant McGuire stated he could hear someone yelling in the background as Deputy Szabo was keying up the microphone. Sergeant McGuire advised he was too far away and knew that Deputy Hernandez was in the area near Deputy Szabo. Sergeant McGuire stated he heard Deputy Hernandez call on the radio that he had a Taser deployment and requested Sergeant McGuire respond. Sergeant McGuire stated he arrived on scene and observed Mr. Rockmore's behavior to be very irate. Sergeant McGuire advised he observed a laceration on Mr. Rockmore's forehead and his lips were swollen and bleeding.

Sergeant McGuire's account of what he was told by Deputies Hernandez and Szabo were consistent with the written reports submitted by the deputies. Sergeant McGuire stated he talked to Deputy Hernandez who told him that he intentionally kicked Mr. Rockmore in the face with his right foot to stop his aggressive actions to present a distraction and to gain pain compliance. Sergeant McGuire explained that Deputy Hernandez told him that it looked like Mr. Rockmore was actively fighting with Deputy Szabo because his arms were moving wildly and he thought he may have been striking Deputy Szabo. Sergeant McGuire stated he conducted the supervisor Response to Resistance report and concluded the use of force was justified. Sergeant McGuire said he based his conclusion on the fact that Mr. Rockmore had minor injury and he didn't think Deputy Hernandez meant to hurt Mr. Rockmore. Sergeant McGuire stated Deputy Hernandez told him that he spoke in the past with Director Chuck Habermehl (Director of training for Volusia County Sheriff's Office) who told him that it was permitted. Sergeant McGuire said the Watch Commander Lieutenant Tim Johnson was notified and arrived on scene. Sergeant McGuire stated he completed his supervisor report and submitted it for review to Lieutenant Donald Taylor who is the Assistant District Commander of District 2 in Deland. Sergeant McGuire said he received a phone call from Lieutenant Taylor who had concerns about the incident and the "justified" conclusion on the Response to Resistance Report.

Sergeant McGuire was asked based on his 10 years of law enforcement experience if Mr. Rockmore appeared to be under the influence of drugs or alcohol, he replied, *"Oh yes sir. I mean he was, I mean he just would not quit talking you know that's a sign of impairment you're just constantly going, going, going. You could smell the odor of alcohol on him. His eyes were glazed over. You know even to the point when we tried to put him in the car after the whole thing was over with, he still was resisting, he had to be forcefully put into the car."* (See Tab E for complete transcript)

### **Lieutenant Tim Johnson**

On March 7, 2013, Sergeant Tatum and Lieutenant Eagan conducted a sworn recorded interview with Lieutenant Tim Johnson at the District 2 Office in Deland, FL. The following is a summary of the interview.

Lieutenant Johnson stated on February 17, 2013, at approximately 2248 hrs., he received a call from Sergeant McGuire informing him of a Taser deployment and that he was doing a use of force report on the incident. Lieutenant Johnson said he was in the general area and responded to the scene at W. Carter St. and S. Florida Ave. in Deland, FL. Lieutenant Johnson advised he spoke with Sergeant McGuire who informed him of the incident where Deputy Szabo was on the ground fighting with the suspect and Deputy Hernandez showed up and kicked the suspect, then deployed his Taser to get him off. Lieutenant Johnson was not aware that Deputy Hernandez intentionally kicked Mr. Rockmore in the face; he thought the kick was to Mr. Rockmore's body.

Lieutenant Johnson stated he did not see any injury to Mr. Rockmore but he was yelling about his shoe which was about 10 or 15 feet from him. Lieutenant Johnson said he was only on scene for about 10 minutes then cleared. Lieutenant Johnson explained that the use of force reports generated by the supervisors are not reviewed by him; the reports go to the supervisor's chain of command for review and approval. *(See Tab F for complete transcript)*

Sergeant Tatum made several attempts to contact Mr. Rockmore at his residence 201 S. Garfield, Deland, FL. The first attempt was on March 13, 2013, with no answer at the residence. The second attempt was on March 15, 2013. Contact was made with Mr. Rockmore's step-father who advised he would tell Mr. Rockmore to contact investigators. Sergeant Tatum left a business card with Mr. Rockmore's step-father. At the time of this report, Mr. Rockmore has not made any attempt to contact Sergeant Tatum.

### **Director Charles Habermehl (Director of Training for Volusia County Sheriff's Office)**

On March 18, 2013, Sergeant Tatum conducted a sworn recorded interview with Charles Habermehl at the Saboda Training Center in Daytona Beach, FL. The following is a summary of the interview with Mr. Habermehl.

Mr. Habermehl has been employed by the Volusia County Sheriff's Office for the past 12 years. Mr. Habermehl has over 40 years of law enforcement experience with the majority of his time spent training officers.

Mr. Habermehl advised he prepared the lesson plan for striking points on the body for kicks and strikes. Mr. Habermehl said in a non-deadly use of force situation, typically the strikes would be to the large muscle groups of the body like in and outside of the thigh, maybe even the torso area. Sergeant Tatum asked Mr. Habermehl if kicks to the head are authorized and he advised only in lethal force situations. Mr. Habermehl explained that the training staff instructs kicks and strikes on different target areas depending on what the level of force is. Mr. Habermehl stated the instructors

do not practice kicking the dummy targets in the head during training, but they do teach knee strikes and shin strikes. Sergeant Tatum asked Mr. Habermehl given the circumstances documented in Deputy Hernandez's report, would that authorize him to kick a suspect in the face and Mr. Habermehl replied, *"Unless he was trying to disarm Deputy Szabo or if the subject was trying to arm himself than I can't see where that kick to the face would be authorized."* Sergeant Tatum asked Mr. Habermehl if he had a conversation with Deputy Hernandez telling him that kicks to the head are authorized. Mr. Habermehl explained that he does not remember having Deputy Hernandez as a student and that if the question was ever asked he would say that it was not authorized. (See Tab G for complete transcript)

### **Deputy Joel Hernandez**

On April 4, 2013, Sergeant Tatum and Lieutenant Eagan conducted a sworn recorded interview with Deputy Hernandez in the Sheriff's Office conference room located in Deland, FL. Also present during the interview was Teamsters Representative Josh Vedder, Brodie Hughes and Teamsters Business Agent Bob Walker. The following is a summary of the interview.

Deputy Hernandez has worked for the Volusia County Sheriff's Office for 10 years. Deputy Hernandez has also been a member of the SWAT team for 7 years and he was in the Marine Corps. Deputy Hernandez stated while in the military he was an instructor of Close Quarter Battle (CQB) and has training in Tae Kwon Do and boxing.

Deputy Hernandez stated on February 17, 2013, at approximately 2236 hrs., he responded as back up for Deputy Szabo who called out on the radio with a male at W. Carter St. and S. Florida Ave. Deland, FL. Deputy Hernandez advised when Deputy Szabo called on the radio he could hear a male yelling in the background and he expedited his response. Deputy Hernandez said as he pulled up to the scene he could hear somebody screaming. Deputy Hernandez stated he observed the male later identified as Mr. Rockmore standing in front of Deputy Szabo's patrol vehicle. Deputy Hernandez explained he observed Mr. Rockmore take a fighting stance by rolling up his sleeves and raising up his arms. Deputy Hernandez stated Deputy Szabo then grabbed Mr. Rockmore and took him to the ground and Mr. Rockmore began swinging at Deputy Szabo. Deputy Hernandez said he heard Deputy Szabo telling Mr. Rockmore to place his hands behind his back as Mr. Rockmore continued swinging his arms and kicking. Deputy Szabo stated it appeared to him that Mr. Rockmore was attempting to punch Deputy Szabo. Deputy Hernandez explained that Deputy Szabo and Mr. Rockmore were near a tree which blocked part of his view as he approached. Deputy Hernandez stated he believed Mr. Rockmore was striking Deputy Szabo or attempting to strike him. Deputy Hernandez said he could not see that Mr. Rockmore's hands were empty, he was only able to get a quick visual and he then delivered a right kick to the left side of Mr. Rockmore's face. Deputy Hernandez stated he believes his foot only traveled approximately one foot when he delivered the kick. Deputy Hernandez stated the kick accomplished the desired results which were to distract and stop Mr. Rockmore's violent actions. Deputy Hernandez said Mr. Rockmore stopped swinging at Deputy Szabo and faced the ground which gave them enough time to attempt to secure him.

Deputy Hernandez stated Mr. Rockmore was then on his stomach and he placed his right hand under

his stomach area. Deputy Hernandez said Deputy Szabo was able to gain control of Mr. Rockmore's left arm but they still could not gain control of Mr. Rockmore's right hand. Deputy Hernandez explained that it was a cold night and Mr. Rockmore had very baggy clothing on and his concern was that Mr. Rockmore was attempting to gain access to a weapon. Deputy Hernandez stated Deputy Szabo was calling for the Taser and said, "*Taser him, Taser him.*" Deputy Hernandez explained he then Tasered Mr. Rockmore with a contact stun to the back with the cartridge attached. Deputy Hernandez said the deployment of the Taser affected him initially, but then Mr. Rockmore rolled on his right side facing him and Mr. Rockmore grabbed his Taser. Deputy Hernandez said he drove the Taser into the stomach of Mr. Rockmore and activated another cycle. Deputy Hernandez stated Mr. Rockmore continued to grab for the Taser and tried pulling it back. Deputy Hernandez explained when Mr. Rockmore continued to grab for the Taser he had great concern that Mr. Rockmore would gain access to his Taser. Deputy Hernandez said he knew if Mr. Rockmore obtained his Taser and turned it on them the situation would become lethal. Deputy Hernandez explained that during his official Taser training, he was Tasered and knew the incapacitating ability of receiving a Taser deployment. Deputy Hernandez said he gave Mr. Rockmore another deployment of the Taser which had no effect. Deputy Hernandez stated he maintained control of the Taser and used the butt end of the Taser as a tool of convenience to strike Mr. Rockmore in the face three times which stopped his aggressive actions. Deputy Hernandez stated during the encounter Mr. Rockmore was given verbal commands to stop resisting but he continued fighting. Deputy Hernandez said they were finally able to secure Mr. Rockmore. Deputy Hernandez stated even after Mr. Rockmore was secured, he continued to yell and scream the whole time.

Deputy Hernandez explained that Sergeant McGuire showed up on scene and he explained to him what had occurred. Deputy Hernandez stated when he told Sergeant McGuire he intentionally kicked Mr. Rockmore in the face, Sergeant McGuire asked him to clarify that and he said, "*Yes, I did kick him in the face intentionally and told him why I did it.*"

Sergeant Tatum asked Deputy Hernandez if he was trained to kick a person in the head or face if the situation did not meet deadly force criteria. Deputy Hernandez explained that when he was taught at the academy, the training consisted of somebody stand in front of him, not much training was on the ground. Deputy Hernandez said when a fight goes to the ground several strikes were taught such as knee spikes and elbow spikes, so why not kick somebody in the face just because they are on the ground. Sergeant Tatum asked Deputy Hernandez if he felt it was necessary to kick Mr. Rockmore in the face, he replied, "*I absolutely do. I feel that if I had not I feel that if I had not been there and I don't know basically talking to Szabo afterward I find out that he had not been struck. I believed that he was being punched. If in so he was being punched at the time all it takes is one punch and that would have taken completely Szabo out leaving him with his gun belt laying in front of him and me running after him where Rockmore could easily arm himself.*" Deputy Hernandez stated he was never instructed by Volusia County Sheriff's Office how to kick somebody in the head because most of the training is stand up fighting when delivering strikes.

Deputy Hernandez explained that his prior experience in ground fighting (Military) he was trained to, "*...I've been taught to bite people in the face I've been taught to eye gouge people in the face I've been taught to knee people in the face. If I can remember them saying that it's the preferred method*

*to kick anybody in the face no. But all it is, it is a fight and I'm gonna use whatever's available to me."*

Sergeant Tatum asked Deputy Hernandez if he felt he violated directive 26.2.102 Use of excessive force resulting in injury, he replied, *"No I do not."*

Teamsters Representative Hughes asked Deputy Hernandez if the Sheriff's Office training ever told him not to strike somebody in the face, he replied *"No."* Mr. Hughes asked Deputy Hernandez if he was aware of any policy that prohibits active countermeasures to the face or head, he replied, *"Absolutely not."* Mr. Hughes asked Deputy Hernandez if there was any policy that describes active countermeasures to the face as deadly force, he replied *"No."*

Prior to the conclusion of the interview, Deputy Hernandez presented a word document he typed and asked that it be added in addition to his original supplement report. The word document appeared to be a more detailed account of the incident under investigation. Deputy Hernandez stated he was told by his supervisor not to submit the supplement due to the active internal investigation. The word document has been attached to this investigation. *(See Tab H for complete transcript and Tab K for addendum to Deputy Hernandez's supplemental report)*

#### **CONCLUSION:**

On April 23, 2013, this investigation was presented to the Sheriff and his administrative staff. After review, the Sheriff determined the violations of the below listed Department Standards Directives to be: **Sustained**

**26.2.102 Excessive Force Resulting in Injury** - Deputies shall not use excessive force resulting in injury to another. *(Violation subject up to dismissal.)*

Sheriff Johnson determined the discipline to be a letter of reprimand for Deputy Hernandez. In addition to the letter of reprimand, Sheriff Johnson ordered Deputy Hernandez to attend a mandatory 40 hour defensive tactics training course to be held during the next FTEP class. Once the pending FTEP schedule is complete, Deputy Hernandez will be advised of the dates he will attend.

The Response to Resistance report completed by Sergeant McGuire was addressed due to his finding of "justified" in the use of force. Sergeant McGuire will receive an employee performance notice for his erroneous finding in this incident.

#### **EXHIBITS:**

- A. Report of Investigation
- B. Official Correspondence
- C. Copies of VCSO Incident report, supplement reports, SA 707 and Response to Resistance report

- D. Transcript of interview with Deputy John Szabo
- E. Transcript of interview with Sergeant Shon McGuire
- F. Transcript of interview with Lieutenant Tim Johnson
- G. Transcript of interview with Charles Habermehl
- H. Transcript of interview with Deputy Joel Hernandez
- I. D.A.V.I.D. and Criminal History of Mr. Rockmore
- J. CAD history of call #
- K. Miscellaneous
- L. C.D.'s of interviews

**WITNESSES:**

Deputy John Szabo  
Volusia County Sheriff's Office  
District 2 Deland, Fl.  
386-943-7866

Sergeant Shon McGuire  
Volusia County Sheriff's Office  
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386-943-7866

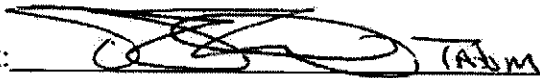
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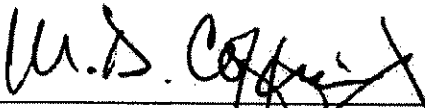
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Deputy Joel Hernandez  
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I, the undersigned, do hereby swear, under the penalty of perjury, that, to the best of my personal knowledge, information, and belief, I have not knowingly or willfully deprived,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

INVESTIGATOR:  DATE: 05/14/13  
**Sergeant Thomas E. Tatum**  
**Internal Affairs Investigator**

APPROVED BY:  DATE: 05/16/13  
**Chief Deputy Mike Coffin**  
**SHERIFF BEN F. JOHNSON**  
**VOLUSIA COUNTY FLORIDA**