

PROBABLE CAUSE COMMITTEE RECOMMENDATION TO COUNCIL

CASE NO. 008-591-12-20

1. Austin Antonio Albino is certified (Jailer).
2. Officer Albino was employed with the most recent law enforcement unit from 10/29/2018, until he was terminated on 12/09/2020.
3. Officer Albino is not currently employed by a law enforcement unit.
4. Officer Albino did not report his arrest from 06/11/2021.
5. Officer Albino did not submit a response to this investigation.

CASE SUMMARY

On 12/03/2020, Officer Albino, who was employed as a jailer with a county sheriff's office was involved in a Use of Force incident with Inmate Flournoy as he and Officers Reed, Simmons, and Fountain were completing routine cell inspections. Officer Simmons asked Corporal Carr later that morning if Officer Albino had given her a call about "getting into it" with Inmate Flournoy during the cell checks. Corporal Carr advised she was unfamiliar with the incident, and she asked Officer Albino about the incident later that day. Officer Albino advised that he had to push Inmate Flournoy up against the wall for not complying with his orders. Corporal Carr asked Officer Albino why she was just hearing about this as he knew that all incidents were to be reported immediately, and she asked about the required report. Corporal Carr stated Officer Albino told her that he was in the process of completing the report, but he did not have access to the Use of Force report system.

According to the report completed by Officer Albino, he told Inmate Flournoy to put his hands on the door, in order for him to be patted down as part of the process. Officer Albino wrote that Inmate Flournoy walked up to him with his hands in front of him, then turned as if he was going to comply with his directions, then turned back to him, looking him up and down, and coming back in his direction. Officer Albino stated that when Inmate Flournoy was within a foot of him, he (Officer Albino) grabbed him, turned him, and placed him on the wall while his cell was searched by Officer Reed. Officer Albino also stated that Inmate Flournoy began resisting as he was trying to escort him back into his cell. Officer Albino indicated that he could not utilize his pepper spray or taser due to the proximity of Officers Fountain and Reed, so he used two open hand strikes to Inmate Flournoy's upper shoulder area in order to get him into his cell. Officer Albino noted that once Inmate Flournoy was secured in his cell all levels of force ceased. Officer Albino wrote that he notified his immediate supervisor, Corporal Carr, as soon as he was able to do so.

Officers Reed, Fountain, and Simmons completed supplemental reports related to this Use of Force incident. Officers Fountain and Reed mentioned in their supplemental reports that Inmate Flournoy had a history of being aggressive. Officers Reed and Simmons noted in their supplemental reports that they observed Inmate Flournoy pacing back and forth in his cell; Officer Simmons added Inmate Flournoy appeared to be angry. After opening Inmate Flournoy's cell for him to step out for the cell check, Officers Reed and Simmons noted in their reports that

Inmate Flournoy stopped and "looked Officer Albino up and down" before walking towards him. Officer Reed reported he and Officer Fountain assisted Officer Albino during the incident with Inmate Flournoy by using "soft hands" to push him towards and into his cell.

According to Officer Simmons' report, Officer Albino "decided to grab" Inmate Flournoy and put him on the wall as Officers Reed and Fountain searched his cell. Officer Simmons stated that after Inmate Flournoy's cell was searched, he refused to go back into his cell, instead charging towards Officer Albino. Officer Simmons stated a tussle ensued between Officer Albino and Inmate Flournoy, and the two of them exchanged punches. Officer Simmons reported that he, along with Officer Reed, pushed Inmate Flournoy back into his cell.

Officer Fountain wrote that words were exchanged between Officer Albino and Inmate Flournoy, but he could not make out what either one said. Officer Fountain noted that after the cell search, at some point he stepped between Officer Albino and Inmate Flournoy in an effort to separate them; he mentioned that Officer Albino did not have time to draw his taser or O.C., and due to Inmate Flournoy's actions, he (Albino) began throwing strikes at Inmate Flournoy, hitting him in the upper shoulder area. A copy of the jail incident report, and narratives are included in the case file, along with a copy of the Use of Force report.

Corporal Carr documented that she later received a text message from 1st Lieutenant Smith that included Sergeant Berry and Lieutenant Williams in the text chain. Corporal Carr noted that a video was attached and she was asked to contact 1st Lieutenant Smith immediately. Corporal Carr added that she reviewed the video and that it did not match what was reported to her by Officer Albino. Corporal Carr stated the video she viewed "was an abuse of authority, mistreatment and unnecessary force from an officer." Corporal Carr indicated that Officer Albino falsified his report by not reporting exactly what happened, and his entire report was fabricated.

The Notice of Adverse Action to Officer Albino, dated 12/09/2020, noted the following was observed: Officers Albino and Fountain approached Inmate Flournoy's cell and Officer Reed proceeded to the lower tier to assist. Inmate Flournoy was observed exiting his cell with his hands on his head, and he lowered his hands to his side. There was some type of verbal exchange between Inmate Flournoy and Officer Albino, and then Inmate Flournoy was "forcibly pushed" by Officer Albino. Inmate Flournoy did not face the wall; he instead walked "nonchalantly" towards Officer Albino, again with his hands to his side. Officer Albino closed the distance between himself and Inmate Flournoy and placed him on the wall. Officers Reed and Fountain were "observed" stepping in to try to calm the situation. It was noted that Officer Fountain was interviewed and said that he tried to intervene, and that he asked Officer Albino to step out without success. It was also noted that it appeared Officer Albino "zoned out" as he did not respond to his co-workers.

According to the adverse action notice, after Inmate Flournoy's cell inspection was completed, it was observed that Officer Albino placed his hand on Inmate Flournoy's head and pushed him towards the cell door in a forceful manner. As Officer Albino attempted to close the cell door, Inmate Flournoy attempted to exit the cell. Officer Albino delivered two closed fist

strikes to the upper area of Inmate Flournoy. Inmate Flournoy was pushed into the cell and the door was secured by the officers.

It was noted that this incident occurred at approximately 7:15 am, but Officer Albino did not notify his supervisor (Corporal Carr), until 3:23 pm, when she asked him about the incident. It was noted that Officer Albino had stated he only pushed Inmate Flournoy against the wall with "soft hands." According to the notice, Officer Albino failed to report the incident as required and was not truthful, as his report contained events that did not occur. The proposed action notice for termination was signed by Lieutenant Williams and 1st Lieutenant Smith.

On 12/09/2020, Officer Albino was terminated for violation of the following: failing to meet job performance standards, including negligence in performing assigned duties, inefficiency, misfeasance, malfeasance, or nonfeasance; engaging in conduct that could reflect discredit or bring disrepute to the County or department; alteration or falsification of any type of county record.

A copy of the Notice of Adverse Action, a copy of the statement by Corporal Carr, and a copy of the Adverse Action authored by Corporal Carr are included in the case file.

On 03/08/2021, this investigator spoke with Officer Albino via phone and went over the POST process, including his opportunity to provide a response. Officer Albino initially stated that he was not planning to provide a response, but later stated that he changed his mind, and would provide one by 03/22/2021. Officer Albino commented that he and the supervisor had prior issues, and he felt that he was thrown "under the bus." Officer Albino also mentioned that he did not see himself going back into law enforcement. As of the date of this report, Officer Albino's written response has not been received. Two emails were sent to Officer Albino this date; one was a copy of the letter of notice of POST investigation. The second email was an overview of our conversation, along with the agreed upon date for him to supply his written response.

On 05/17/2021, this investigator met with Lieutenant Cunningham in reference to locating a copy of any video recording of the reported Use of Force incident between Officer Albino and Inmate Flournoy. Initially, this investigator was advised there was no video available. Lieutenant Cunningham spoke with the person charged with saving any requested video. It was determined that a request to archive the jail surveillance video was never requested. A copy of the video was found through Lieutenant Williams, and forwarded to me by text from Lieutenant Cunningham. A copy of the videos were transferred to DVD and placed in the case file.

Upon review of the video received by this investigator, there were actually two recordings included in the text, but from different angles; one is slightly longer in length than the other, but both captured when Inmate Flournoy came out of his cell and when he went back into his cell. On one of the videos, some sound is heard, but it was very difficult to confirm the conversation. The videos depict Inmate Flournoy coming out of his cell, with his hands on his head; he drops his hands down to his side as he nears Officer Albino. Officer Albino then forcibly pushes Inmate Flournoy to the other side of the cell door and places him facing the wall, holding him there.

While escorting Inmate Flournoy back to his cell, Officer Albino is shown to have his hands on Inmate Flournoy's upper back or head area and forcibly pushing him into his cell; Inmate Flournoy turns around and comes back towards the door. Officer Albino is seen striking Inmate Flournoy twice with what appeared to be a closed fist. Another officer (later identified as Reed), is seen trying to pull Officer Albino back.

On 06/01/2021, this investigator met with Corporal Carr in order to discuss the Use of Force incident involving Officer Albino. Corporal Carr confirmed that when she initially spoke with Officer Albino, he described using "soft hands" to place Inmate Flournoy on the wall; she said he did not describe striking Inmate Flournoy with his fist or Officer Reed having to pull him back. Corporal Carr advised she does not have access to review videos and was not aware of Officer Albino's actions until she received the text message from 1st Lieutenant Smith, along with the video attachment, asking her to contact him immediately. Corporal Carr was unsure what prompted a review of the video by 1st Lieutenant Smith. The interview was digitally recorded, downloaded, and transferred to a DVD, which is contained in the case file.

On 06/01/2021, this investigator made contact via phone with 1st Lieutenant Smith in reference to the video; he could not recall why the video was reviewed.

On 06/16/2021, this investigator discovered Officer Albino had been arrested on 06/11/2021. A copy of the incident report revealed that Officer Walker was dispatched to a theft in progress call of a trailer. Officer Walker stated he was in the area of the theft call approximately ten (10) minutes before the 911 call; he observed two (2) males with the trailer. Officer Walker observed the truck and trailer coming towards him as he was traveling to the location. Officer Walker stopped the truck and during his on-scene investigation, he identified Officer Albino as the driver and Mr. Buckhault as his passenger.

Officer Walker wrote that he and Officer Sanzo spoke with Mr. Buckhault, who said he worked for Officer Albino; he said he did not know who the trailer belonged to, and that Officer Albino asked him to load the trailer onto the truck. Mr. Buckhault said they were only moving the trailer down the road to an empty parking lot (Kroger) as it could have caused an accident where it had been left. Officer Walker noted he told Mr. Buckhault that the trailer was not a traffic hazard where it was, and there was an empty parking lot right next to where the trailer had been left. It was noted that Mr. Buckhault advised officers he was on probation for burglary.

Officer Walker wrote that Officer Albino confirmed the trailer did not belong to him, and he did not know the owner of the trailer; he said he was only moving it down the road to an empty lot. Officers Walker and Sanzo could not locate a vin number on the trailer, which was loaded with various items. The decision was made to arrest Officer Albino and Mr. Buckhault for Theft of Mislaid Property. A copy of the incident report and the officer's body/dash cam footage are contained in the case file.

Upon review of the video footage by this investigator, it was noted a call was made to 911 that someone was stealing a trailer. Officer Walker's dash cam video was on as he passed

Officer Albino's vehicle with the trailer attached. Officer Walker turned around and activated his emergency equipment. As Officer Walker was catching up to Officer Albino's vehicle, he (Albino) was turning into a Kroger parking lot. Officer Albino made statements during his encounter with deputies that he was moving the trailer into the Kroger parking lot and also said that he had no ill intent by moving the trailer. The officer's body cam footage did capture the trailer and some of the miscellaneous content loaded on it, along with items that Officer Albino had in the bed of his personal truck. In addition, an unidentified witness stopped to inform officers that he had made contact with Officer Albino and Mr. Buckhault, who told him they were moving the trailer to the EMS parking lot which was indicated by their conversation to have been closer to where the trailer had initially been left. There was no additional information of value noted.

On 12/16/2021, a motion to Nolle Prosequi the charge and restrict it from Officer Albino's criminal history was made by ADA McCreight. The following was noted in the motion: "though probable cause existed for the initial arrest and prosecution" of the charge, that after further investigation, the State could not prove Officer Albino took the trailer with the intent to appropriate it for his own use beyond a reasonable doubt. A copy of the Nolle Prosequi is contained in the case file.

On 01/20/2022, this investigator attempted to contact Officer Albino via phone at the number listed on his POST demographics page to discuss the arrest incident. An automated message advised the subscriber does not have a voice mail set up. As such, this investigator was unable to leave a message.

DISCIPLINARY HISTORY

Date: 01/30/2020
Violation: Uniform Dress Code; Hair and Grooming Standards
Action Taken: Written Warning

Date: 01/21/2020
Violation: Attendance; Tardy
Action Taken: Written Reprimand

Date: 10/07/2020
Violation: Carelessness
Action Taken: Verbal warning

Date: 07/12/2020
Violation: Insubordination; Prompt Compliance with Lawful Order of a Superior
Action Taken: Written Reprimand

CRIMINAL HISTORY

None other than noted above.

VIOLATION

It is hereby asserted this individual is in violation of the following sections of O.C.G.A. 35-8-7.1 (a)(2),(6),(7),(8),(11) as attached:

In accordance with O.C.G.A. 35-8-7.1 (b) (1), the Probable Cause Committee makes the following recommendations to the Council:

_____	_____
_____	_____
_____	_____

Chairman, Probable Cause Committee
Date:

Chairman, P.O.S.T. Council
Date: