

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) **Docket No. 1862**
Amelio Gonzalez)
Correctional Officer)
Star # 15827)

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on September 6 and 21, 2016, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Amelio Gonzalez, hereinafter Respondent, was appointed a Correctional Officer on June 13, 2005. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; and

Each member of the Cook County Sheriff's Merit Board, hereinafter Board, has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was personally served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint; and

The Board has heard the evidence presented by the Sheriff and the Respondent and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

On June 13, 2005, the Respondent was appointed a Correctional Officer and on August 7, 2008, the Respondent was assigned to Division IX, Cook County Department of Corrections (CCDOC), 2834 W. 31st Street, Chicago, IL. On July 28, 2014, the Respondent was assigned to the External Operations Unit of the CCDOC, 2834 W. 31st St. and on November 9, 2014, the Respondent was assigned to Division IX of the CCDOC. On November 30, 2014, the Respondent was assigned to the External Operations Unit of the CCDOC.

On May 25, 2014, while on duty on Tier 1E in Division IX of the CCDOC, the Respondent used excessive force against detainee [REDACTED] by placing his arm around the neck of detainee [REDACTED] restrain detainee [REDACTED] and dragging him towards the interlock door of the tier by his neck.

On May 25, 2014, the Respondent took detainee [REDACTED] off the tier into a hallway where he again used excessive force against detainee [REDACTED]. The Respondent pushed detainee [REDACTED] to the ground and upon detainee [REDACTED] trying to get up off the ground the Respondent kicked detainee [REDACTED] in the back and punched detainee [REDACTED] in the face and head.

On May 25, 2014, the Respondent completed a Response to Resistance/Use of Force Report. In that report, the Respondent failed to document that he utilized a neck hold upon detainee [REDACTED] to restrain detainee [REDACTED], dragged detainee [REDACTED] from the tier by his neck or that the Respondent utilized an additional kick to the back and hand strikes to the face and head of detainee [REDACTED] the hallway.

On May 25, 2014, the Respondent completed an Incident Report. In that report, the Respondent failed to document that he utilized a neck hold upon detainee [REDACTED] to restrain detainee [REDACTED], dragged detainee [REDACTED] from the tier by his neck or that the Respondent utilized an additional kick to the back and hand strikes to the face and head of detainee [REDACTED] in the hallway.

On May 25, 2014, the Respondent completed an Inmate Disciplinary Report. In that report, the Respondent failed to document that he utilized a neck hold upon detainee [REDACTED] to restrain detainee [REDACTED], dragged detainee [REDACTED] from the tier by his neck or that the Respondent utilized an additional kick to the back and hand strikes to the face and head of detainee [REDACTED] in the hallway.

On May 25, 2014, a videotape recording from a stationary camera in Division IX depicts the Respondent using a closed hand strike to the left side of detainee [REDACTED] face. The video further depicts the use of excessive force when the Respondent restrained detainee [REDACTED] by the neck and dragged him out of the view of the camera.

On May 25, 2014, detainee [REDACTED] made a video statement to personnel from the CCDOC following the incident with the Respondent. [REDACTED] is depicted on the video, in conjunction with a review of his medical records, as having injury to the right and left sides of his face inconsistent with the Respondent's reports that he utilized a single hand strike to the face of detainee [REDACTED]. Further, during the video statement, detainee [REDACTED] indicated the Respondent kicked and punched him several more times after he was removed from the tier, including on the right side of his face.

On December 5, 2014, RESPONDENT was interviewed and provided a signed statement to investigators from the Cook County Sheriff's Office of Professional Review (OPR). The Respondent falsely reported to investigators from OPR that while detainee [REDACTED] was on all fours on the ground, the Respondent wrapped his arm around detainee [REDACTED] shoulders and escorted him into the core.

The Respondent failed to conduct himself on and off duty in such a manner to reflect favorably on the Cook County Sheriff's Office (CCSO) and failed to maintain a professional demeanor and the Respondent's conduct throughout the incident on May 25, 2014, was unbecoming of an Officer of the CCSO.

By complaint dated January 8, 2016, upon a finding of guilt, the Petitioner sought the suspension of the Respondent from the Cook County Sheriff's Department for a period of 105 days.

Issues Presented

The Respondent was charged based on his actions detailed above with violations of the Rules and Regulations and General Orders of the Cook County Department of Corrections, specifically:

Sheriff's Order 11.2.1.0 - Response to Resistance/Use of Force Policy, in its entirety, including but not limited to, the following subparts:

II. POLICY

Officers shall use an amount of force reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect the officer(s) or others from injury, as specified by federal/Illinois statutes and case law.

The CCSO utilizes the Use of Force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to effect a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive. Officers shall not unreasonably endanger themselves or another person to conform to the restrictions of this directive.

V. DEFINITIONS

E. Excessive force – The application of an unreasonable amount of force in a given incident based on the totality of the circumstances.

VII. GUIDELINES

- A. The primary objective of the use of force is to ensure control of a subject with only the amount of reasonable force necessary based on the totality of the circumstances and to gain compliance of the subject as safely and quickly as possible.
- B. Officers are authorized to use only the amount of force necessary to effect lawful objectives. The determination of what is or is not reasonable force is based on each individual situation and is a decision that the involved officer must make based on the totality of the circumstances.
- C. Except under exigent circumstances, officers must identify themselves and give verbal warnings to any subject prior to using any force. Officers, whenever possible, shall exercise advice, persuasion, verbal commands and warnings prior to the consideration of force. This may include the utilization of any previous crisis intervention training the officer may

possess or the presence of a mental health provider if possible. When possible, verbal commands are to be used in conjunction with the officer's actions.

- E. When force is applied, officers shall escalate or de-escalate their use of force based on the subject's resistance.

X. PROHIBITED/RESTRICTED ACTS

The use of excessive force is prohibited. Officers using excessive force, unwarranted physical force, or verbal abuse shall be subject to disciplinary action up to and including termination of employment.

- A. The following acts are prohibited:

- 5. use of force as punishment or retaliation;
- 7. use of force against a subject after the subject has ceased to offer resistance and is under control.

- B. The following acts are restricted:

- 2. The use of a choke hold must only be used as a last resort when the use of deadly force is necessary to prevent imminent death or great bodily harm to the officer or another person.

XIII. APPLICABILITY

- A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.
- B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.
- C. All CCSO officers are required to familiarize themselves with the contents of this order and to adhere to the policy established herein.

Sheriff's Order 11.2.2.0 – Response to Resistance/Use of Force Duties, Notifications and Reporting Procedures, in its entirety, including but not limited to, the following subparts:

II. POLICY

Staff involved in a response to resistance/use of force incident, whether on-duty or off-duty must be in compliance with procedures stated in the current CCSO Response to Resistance/Use of Force Policy.

The CCSO utilizes the Use of force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to accomplish a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force Model employs the progressive and reasonable escalation and de-escalation of officer applied force

in proportional response to the actions and level of resistance offered by a subject.

Every response to resistance/use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive.

V. DUTIES, NOTIFICATIONS, AND REPORTING PROCEDURE

A. Reporting alleged or actual excessive force incidents.

Any employee:

1. With knowledge of the suspected and/or actual excessive use of force or knowledge of an excessive use of force allegation shall immediately verbally report this information to his/her supervisor. The immediate supervisor shall report the verbal notification to the watch commander. The watch commander may require the employee to complete and submit a To/From Memorandum.

B. The officer involved in a use of force incident, whether on-duty or off-duty, must perform the following:

2. Immediately make a verbal notification to his/her supervisor that he/she has been involved in a response to resistance/use of force incident. The statement shall include, but not be limited to the following:
 - a. information regarding the subject's actions and the officer's response to resistance;
 - b. the type of force used;
 - d. the location of injured persons, including those in need of medical attention, if any;
 - h. other information as necessary to ensure officer and public safety and assist in the apprehension of outstanding suspect(s).
4. All officers who use force must submit a Response to Resistance/Use of Force Form and complete the Officer Statement section.
6. Complete and submit the reports within two (2) hours of the incident taking place. Additional time required must be approved by a supervisor and the detailed reason(s) for the extension shall be included in the narrative section of all required reports. In any case, all reports shall be filed by the end of the officer's tour of duty. If the reporting officer is unable to complete and submit reports, refer to Section V, subsection B.6 of this order.

XIII. APPLICABILITY

- A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.
- B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.
- C. All CCSO officers are required to familiarize themselves with the contents of this order and to adhere to the policy established herein.

General Order 24.9.1.0 – Reporting Incidents - in its entirety, including but not limited to, the following subparts:

II. POLICY

It is the policy of the CCDOC to have written procedures for reporting and documenting incidents involving staff, inmates, and visitors, as well as to ensure that incidents or problems with the facility, i.e., sanitation, plumbing, electrical, ventilation, or any other situation that creates a dangerous workplace, are reported and documented in a timely and professional manner.

Employees shall immediately report to their supervisor any information indicating a violation or attempted violation of criminal laws, or a threat to the safety and security of the facility, its property or any person.

Reports shall be made verbally and in writing as directed by this order.

VII. PROCEDURES

A. Notification

- 1. All reportable incidents occurring within CCDOC involving staff, inmates, or visitors are required to be verbally reported and documented on an Incident Report by staff via the chain of command.
- 2. Response to resistance/use of force incidents by staff shall be reported in accordance with the current Cook County Sheriff's Office (CCSO) Response to Resistance/Use of Force Policy.

B. Incident Report Requirements

- 1. All Incident Reports must be entered into the IMACS system. If the system is not available, the reporting officer shall manually complete the Incident Report. All incidents reported by manually completing an Incident Report are to be reported to the Incident Tracking Line and receive a tracking number.
- 2. CCDOC staff shall completely and accurately document any incident or situation that he or she observes or that is reported to him/her.

3. All CCDOC staff shall promptly prepare the Incident Report and forward the report to the supervisor.
 6. Incident Reports shall be prepared immediately after an incident in order to be as accurate as possible; however, they shall be completed, submitted and reviewed by a supervisor prior to being relieved from duty.
- C. Any employee failing to file a report or filing a false report shall be subject to disciplinary action up to and including termination of employment and/or the filing of criminal charges.
- F. General Reporting Guidelines
2. Complete and accurate documentation of events and incidents within CCDOC facilities and other sites are essential. Written reports and reports in IMACS serve to keep staff informed of developments and problem areas within the facility. Reports are also instrumental in the planning and implementation of Sheriff's Office policies and procedures.

VIII. APPLICABILITY

This General Order is applicable to all employees of the Cook County Department of Corrections. All employees shall familiarize themselves with the contents of this order. All supervisors will review the contents of this order with all employees under their supervision as appropriate, and ensure the provisions as outlined are strictly adhered to. This order is for strict compliance.

Sheriff's Order 11.2.20.0 – Rules of Conduct, in its entirety, including but not limited to, the following subparts:

II. POLICY

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

III. APPLICABILITY

This order is applicable to all employees of the CCSO and is for strict compliance. Any violations of this Sheriff's Order may result in disciplinary action up to and including termination. Any conflicts with existing directives shall be resolved in favor of this order.

VI. RULES AND REGULATIONS FOR ALL SWORN AND CIVILIAN CCSO EMPLOYEES

A. Compliance with Laws, Ordinances, and Regulations

1. Employees shall uphold the Constitution of the United States and the State of Illinois, obey all federal, state and local laws in which jurisdiction the employee is present, and comply with court decisions and orders of courts having jurisdiction.
2. Employees shall comply with lawful rules, Sheriff's Office written directives, verbal orders, SEAM articles, and political prohibitions issued by the proper authorities.
3. Employees shall respect and protect the civil and legal rights of all individuals.

B. Conduct on and off duty.

CCSO employees shall:

1. Maintain a professional demeanor while on duty and will not engage in off-duty behavior that would reflect negatively on the CCSO.
2. Conduct themselves on and off-duty in such a manner to reflect favorably on the CCSO. Employees, whether on or off-duty, will not engage in conduct which discredits the integrity of the CCSO, its employees, the employee him/herself, or which impairs the operations of the CCSO. Such actions shall constitute conduct unbecoming of an officer or employee of the CCSO.
4. Maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Employees will not participate in any incident that:
 - b. Causes the CCSO to be brought into disrepute.

D. Prohibited associations, establishments, and activities.

CCSO employees shall not:

3. Subject those in custody to sexual, emotional, verbal, or physical abuse; or excessive force.

H. Reporting violations.

4. Employees are prohibited from making a false report, written or oral.

I. Cooperation within the CCSO and with other agencies.

CCSO employees shall:

1. Truthfully answer all questions, provide proper materials, and provide truthful and relevant statements when the employee is involved in an investigation, either as the subject or not, as long as the employee's rights are preserved.

Furthermore, the Respondent's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

Cook County Sheriff's Department Merit Board Rules and Regulations, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B:

No Police Officer, Police Sergeant, Police Lieutenant of the Cook County Sheriff's Police Department, Correctional Officer, Correctional Sergeant, Correctional Lieutenant, Correctional Captain of the Cook County Department of Corrections or Deputy Sheriff, Deputy Sergeant, Deputy Lieutenant of the Cook County Sheriff's Court Services Department will:

3. Violate any of the Sheriff's Executive Orders, General Orders, Special Orders, Directives or Rules and Regulations of the Cook County Sheriff's Department or Cook County Sheriff's Merit Board Rules and Regulations.

Findings of Fact

This matter was called for trial on September 6 and 21, 2016, after the case was continued several times based upon the needs of the Petitioner (Sheriff) and/or the Respondent's request through counsel, and the completion of all discovery matters. At the trial, with a court reporter being present, all witnesses were sworn under oath. The Respondent did testify. During the trial documents were introduced by the Sheriff and the Respondent that were received into evidence. Additionally, there were certain documents that were admitted as exhibits through agreed upon stipulations by both parties. The Sheriff and Respondent made closing arguments addressing issues in the trial.

Through stipulation between the parties, the following exhibits were introduced and admitted as joint exhibits: the complaint against the Respondent, dated January 8, 2016 (J-Exhibit 1); Sheriff's Order 11.2.1.0 (J-Exhibit 2); Sheriff's Order 11.2.2.0 (J-Exhibit 3); Sheriff's General Order 24.9.1.0 (J-Exhibit 4); Sheriff's Order 11.2.20.0 (J-Exhibit 5); Sheriff's General Order 4.1A (J-Exhibit 6); and Cook County Sheriff's Merit Board Rules and Regulations (J-Exhibit 7). They were all admitted.

The parties stipulated that the Respondent had no prior discipline pending or that he used as progressive discipline and there was no discipline in his disciplinary history.

Additionally, the Respondent introduced the Collective Bargaining Agreement (CBA) between the Sheriff and Teamsters Local 700 (R-Exhibit 1). The sheriff agreed to its foundation for the record but not its relevance – it was admitted.

The Respondent moved to dismiss this matter based on it being filed outside of the current letter of agreement executed between the union and the Sheriff on August 1, 2015. This issue was ruled on in a previous case by the Chairman of the Board and denied. The Board denied the Respondent's motion in this matter.

After a brief opening statement by the Sheriff and the Respondent, the first witness called by the Sheriff was [REDACTED] Use of Force Review Unit, CCDOC. [REDACTED] testified he had been assigned to the Use of Force Review Unit (UFRU) since 2012 and prior to that assignment he was an instructor for the CCSO Academy teaching defensive tactics and firearms. [REDACTED] testified that one of his responsibilities in the UFRU was to review incidents of force use by members of the CCSO. He testified from the CCDOC side he would receive the information through an "ADO notification" which would originate from the duty officer or whoever is in charge at the time of the use of force incident. He said in regards to the matter involving the Respondent he reviewed the Respondent's Use of Force Report, a witness statement and a "partial video" of the incident (Exhibit 1).

The video was played and [REDACTED] identified it as an incident involving the Respondent and a detainee in a tier of Division IX. The Respondent objected to [REDACTED] testifying as an expert in this matter. The Board ruled that [REDACTED] was testifying as a fact witness regarding the CCSO process in reviewing use of force incidents, specifically the matter involving the Respondent, and not as an expert witness. [REDACTED] testified he was an instructor in response to resistance/use of force that followed the Desmond model as described in the Sheriff General Orders (J-Exhibit 2). [REDACTED] testified that when he reviewed an incident his task was to ensure that the officers tactics were commensurate with the subject's resistance and were in accordance with the Sheriff's policy. If he saw something that he did not believe was appropriate in an incident it was forwarded through his chain of command to OPR. Additionally, if he noted some technique that was applied in an incident that required additional training by an officer he would make such a recommendation.

[REDACTED] testified that he reviewed the video of the incident of the Respondent and detainee [REDACTED] (Exhibit 1) and he determined "*I was going to forward it to OPR based on the use of the neck restraint hold*" (by the Respondent). [REDACTED] testified the Respondent's use of a punch on the detainee at the beginning of the incident was appropriate based on the circumstances. [REDACTED] testified that once he completed his review and made findings his next step was to bring it to his director. [REDACTED] said his recommendation was to forward the case to OPR "*based on the use of the neck restraint hold and based on allegations that were made by the subject ([REDACTED]) in his videotaped interview.*"

[REDACTED] testified that [REDACTED] wore a lime green jumpsuit instead of the normal orange as he had been previously identified as a "weapons carrier" or " they were known to have weapons on them."

On cross-examination, [REDACTED] testified he became a sergeant in the UFRU in April of 2015. Prior to that he was a Deputy in the CCSO Court Service's Department. He testified he not ever worked in the CCDOC as a correctional officer or sergeant. He testified that he had worked in the CCSO training academy as an instructor from 2000 until December of 2009, in a part-time role in the beginning and then a full-time role. In 2011, he was detailed back to the Academy as an instructor. He testified the training he conducted included training on the use of force during in-service training for CCDOC officers. He could not recall specifically training the Respondent in use of force.

██████████ testified that he reviewed the video and the reports involving the use of force by the Respondent against ██████████. He said he informed ██████████ that he was concerned about the Respondent's use of a neck restraint on ██████████ and recommended that it be forwarded to OPR. He testified he did not believe that he "slowed down the video" when he was initially reviewing the video of the incident as he did not have the capability to do so. He testified that he did not make the conclusion that the neck restraint was excessive, he said *"I never said it was – I never said anything was excessive, I just forwarded it based on the use of the neck restraint hold."*

██████████, Investigator, OPR, (Investigator ██████████ testified she had been with OPR two years and prior to that was a correctional officer with the CCDOC since 2004. She was assigned the investigation of the Respondent.

██████████ testified she witnessed the execution of a Detainee/Complaint notification form (Exhibit 2) completed by ██████████ that was accompanied by a video-taped statement of ██████████ against the Respondent. Investigator ██████████ testified ██████████ *"alleged he was punched in the face, kicked, I believe punched in the back of the head and dragged off the tier in Division IX, Tier 1E"* (by the Respondent). She testified that she memorialized ██████████ statement in a video.

Investigator ██████████ testified that, *"After we interviewed him (██████████) that day, we took photos. And then the next step was to gather all documents pertaining to the incident as far as incident reports, use of force reports, videos, and interviewing the witnesses then the accused"* (the Respondent).

Investigator ██████████ testified an incident report was completed by the Respondent (Exhibit 3). She testified this was the Respondent's summary of what had occurred with ██████████. She testified the Respondent did not mention in his report that he placed his arm around the detainee's neck. Investigator ██████████ was shown a use of force report (Exhibit 4) that was prepared by the Respondent. She testified the Respondent did not make any notations on the report that he had his arm around the detainee's neck. The Respondent did write in his report that he struck the detainee and that the detainee struck him.

Investigator ██████████ testified that from her perspective the Respondent's reports accurately described what happened with ██████████. She was shown the video tape of the incident (Exhibit 1). She testified that based the tier the detainee was in segregation and based on the color of the detainee's uniform he was a violent inmate. Investigator ██████████ testified that based on her knowledge of the CCSO use of force policy she was concerned with *"the technique he (the Respondent) used in escorting the detainee off of the ground."* Investigator ██████████ said this method was not taught through in-service training.

Investigator ██████████ testified that she had no concerns regarding the punch used by the Respondent against ██████████ as the detainee struck the Respondent first. She identified an inmate disciplinary report that was prepared by the Respondent (Exhibit 5) and testified it was prepared accurately by the Respondent. She testified that she did review the video of the detainee's statement regarding the incident (marked as Exhibit 6 but was not introduced).

Investigator ██████████ said she interviewed the Respondent after he executed a series of forms required by OPR (Exhibit 7). She said the Respondent was provided with the opportunity to review his reports during the interview. She also showed him the video of the

incident with [REDACTED] (Exhibit 1). She testified that she prepared a summary statement of her interview with the Respondent that he signed (Exhibit 8). She could not recall if the Respondent told her that he had placed his arm around the detainee's neck nor could she recall if he told her that he carried the detainee out of the tier with his arm around his ([REDACTED]) neck.

Investigator [REDACTED] testified that after she completed her investigation she prepared a final report with exhibits. She had no role in recommending discipline. She testified that she did submit a summary of what occurred and her findings. She said that her *"findings were that the tactics Officer Gonzalez (the Respondent) used did not fall within the use of force policy."*

On cross-examination Investigator [REDACTED] testified that when she was an officer with CCDOC she attended several in-service training classes but could not recall if she ever was in a training class with the Respondent. She did not attend the academy with the Respondent. She was shown an officer battery report of the Respondent by [REDACTED] (R-Exhibit 2) which she testified was part of the use of force packet she obtained during her investigation.

Investigator [REDACTED] identified a CCSO document entitled Inmate Disciplinary Report - Findings of Fact and Decision (R-Exhibit 3), dated May 27, 2014, as being related to the incident involving the Respondent and [REDACTED]. Investigator [REDACTED] testified [REDACTED] was found guilty by the disciplinary hearing board (R-Exhibit 3). The hearing board reported:

"Guilty 40 days. Watched the video that showed that inmate pushed officer twice (shoved the officer with cuffs near the officer's face). Inmate guilty of refusing an order + battery = 40 days." This was further supported in the decision with an admission from [REDACTED] that stated, [REDACTED] *admitted that he could have avoided the entire incident if he complied w/Officers first order to get off the phone and lock up."*

Investigator [REDACTED] testified that she wrote in the Respondent's statement that he wrapped his arm around [REDACTED] shoulders and escorted him to the core. This was after she watched the video of the incident with the Respondent (Exhibit 1). Investigator [REDACTED] testified the Respondent also had indicated to her that the detainee fell or slipped into a hold and the hold was not done purposely. She was asked if she questioned the Respondent as to why he used the hold that he used on [REDACTED]. She testified that she did not.

Investigator [REDACTED] testified she concluded the Respondent violated the CCSO use of force order because of the technique he used in the escort of [REDACTED]. She said this was not a technique taught in the CCSO in-service training.

On re-direct examination, Investigator [REDACTED] testified that choke holds are prohibited by CCSO policy. She said their use was only permitted if there was a threat of death to the officer or a person which did not exist in this incident.

On re-cross examination, Investigator [REDACTED] testified the reference to the choke hold was defined in Sheriff's order 11.2.1.0 (J-Exhibit 2). She said the choke hold language was under X, "Prohibited/Restricted Acts," page 8 of the order, section B-2. This section provided that a choke hold was prohibited unless it was used as a last resort. She testified there was no definition anywhere that provided what a definition of a choke hold was. Investigator [REDACTED] said she did not ask the Respondent, during her interview of him, if he applied pressure to [REDACTED] neck, if he did anything to make it difficult for [REDACTED] to breathe, or if

she asked the Respondent if could tell whether [REDACTED] was able to breathe during the escort.

The Sheriff rested.

[REDACTED] Deputy Sheriff, CCDOC, testified that he had been with the CCDOC for approximately 11 years. He said he worked with the Respondent for eight years in Division IX. [REDACTED] said the Respondent was a good man, a good worker and one who treated detainees in a fair manner. [REDACTED] testified on September 4, 2012, he had a heart attack while on duty and the Respondent administered CPR to him and saved his life.

The Respondent testified that he has been with the CCDOC for eleven years. He said on May 25, 2014, he was working in Division IX on Tier 1E. He said Tier 1E was known as Level 3 which is the *"worst of the worst as far as inmates go at the jail."* He testified the security classification of the detainees was maximum. He said detainees were *"placed on 1E for numerous reasons, including batteries to officers, batteries to other detainee, if you are caught with a weapon."* The Respondent said it was an administrative discipline tier.

The Respondent testified [REDACTED] was in Tier 1E and was wearing a lime green jumpsuit to identify him as a *"WIMP, weapons in my possession, which means he was caught with a weapon on his person."* The Respondent testified this elevated the type of security risk that [REDACTED] was. He said that he had not had an incident with [REDACTED] prior to the event of May 25, 2014.

The Respondent testified on May 25, 2014, [REDACTED] had been on a visit and was returned to the tier by another CCDOC officer while the Respondent was removing the handcuffs before locking another detainee in his room upstairs. [REDACTED] immediately walked to a pay phone on the wall. The Respondent ordered [REDACTED] to hang up the phone as he was not authorized to be on the phone, [REDACTED] ignored his commands. He had to repeat his commands and finally [REDACTED] complied and hung up the phone. When he reached [REDACTED] he refused to move and comply with the Respondent's instructions on returning to his cell. [REDACTED] was verbally making comments to the Respondent.

The Respondent attempted to escort the detainee to his cell when [REDACTED] shoved the Respondent and told him not to touch him. The Respondent instructed detainee [REDACTED] to not touch him again and ordered him to lock up. The Respondent grabbed the detainee by the shoulder area of his jumpsuit to escort him to his cell. [REDACTED] pulled away and pushed the Respondent in his chest. The Respondent struck the detainee on the left side of his face and then grabbed the Respondent threw him on the ground.

The Respondent testified at no time was [REDACTED] compliant with his commands or attempts to physically move the detainee. Additionally, as this was occurring the rest of the inmates in the tier were screaming at him and yelling *"Spray him down, spray him down."* The Respondent said, *"spray him down"* was a term that inmates use when they want to spray feces or urine on an officer or another person on the tier. He said this occurred *"too often"* in the tier.

The Respondent said he noticed that [REDACTED] was attempting to stand up so he attempted to wrap his arms around the detainee's back to get out of the situation and to avoid being sprayed. He wanted to remove the detainee from the tier. The Respondent said it was for his own safety and he believed grabbing the detainee from behind was safer then grabbing him

from his front, for if he grabbed the detainee from the front, "we would have fought some more." The Respondent said the detainee was handcuffed in front during this process which limited the Respondent's ability in gaining control of the detainee. This caused the Respondent to believe the best method of gaining control of detainee was to pick him up and take him outside the tier to the core area. This technique is known as an escort. The Respondent testified that he had no intention of putting [REDACTED] in a choke hold nor did he put the detainee in a choke hold. He knew he was not choking [REDACTED] as the detainee was yelling profanities and threatening the Respondent throughout the entire process of escorting him out of the tier. Once the Respondent had [REDACTED] off the tier he placed him on the ground and went to a bathroom to wash blood off his arms. There were other officers present maintaining control of the detainee.

Once off the tier the Respondent did not use any additional force against the detainee. He testified that he prepared an incident report (Exhibit 3), a disciplinary report (Exhibit 3) and a use of force report (Exhibit 4). He also prepared an officer battery report (R-Exhibit 2). The Respondent testified that he did not list the use of a choke hold in any of his reports because he did not know that he had used such a hold. He wrote his reports from his recollection and not from viewing the video. He submitted his reports to [REDACTED]. She directed him to revise his reports to change the wording from, "I put that I was in fear for my life and she asked me to change you were – I was in fear for my safety." She did not ask him to change anything regarding how he described the escort hold. He did not know if [REDACTED] saw the video.

The Respondent testified that he was shown the video of the incident (Exhibit 1) at OPR and was asked to describe the hold. He looked at the video and told the OPR investigator that he tried to wrap his arms around [REDACTED] shoulders and he was not choking him; therefore, it was not a choke hold. He did not know what to call the type of hold. He said this was why he described it to OPR as the detainee slipped into the hold. The Respondent said he never had any intention of depriving [REDACTED] of air, never attempted to asphyxiate the detainee, and never attempted to apply pressure to the neck or airway of the detainee.

The Respondent was shown the video (Exhibit 1) and described his attempts at grabbing the detainee from behind into an escort hold and removing him from the tier to avoid getting sprayed. He said the detainee was non-compliant and struggling so he moved as quickly as possible with the detainee to get him out of the tier.

The Respondent testified after the incident he received training from [REDACTED]. He said the training was in response to the incident with the detainee and he signed a document regarding the training (R-Exhibit 4). The Respondent testified he was not shown any alternative escort hold by [REDACTED] and [REDACTED] commented to him that his reports of the incident were written very well. The Respondent said he has never been disciplined for use of force or the use of an improper escort hold. He has never been disciplined for the use of a choke hold outside of this incident.

The Respondent provided the details of using the AED to save the life of [REDACTED]. The Respondent said he maintains a good rapport with the detainees. He described himself as being "firm but fair." He said none of his actions against [REDACTED] were retaliatory.

On cross-examination, the Respondent testified that he received use of force training from the Sheriff's Department at the academy and during in-service training. He said he was never instructed to use a choke-hold and said his training advised against it. The Respondent testified that he did not list in his incident report (Exhibit 3) or his use of force report (Exhibit 4)

anything about the potential of being sprayed. Additionally, he did not mention it during his interview with Investigator [REDACTED] (Exhibit 8). The Respondent said he did not describe in his reports what he did with his arms in trying to restrain [REDACTED]

On re-direct, the Respondent testified that he was not sprayed during the event nor did he use any force to prevent spraying from occurring or to avoid getting sprayed. He said because the detainee was handcuffed in front it made the detainee more of a potential threat and limited the Respondent's ability to apply escort holds. He testified that he did inform [REDACTED] about the threat of spraying and she told him "they would probably flush it down anyways, ain't no point of searching." The Respondent said he did intentionally omit any sort of facts or circumstances out of any of his reports or during his interview with OPR.

[REDACTED], Investigator, CCDOC, testified he was assigned to the electronic monitoring unit and had been for the last 2 ½ years. Prior to this assignment, he was assigned to Division IX and been with the CCSO for approximately ten years. He said he had worked with the Respondent for five or six years.

Investigator [REDACTED] testified on May 25, 2014, he was the Respondent's partner that day. He witnessed detainee [REDACTED] assault the Respondent after he was ordered to get off the phone by the Respondent. Investigator [REDACTED] said he was in the interlock at the door to the tier. He said he could hear everything that was being said in the tier. He heard the Respondent give [REDACTED] multiple orders to get off the phone that were ignored by the detainee. He heard the detainee refusing the orders and swearing at the Respondent. He saw the detainee assault the Respondent, regain his composure and then assault the Respondent again. He saw the Respondent defend himself and gain control of the detainee. He could see the other detainees yelling and screaming and saying, "shit him down." [REDACTED] said the detainees could not get out of their cells but they could throw things at the officers through the windows on the doors, which is what they were threatening to do. He said there was not enough time to get a supervisor on the tier; therefore, the best strategy was to remove [REDACTED] from the tier by the Respondent. [REDACTED] said he did prepare a witness report of the incident (R-Exhibit 5).

On cross-examination, Investigator [REDACTED] said he did not have an obstructed view of the incident between the Respondent and detainee [REDACTED]. Investigator [REDACTED] described how the Respondent removed the detainee physically as, "*His physical actions, basically after he hit him, he picked him up and he escorted him outside the tier.*" He was asked if he recalled whether the Respondent had his arm around the detainee's neck. [REDACTED] said, "*No, I don't recall that at all.*" [REDACTED] said he had a clear view of the incident and he did not see the Respondent put his arm around the neck of the detainee. [REDACTED] said once the detainee was outside of the tier, he was sat down on the floor and a supervisor arrived shortly thereafter. [REDACTED] was shown the video of the incident (Exhibit 1) and said that he did not see the Respondent putting his arm around the detainee's neck. He said this was when the other detainees were yelling, "*shit him down, shit him down.*"

On redirect, Investigator [REDACTED] was asked if he perceived the Respondent escorting [REDACTED] in a choke hold. He testified, "*No, if the inmate was talking, he wasn't in a choke hold, and he was screaming, fuck you, fuck you, I'm going to kick your (the Respondent) fucking ass.*"

[REDACTED], Corrections Officer, CCDOC, testified he had been with the CCSO for approximately 12 years. He said he had worked with the Respondent daily for five or six years

and was working on May 25, 2014, in Division IX and was assigned to 1 South Core. Officer [REDACTED] did not see the event with [REDACTED] but was present when the Respondent brought [REDACTED] into the core. He saw no use of force by the Respondent against detainee [REDACTED] in the hallway of the core.

There was no redirect examination and the Respondent rested.

The Sheriff requested a continuance to call [REDACTED] as a rebuttal witness. After discussion with both parties, including making a record of the Respondent's objection to the continuance, the case was adjourned and continued to September 21, 2016.

On September 21, 2016, the trial was continued. [REDACTED] now [REDACTED], was to appear as a rebuttal witness but failed to do so. She had been notified of the hearing date and was asked to be at the hearing by the Sheriff, but she notified the Sheriff's office it was her day off and she did not appear. The Sheriff requested a continuance of the trial to accommodate her schedule.

A proffer was made by the Sheriff that [REDACTED] would have testified that she recalled the incident, she recalled the officer (the Respondent), but had no recollection of the reporting process. The Respondent did not object to the proffer but objected to a continuance of the trial.

The motion to continue was denied by the board and the Sheriff's representative was asked to follow up with the witness and to remind them of their duties to appear for hearings. Both sides delivered their closings.

Decision

The Board finds by a preponderance of the evidence through the testimony of the witnesses; the video tape recording of the May 25, 2014, incident (Exhibit 1); and the supporting evidence that the Respondent did not use excessive force or apply an unauthorized choke hold. The Respondent was credible in his testimony and accurate in his written reporting of the event (Exhibits 3-5) and his interview with OPR (Exhibit 8). The video shows that [REDACTED] was struck in the head by the Respondent after first assaulting the Respondent by shoving the Respondent. It should be noted no allegation was made against the Respondent for this strike against [REDACTED] as the Respondent was defending himself. The Respondent then picked up [REDACTED] from behind and quickly dragged him from the tier into a safe area. This dragging was done with the Respondent having his arm around the detainee's shoulders and probably under his neck area too but was not applied with the intent of cutting off the air supply of the detainee. The evidence showed that by the continuous shouting of obscenities by the detainee at the Respondent during this move process it was clear his oxygen was not impaired.

There was no evidence presented as alleged in number 7 of the initial complaint against the Respondent, "*That on May 25, 2014, Respondent took detainee [REDACTED] off the tier into a hallway where he again used excessive force against detainee [REDACTED] when Respondent pushed [REDACTED] to the ground and, upon [REDACTED] a trying to get up off the ground, Respondent kicked [REDACTED] in the back and punched [REDACTED] in the face and head.*" This action is re-alleged, in part, in numbers 8-10 and 12 of the complaint regarding the Respondent's failure to report this action as described above. As there was no evidence presented that this conduct occurred by the Respondent,

there is no finding of guilt against the respondent for these actions by a preponderance of the evidence. It should be noted the only mention of this conduct is in the complaint. No evidence was introduced at trial to support this allegation. The Respondent did offer two witnesses, Investigator [REDACTED], who both testified that the Respondent did not hit or kick the detainee while in the hallway.

One of the principal issues of this matter was the application or non-application of a choke hold. Again, based on a preponderance of the evidence, there was no application of a choke (neck) hold by the Respondent against [REDACTED]. The application of a choke hold is a deliberate act by an officer and there was no evidence of such a hold being applied. The Respondent attempted to grab the detainee by the shoulders and immediately extricate him from the tier and the detainee may have "slipped" into a hold but the detainee was breathing and shouting obscenities the entire short amount of time. The fact that an individual's neck or throat has another's arm around it or by it is not evidence of a deliberate application of a choke hold.

Conclusions of Law

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, the Board finds that Respondent Amelio Gonzalez, Star Number 15827, CCDOC, did not violate Sheriffs Order 11.2.1.0, Section II, Section V, E, Section VII, A, B, C and E, Section X A 5&7, Section XIII A, B, C; Sheriffs Order 11.2.2.0, Section II, Section V A1, B2 a, b, d&h, 4&6, Section XIII A-C; General Order 24.9.1.0, Sections II and VII, A1-2, B1-3, 6, C and F-2, and Section VIII; Sheriffs Order 11.2.20.0, Sections II, III and VI, A1-3, B1-2, 4b, D3, H4 and I1; General Order 4.1, Section III, A17-18; and Article X, Paragraph B3, of the Rules of the Cook County Sheriff's Merit Board.

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Amelio Gonzalez, is acquitted of all charges in this matter, effective January 8, 2016.

[Redacted Signature]

James P. Nally, Chairman

[Redacted Signature]

Jennifer E. Bae, Board Member

[Redacted Signature]

Byron Brazier, Vice Chairman

[Redacted Signature]

Kim R. Widup, Board Member

[Redacted Signature]

Gray Mateo-Harris, Board Member

[Redacted Signature]

Patrick Brady, Board Member

[Redacted Signature]

John J. Dancandro, Secretary

[Redacted Signature]

Vincent T. Winters, Board Member

[Redacted Signature]

Dated:

April 13, 2017

