COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County	)	
	)	
vs.	)	**Docket # 1775**
	)	
Steven Cruz	)	
Correctional Officer	)	

DECISION

This matter coming on to be heard before Merit Board Member John J. Dalicandro pursuant to notice, the Cook County Sheriff's Merit Board finds as follows

Jurisdiction: The Respondent, Steven Cruz, hereinafter "Respondent". 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 did appear before the Board to contest the charges contained in the complaint; and
The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background
By complaint dated, Sheriff Thomas J. Dart, sought the termination of Correctional Officer Steven Cruz. The complaint states that on ("Respondent"), pursuant to 55 ILCS 5/3-7011 & 7012. In support thereof, the Sheriff states as follows:
1. That on September 18, 2006, the Respondent was appointed a Correctional Officer.
2. That on May 29, 2011, the Respondent was assigned to the Receiving Classification Diagnostic Center ("RCDC and/or Receiving") in Division V of the Cook County Department of Corrections ("CCDOC"), located at 2700 S. California Avenue, Chicago, Illinois 60608.
3. That on March 11, 2012, the Respondent was assigned to the External Operations Unit of the CCDOC, located at 2834 W. 31st Street, Chicago, Illinois 60608.
4. That on October 28, 2012, the Respondent was assigned to Cermak Health Services in Chicago, Illinois.
5. That on July 13, 2014, the Respondent was assigned to Division V of the CCDOC, located at 2700 S. California Avenue, Chicago, Illinois 60608.

6. That on January 13, 2012 at approximately 16:09 hours, while on duty in RCDC of the CCDOC, Respondent used excessive force against detainee [redacted] by pushing detainee [redacted] with both hands to the chest twice and deploying Oleoresin Capsicum ("OC") spray directly into the face and eyes of detainee [redacted] without warning, as detainee [redacted] was being held from behind by Correctional Officer ("C/O") [redacted] in a headlock.

7. That on January 13, 2012, Respondent completed a Use of Force Report, an Incident Report and an Inmate Disciplinary Report. In the narrative of all three reports, Respondent failed to document that he pushed detainee [redacted] twice with both hands or that Respondent immediately deployed OC spray to detainee [redacted] face and eyes without warning, as detainee [redacted] was being held from behind by C/O [redacted] in a headlock. In addition, in the narrative of all three reports, Respondent falsely documented that detainee [redacted] was attempting to escape when Respondent deployed the OC spray into detainee [redacted] s face and eyes.

8. That videotape recording from a stationary camera in RCDC of January 13, 2012 shows Respondent approaching detainee [redacted] standing in front of detainee [redacted] and pushing detainee [redacted] with both hands to the chest. The videotape recording then shows detainee [redacted] attempting to walk around the Respondent and Respondent standing in detainee [redacted] way. The videotape recording then shows Respondent pushing detainee [redacted] with both hands to the chest a second time. The videotape recording then shows C/O [redacted] walking up behind detainee [redacted] and holding detainee [redacted] in a headlock using his right arm. The videotape recording then shows Respondent taking out the OC spray, approaching detainee [redacted] and immediately deploying the OC spray directly into the face and eyes of detainee [redacted] as detainee [redacted] is being held by C/O [redacted] from behind in a headlock and while detainee [redacted] arms are inside of his sweater and at his side.

9. That on March 10, 2014, Respondent was interviewed and provided a signed statement to investigators from the Cook County Sheriff's Office of Professional Review ("OPR"). Respondent was shown a copy of the Incident Report and the Use of Force Report and Respondent stated that he authored both documents and that both documents were true and accurate statements of the incident on January 13, 2012.

10. That on March 10, 2014, Respondent falsely reported to investigators from the OPR that on January 13, 2012, he told detainee [redacted] to "stop resisting" a couple of times and to "stop resisting or [detainee [redacted] was going to be sprayed with OC." Respondent falsely reported that on January 13, 2012, detainee [redacted] continued to fight against C/O [redacted] hold and Respondent deployed OC spray at that time.

11. That on March 10, 2014, after Respondent was shown the videotape recording of the incident on January 13, 2012, Respondent falsely reported to investigators from the OPR that he walked over to detainee [redacted] to escort the detainee.

12. That on March 10, 2014, Respondent falsely reported to investigators from the OPR that on January 13, 2012, detainee [redacted] continued to resist and tried to escape C/O [redacted] hold and that Respondent told detainee [redacted] to stop resisting or he would be sprayed.

13. That by his actions, Respondent violated the Rules and Regulations and General Orders of the Cook County Department of Corrections, specifically:

SHERIFF'S ORDER 11.2.4.0 (effective September 19, 2011)

USE OF OLEORESIN CAPSICUM (OC) SPRAYS, in its entirety, including but not limited to, the following subparts:

II. POLICY

A. The approved use of OC spray by an officer shall be in accordance with federal and state of Illinois laws, department rules, regulations, policies, guidelines and pursuant to training by the CCSO Training Institute.

B. Officers authorized to carry and use OC spray shall only be allowed to carry and use the OC spray by their respective department.

C. Officers' use of department authorized OC spray shall be in accordance with the guidelines and procedures established in the current CCSO Response to Resistance/Use of Force Policy.

III. DEFINITIONS

For purposes of this order, the following definitions shall apply:

D. Oleoresin Capsicum (OC) – A derivative of cayenne pepper; OC spray is considered inflammatory.

E. Oleoresin Capsicum (OC) sprays – A self-contained delivery system for the dispersal of OC stream, mist, cone, gel, or foam.

VI. PROCEDURES

B. Usage Criteria

1. OC spray is considered a use of force and shall be employed in a manner consistent with current CCSO Response to Resistance/Use of Force Policy.

6. OC spray shall only be used as a control and compliance measure and shall never be used for any unauthorized, unlawful purpose, or for punishment.

H. The Office of Professional Review shall:

1. Open and actively pursue an investigation for incidents involving OC deployment when:

b. The OC spray appears to have been used in a punitive or abusive manner; or

VII. APPLICABILITY

By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO employees and must be strictly observed.

SHERIFF'S ORDER 11.2.1.0 (effective September 19, 2011)

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 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:

4. use of force as a response to verbal insults or subject threats where there is no immediate threat to safety of the institution, subjects, or staff;

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.

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 3.8

ETHICS AND STANDARDS OF CONDUCT, in its entirety, including but not limited to, the following subparts:

I. POLICY

It is the policy of the Cook County Department of Corrections (CCDOC) that employees will conduct themselves in a professional and ethical manner, both on and off duty. Employees will

not engage in activities unbecoming of county employees, or conduct that reflects unfavorably to the Office of the Sheriff of Cook County.

III. REQUIREMENTS

The CCDOC Code of Ethics requires the highest level of conduct from all employees. It is the expectation that sworn and civilian employees conduct themselves with high standards of professional conduct and behavior. Employees that fall [sic] to maintain high standards of conduct and ethics, will be subject to corrective or disciplinary action, and may include recommendation for termination.

A. Compliance with Laws and Regulations

4. Employees will comply with lawful departmental rules, written procedures, directives, bulletins, and verbal orders issued by the proper authorities.

D. Professional Conduct

2. Detainees will not be subjected to sexual, emotional, verbal or physical abuse or the use of unnecessary levels of force.

4. Employees will not commit acts that jeopardize security of the facility or the health, safety and welfare of detainees, staff and visitors.

GENERAL ORDER 4.1

INTERNAL INVESTIGATIONS, in its entirety, including but not limited to, the following subparts:

III. REQUIREMENTS

Misconduct which impairs an employee's ability to perform his/her assigned responsibilities, or adversely affects or involves the Cook County Department of Corrections and/or the Office of the Sheriff of Cook County may be cause for disciplinary action.

Serious misconduct would include those violations of the law which constitutes a misdemeanor of a felony, or alleged/suspected, violations of Cook County Department of Corrections rules and orders which pose a threat to the safety of staff or inmates or the security of the institution. Included also is misconduct committed while an employee is off duty/outside the institution where in the official character and status of the employee as a correctional officer, deputy sheriff, law enforcement officer, or civilian correctional employee becomes identifiable and calls into question the reputation of the County of Cook, the Office of the Sheriff, or the Department of Corrections.

A. Guidelines for SERIOUS MISCONDUCT include, but are not limited to:

17. Engage in any conduct unbecoming an employee of the Cook County Department of Corrections which tends to reflect discredit on the Department of Corrections or Sheriff's Office.

18. Making a false official report, either oral or written.

GENERAL ORDER 24.9.1.0 (effective July 11, 2011)

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.
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 (effective January 25, 2013)
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.

D. Prohibited associations, establishments, and activities.
25. Fail to cooperate or fail to be truthful with external and/or internal agencies in an investigation of a criminal or civil matter.

H. Reporting violations.

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

14. Furthermore, the Respondent's actions violated the Rules and Regulations of the 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 of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections or Deputy Sheriff of the Cook County Sheriff's Court Services Department will:

1. violate any Law or Statute of any State or of the United States of America.
2. violate any Ordinance of any County or Municipal Government.
3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Department.

Issues Presented: Whether the actions of the Respondent violated any of the General Orders and Rules and Regulations set forth above and what if any discipline is appropriate if a violation occurred.

Findings of Fact: Evidentiary hearings on this matter were held on February 11, 2016 and March 1, 2016. Present were Assistant State's Attorney Matthew Kaminski on behalf of the Sheriff and Miriam Santiago, Assistant General Counsel for the Sheriff of Cook County. Nicole Chaney appeared on behalf of Respondent Steven Cruz who was also present.

Four witnesses testified for the Sheriff, [redacted] and [redacted]
One witness testified for the Respondent [redacted] the respondent Steven Cruz also testified.

DIRECT EXAMINATION

Witness [redacted] testified at the relevant times. Investigator, Office of Professional Review at the Cook County Sheriff's Office. She is familiar with the Sheriff's General Order 11.2.1.0 with the response to resistance/use of force. She has conducted investigations involved with the use of OC spray. OC spray is considered as a use of force. For the officer to use OC spray the detainee must be a moving resister. If the detainee is moving to avoid the officer trying to gain physical control of them, that is usually considered a moving resister.

[redacted] was not the chief investigator on this case she was the secondary investigator. She sat in with Commander [redacted] when he conducted the interview of Officer Cruz. As part of her investigation she reviewed the video of the incident. In her review of the video she could see Officer [redacted] has his right arm around the chest and neck area of the detainee and is kind of holding him back. Officer Cruz is standing in front of the detainee. At this point he's not resisting the officers' efforts to gain control of him, he's not pulling away. She wouldn't classify him as being totally cooperative because it's partially due to Officer [redacted] physical restraint of his person.

CROSS EXAMINATION

Investigator [redacted] testified, she was never employed as a correctional officer. She did have training relating to the deployment of OC spray. Sheriff's Order 11.2.4.0, the use of oleoresin capsicum, OC spray, may be used when verbal dialogue has failed to bring about the subject's compliance and the subject has signaled his intention to actively resist the officer's efforts to take lawful control." OC spray is approved for a moving resister.

Investigator [redacted] testified that after Officer [redacted] placed the detainee in a hold, she would identify the detainee as being a cooperative subject at that point. She did not see the detainee

offering any additional resistance. She cannot say what force he was offering or the amount of pressure that the detainee was applying.

DIRECT EXAMINATION

[redacted] testified [redacted]
Previously worked in Division 9 and RCDC intake. Inmate [redacted] was going through the intake area, he heard the inmate having a verbal exchange with Officer Cruz. As he was walking towards the officer and the inmate, he noticed the inmate make contact with the officer in the chest area of the officer with his own chest. As the words were being exchanged between the officer and the inmate, the inmate seemed agitated, he then physically intervened by pulling the inmate away from Officer Cruz. The inmate was trying to resist his effort to bringing him away from the officer.. As he was trying to restrain him, pulling him backwards, to pull him away from the officer, the inmate was stiffening his body. As [redacted] was grabbing him physically to restrain him Officer Cruz deployed OC spray.

CROSS EXAMINATION

Officer [redacted] testified, that he couldn't hear exactly what was being said between Officer Cruz and the detainee at the start of the incident. In his response to resistance/use of force form that he filled out he wrote, "R/O ordered [redacted] to go back to the bullpen." Inmate [redacted] ignored him and Officer Cruz on the order to go back to the bullpen. His report also mentioned the chest bump to Officer Cruz. He also documented that detainee [redacted] attempted to escape from him. He was not a cooperative subject. He did not feel the detainee as being compliant at any time prior to the deployment of OC.

DIRECT EXAMINATION

[redacted] testified, he is a lieutenant, Cook County Sheriff's Department. He did not remember an incident with detainee [redacted] involving the use of force with Officer [redacted] and Officer Cruz.

CROSS EXAMINATION

Lieutenant [redacted] can't recall the incident. His signature was on the complaint report as the "Reviewing Supervisor."

DIRECT EXAMINATION

[redacted] testified, he is employed with the Cook County Department of Corrections as a correctional officer. He was working in receiving on January 13, 2012. He did not recall an incident, between Officer Cruz and detainee [redacted] In his review of the video on that day he stated he was working at the time of the incident. He was not interviewed by OPR about the incident.

DIRECT EXAMINATION

Steven Cruz the respondent testified, he is on Administrative leave, he was employed as a correctional officer. He has no previous disciplinary history.
He had a previous incident with an inmate, the inmate grabbed him and he suffered an injury. He was out of work for a while. [redacted]

[redacted]. He informed his sergeant and Lieutenant [redacted]
[redacted].
He has been trained every year on the "Integrated Use of Force Model." He knows the difference between a cooperative subject or assailant. He also understands that OC spray cannot be used for a non-moving resister.
On January 13, 2012 detainee [redacted] was told to move to the bullpen. He did not comply with the order and told Officer Cruz "Shut the fuck up bitch." When Officer Cruz approached him, detainee [redacted] bumped him with his chest. Officer Cruz then pushed him back. Detainee [redacted] kept yelling at him. Officer Cruz warned him to relax or he was going to get sprayed. Officer Cruz from his past experience got scared and thought he was going to get hit, he pushed him back again. Officer [redacted] and [redacted] came over to help him. Officer [redacted] grabbed him across the shoulder and pulled him back. Detainee [redacted] was struggling, trying to get out of hold from Officer [redacted]
He warned him again that he would spray him, if he continued to struggle. At that point he used his OC spray. He felt by spraying him they could get control of the situation.
March 10, 2014, he was brought in to OPR as an accused for an administrative interrogation on the use of excessive force.

CROSS EXAMINATION
Officer Cruz testified he categorized the detainee as a moving resister, that is why he used OC spray. [redacted].
He never wrote any To/From memorandums [redacted]. He gave the paperwork to his sergeant on the first day that he got back to work and he spoke to his lieutenant.
In his review of the video from the incident, at 9:12 the detainee said "Shut the fuck up, bitch." As the detainee walked towards him the chest bump occurs, a second chest bump occurs, Officer Cruz then pushes the detainee. At this point the detainee has taken off a black quarter-zipper hoodie. Officer [redacted] puts his arm around the shoulder and the upper chest of the detainee. Officer [redacted] then walks him all the way back to that pit area. Officer Cruz then deployed the OC spray.
Officer Cruz testified all of the reports were written by Officer [redacted] because his eyes were still effected by the spray. He did put his signature on the reports.
He was able to speak to Officer [redacted] and could have dictated to him what to write in the report, the use of force report, does not describe the second push. Each of the reports were read aloud to him by Officer [redacted]

REDIRECT EXAMINATION
Officer Cruz at the time of the incident, did not know the classification of the detainee.
He did you intentionally omit the second push from any of his reports. He was aware that his conduct could be recorded by the video cameras.
In his review of the video detainee [redacted] is supposed to be returning to the bullpen. He didn't respond to the commands. That's when he walked out and started motioning him, to get to the bullpen. The detainee was already agitated. He was not cooperating with his direction. The chest bump then occurs followed by the push back and then the second chest bump. Detainee [redacted] is in the process of removing his hooded sweatshirt and throwing it to the floor. Officer [redacted] then placed his arm around the detainee's shoulders. He kept telling him, Stop resisting, you're

going to get sprayed. At that point he sprays the detainee. It was approximately 16 seconds that passed from the push to the OC spray.

Findings of Fact:
Officer Cruz in this incident had an opportunity to deescalate the situation. There was no evidence to show that Officer [redacted] had any type of struggle to walk this detainee away. He was in control of the detainee when Officer Cruz sprayed him with OC spray. Correctional Officers are aware that if you violate the use of force general order, that termination is possible, and that is a consequence.

Conclusions of Law: Based on the evidence presented, and after assessing the credibility of witnesses and the weight given by the evidence in the record, the Merit Board finds that the Respondent did violate the Cook County Sheriff's Police Department Rules and Regulations and Cook County Sheriff's Merit Board Rules and Regulations, Article X., Paragraph B

Order: Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to terminate and remove Steven Cruz, respondent, from the Cook County Sheriff's Office is granted effective July 30, 2014.

Steven Cruz 1775
Correctional Officer

[redacted]

James P. Nally, Chairman

[redacted]

Kim R. Widup, Board Member

[redacted]

Vincent T. Winters, Board Member

[redacted]

Byron T. Brazier, Vice-Chairman

[redacted]

Patrick Brady, Board Member

[redacted]

Jennifer E. Bae, Board Member

[redacted]

Gray Mateo-Harris, Board Member

[redacted]

John J. Dalicandro, Secretary

Dated: May 2, 2016