

Sheriff of Cook County)
)
vs.) **Docket # 1789**
)
Correctional Officer)
Luis Zuniga)

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, Luis Zuniga, 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 not 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 November 18, 2014, Sheriff Thomas J. Dart, sought the termination of Correctional Officer Luis Zuniga. the Respondent along with other Correctional Officers were moving detainee [REDACTED] through the facility after there had been a previous altercation. It is alleged that Respondent used excessive force against the detainee by kicking him in the face while he was handcuffed, laying on the ground and causing injury to [REDACTED] The Sheriff further alleges that the Respondent did not report the excessive force. The Sheriff is seeking termination from the Cook County Sheriff’s Office for the alleged violations of the Rules and Regulations of the General Orders of the Cook County Department of Corrections.

That by his actions, Respondent violated the Rules and Regulations and General Orders of the Cook County Sheriff’s Court Services Department, specifically:

The complaint states:

1. That on February 25, 2002, the Respondent was appointed a Correctional Officer.
2. That on July 18, 2011, the Respondent was assigned to Division IX of the Cook County Department of Corrections ("CCDOC"), located at 2834 W. 31st Street, Chicago, Illinois 60608.
3. That on January 4, 2012 at approximately 14:00 hours, while on duty in Division IX of the CCDOC, Respondent used excessive force against detainee [REDACTED] by kicking detainee [REDACTED] in the face while detainee [REDACTED] was handcuffed and on the ground.
4. That on January 4, 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 kicked detainee [REDACTED] in the face while detainee [REDACTED] was handcuffed and on the ground.
5. That videotape recording of January 4, 2012 shows Respondent escorting detainee [REDACTED] to the elevator and into a holding cell in Division IX. The videotape recording shows Respondent kick detainee [REDACTED] in the face while detainee [REDACTED] was handcuffed and on the ground. The videotape recording shows detainee [REDACTED] mouth and nose covered in blood when he stood up and blood is visible on his shirt and on the floor of the holding cell. The aforementioned was videotaped by Correctional Sergeant [REDACTED]
6. That by his actions, Respondent violated the Rules and Regulations and General Orders of the Cook County Department of Corrections, specifically:

SHERIFF'S ORDER 11.2.1.0 (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

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.

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;

6. striking, hitting, or punching a restrained or handcuffed and non-combative subject; and

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 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.

7. 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:

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 hearing on this matter was held on October 20, 2015, November 24, 2015 and January 5, 2016. Present were Assistant State's Attorney [REDACTED] on behalf of the Sheriff and [REDACTED], Assistant General Counsel for the Sheriff of Cook County. [REDACTED] appeared on behalf of Respondent Luis Zuniga who was also present. [REDACTED] appeared on behalf of [REDACTED]

Two witnesses testified for the Sheriff, [REDACTED] [REDACTED]

Six witnesses testified for the Respondent [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Respondent Luis Zuniga also testified.

DIRECT EXAMINATION

██████████ testified at the relevant times. ██████████ is currently an inmate ██████████ in the State Department of Corrections.

On January 4th, 2012, he had an altercation with Officer Zuniga. He was placing his hands through the chuck hole to get cuffed, at the time he had a broken wrist that hadn't properly healed so he was wearing a wrist band on his wrist. Officer Zuniga placed handcuffs on his wrist. ██████████ felt that they were on too tight so he requested for a supervisor. Sergeant ██████████ came to the tier to speak with ██████████. At this time ██████████ testified that, Officer Zuniga slammed the chuckhole and proceeded to put on his gloves and stated, "Come on, Motherfucker, come on," and they started going back and forth verbally at each other. After this the verbal altercation turns physical. Other Correctional Officers are called to restrain ██████████. He was carried off the tier down the stairs and into a holding cell. As they were carrying him he noticed that Sgt. ██████████ had a video camera. He was carried by Officers Zuniga, ██████████, ██████████ and ██████████. He was dropped by the Officers in the holding cell. Officer Zuniga at that point kicked him in the head. He was taken to Cermak Hospital, first and then transferred to Stroger because his injuries were severe. He reported the incident when he first returned. An incident report was completed on January 8, 2012.

CROSS-EXAMINATION

BY ██████████

██████████ testified, that he pled guilty to aggravated battery of Officer Zuniga from this incident on January 4th. He has also had numerous disciplinary reports filed against him by officers in the Department of Corrections of Cook County. Photographs of his injury were taken at Cermak Hospital. He refused to wash the blood off of his face until the photographs were taken. He wanted to show people he was injured. After leaving the hospital, he was sent back to Tier 1F, as an Administrative Behavioral Offender which is for high risk level inmates.

██████████ testified he remembered talking to OPR about the incident. He told OPR he was kicked in the forehead in the holding cell.

CROSS-EXAMINATION

BY ██████████:

██████████ testified that on January 4th, 2012, his nose was broken while he was being carried in the hallway by the Correctional Officers and he was kicked in the forehead by Officer Zuniga in the holding cell. His nose and forehead were bleeding.

DIRECT EXAMINATION

BY ██████████:

██████████ testified, she is employed by the Cook County Sheriff's Office, Office of Professional Review. She was assigned the case involving Detainee ██████████ in February of 2014.

As part of her investigation she reviewed the videos from the tier camera from Division IX on January 4th, 2012. Sheriff's Exhibit 1. She could see on the tier video that the detainee is aggravated, he is fighting officers, he would be considered an assailant, and there was necessary force used to achieve a lawful objective of gaining physical control of the detainee.

She also reviewed the video taken by a handheld camera. Sheriff's Exhibit 2.

██████████ testified after interviewing the witnesses and the accused employees, they all said there were no

visible injuries on the detainee, there was no blood on his shirt or anything of that nature. The video taken by a handheld camera. Sheriff's Exhibit 2 shows when he stood up inside of the holding cell, he's got blood running down his face, he has quite a bit of blood on his shirt and on his DOC uniform.

Her testimony was in reviewing the video she determined the detainee was kicked by Officer Zuniga in the face, because she saw a quick movement of the leg by the officer, the body recoil, and the noise of impact and an "umph," sound from the detainee, and she also could hear the background noise of someone going "Zu."

She interviewed Officer Zuniga on February 25th of 2014. Officer Zuniga in his signed statement states that he struck the detainee, with an open hand stun after he alleged that the detainee spit on him. Officer Zuniga told her no one else hit detainee [REDACTED]. In his statement Officer Zuniga never states that he kicked Detainee [REDACTED]. She did not ask Officer Zuniga about the kick that occurred in the video. She did not realize that the kick occurred until after watching the video.

Investigator [REDACTED] testified that her investigation of Sergeant [REDACTED] sustained that he violated the videotaping General Order, because he did not have a camera on the detainee and he did not and activate the camera as soon as he entered the tier. He also did not film the incident uninterrupted when he obscured the view with his fingers twice. Sergeant [REDACTED] also can be clearly heard on the video saying, "Camera's on" three times. In training they are instructed not to use that phrase, "Camera's on", the Use of Force Review Unit has said that that is inappropriate.

CROSS-EXAMINATION

[REDACTED] testified, the incident took place on January 4th of 2012, and she did not get the case until February of 2014. In her review of the video she observed blood on Officer Zuniga's hand. She was also aware that Detainee [REDACTED] stated that his nose was broken prior to going into the holding cell. Detainee [REDACTED] told her he had had a broken nose and that he had been bitten on the ear and that he had been struck and lost consciousness. She did not see any evidence that the detainee was bitten on the ear. However, the medical records did show bite mark on the detainee's ear. She was aware of the discrepancies within the detainee's statement. but there was additional evidence in the video that caused her to come to a finding that he had been kicked in the cell.

Investigator [REDACTED] testified that she did not ask Officer Zuniga's about the kick, because she hadn't noticed the kick or interpreted there having been a kick prior to her questioning of him. She stated, the kick was very subtle she had to listen literally with head phones, in order to be able to hear and to see it and notice it, at that point she already interviewed the officer, and she did not feel that it was necessary to bring him back in, given the level of evidence.

She stated that she reviewed the video approximately 20 times before she concluded the kick took place.

CROSS-EXAMINATION

MS. CHANEY:

Investigator [REDACTED] testified, that Officer Zuniga was interviewed on February 25th. She interviewed all of the Officers which who were involved with this incident. Officer [REDACTED] Officer [REDACTED] and Officer [REDACTED]. None of the Officers saw Officer Zuniga kick Detainee [REDACTED]. Officer Zuniga told her during the interview that Detainee [REDACTED] had an arm brace, the detainee didn't want to be handcuffed, he wouldn't move out of the door to let him close the door and secure it, that he called Sergeant [REDACTED] and he responded, the detainee had a lollipop in his mouth, that the detainee took the lollipop out, spat on him, that he gave him an open hand stun to the face to stop him from spitting, the detainee swung his handcuffed hands at him, he and Sergeant [REDACTED] with the assistance of additional officers took the detainee to the ground.

DIRECT EXAMINATION

██████████

Luis Zuniga the respondent testified, he is a Correctional Officer in the Cook County Department of Corrections. He has worked for the Cook County Department of Corrections since 2/25/02. Detainee ██████████ was identified as a Level 3 inmate. Level 3, the detainees are allowed into the day room for one hour, in which they're cuffed in front, and they have the freedom to walk around, take a shower, use the telephone, but they have to be within the perimeter of the day room. On January 4th of 2012 he was working in Division IX, he was assigned to tier 1E. It was Detainee ██████████ time for his hour out. Officer Zuniga went to his cell to tell him to get ready so he can come out for his hour, he opened up the chuckhole, which is where the inmate is cuffed. He instructed Detainee ██████████ to stick out his hands he was wearing a brace. he cuffed one of his hands, the one that didn't have the brace, and he refused to get cuffed on his brace. Officer Zuniga told him it was policy and procedure, in order for him to come out of the cell, he would have to cuff him, in which he let him cuff him. Officer Zuniga then opened the door Detainee ██████████ then stood in between the door stopping him from securing the door. Detainee ██████████ then complained that the cuffs were too tight. He asked for a Sergeant to complain that the cuffs were too tight. Officer Zuniga then called for Sergeant ██████████ Sergeant ██████████ approached the detainee and asked him what was going on, he explained to him that the detainee was complaining that the cuffs were too tight. Sergeant ██████████ then inspected the cuffs, and saw that they weren't tight at all. He was then able to secure the door. As they were going towards the stairs, Sergeant ██████████ was talking to the detainee. At that moment the detainee took out a lollipop from his mouth and spat at Officer Zuniga in his face. Officer Zuniga then gave him an open hand stun. Detainee ██████████ then hit him in the left shoulder with his cuffs on, he swung again and hit him on the right side of his face. With the help of Sergeant ██████████ and Officer ██████████ they were able to gain control of Detainee ██████████ He kept telling him, "Stop resisting, stop resisting. Give us your hands, let us cuff you, let us cuff you. Stop resisting."

They carried the detainee from the upper tier through the day room out the tier into the elevator. Once in the elevator the detainee was in the fetal position and they had control of him. He was brought to a holding cell once inside the holding cell he did not kick Detainee ██████████

Officer Zuniga testified that he knew there was a videotape, a handheld video camera at that time taping the encounter with Detainee ██████████

He was treated for the injuries he sustained. He had bruising on his left hand, a cut on his nose, and scratches over his arms. He did elect to press charges and was aware that ██████████ pled guilty to aggravated battery to an officer.

Officer Zuniga was contacted by the Office of Professional Review to give a statement regarding his interaction with ██████████ The original allegation was that he had bit Detainee ██████████ ear. He was also asked if he kicked Detainee ██████████ in the face. He stated he did not commit either act.

He has worked in Division IX for over 12 years and he has never been charged with abuse.

CROSS-EXAMINATION

██████████:

Luis Zuniga testified, that he knew that it was against the Sheriff's General Order 11.2.1.0 to use force as a form of punishment or retaliation. He was also aware that it was against the Sheriff's General Order 11.2.1.0 to strike, hit, or punch a restrained or handcuffed and non-combative detainee.

In review of the tier camera video from January 4th, 2012, Sheriff's Exhibit No. 1. Four correctional officers including Officer Zuniga are carrying Detainee ██████████ while he is handcuffed to the holding cell. The handheld camera video is also reviewed and Officer Zuniga testified that he was doing all he could to restrain Detainee ██████████ Once they carried him to the holding cell, Officer Zuniga was near Detainee ██████████ head when he heard a grunt sound from Detainee ██████████ The video shows his body move while he is on the floor in the holding cell. Officer Zuniga testified that he did not kick him in the head.

Detainee ██████████ DOC uniform has blood on it as he is getting up from the ground in the holding cell.

Officer Zuniga completed a use of force report after the incident on January 4th, 2012.

REDIRECT EXAMINATION

Officer Zuniga testified that he is aware of the General Order prohibiting force as punishment against detainees. He did write up [REDACTED] for disciplinary action based on his misconduct on January 4th, 2012.

During the transport he did notice blood on Detainee [REDACTED]'s shirt after they left the elevator.

Officer Zuniga first saw the video during the OPR interview. He only saw the tier video on February 25th, 2014. He never saw the hand held camera video.

RECROSS-EXAMINATION

Officer Zuniga testified, that he had never seen the video from the handheld camera from January 4th, 2012, until the hearing. He did not see it at OPR with Investigator [REDACTED]. He was asked questions about whether he kicked Detainee [REDACTED] in the holding cell during the OPR investigation.

DIRECT EXAMINATION

[REDACTED] testified he is currently employed as a Correctional Officer with the Cook County Sheriff's Department at the Department of Corrections. He worked with Officer Zuniga for three years he was in Division IX. On January 4th of 2012 he was working with him on the tier. He came in on the tier, and saw Detainee [REDACTED] on the ground kicking at Officer Zuniga after he was removed from his cell. He completed a use of force document on this incident. He assisted on carrying Detainee [REDACTED] to the holding cell. He did not see any use of force in the holding cell. He did not see Officer Zuniga kick [REDACTED] during the transport or from the tier to the holding cell.

CROSS-EXAMINATION

Officer [REDACTED] testified as to the content on the video. He does hear a sound coming from the cell and it sounds like "Zu,"

REDIRECT EXAMINATION

Officer [REDACTED] testified that he heard a grunt, He did not where the sound came from.

DIRECT EXAMINATION

[REDACTED] testified, he is currently employed as a Correctional Officer with the Cook County Sheriff's Department at the Department of Corrections. He has worked with Officer Zuniga for seven years. On January 4th of 2012 he was working in 1E. Officer Zuniga went to the chuckhole to cuff Detainee [REDACTED] who did not want to be cuffed. As they were getting close to the stairs he stopped, and heard him say something like, "I should fuck you up right now," at that point that's when he saw him with both hands come across and strike Officer Zuniga. He then ran up the stairs to assist in taking down Detainee [REDACTED]. All of the Officers had to grab a limb to get him to calm down. He was carried all the way to the holding cell. He did not see Officer Zuniga kick the inmate or use any force in the holding Cell. He completed a use of force document on this incident. at happened that day.

CROSS-EXAMINATION

Officer [REDACTED] testified that he sees Officer Zuniga almost every day. He testified on January 4th, 2012, that he was present on Tier 1E of Division IX, and that Detainee [REDACTED] didn't want to be cuffed. He helped carry Detainee [REDACTED] to the holding cell. On his review of the video he was holding Detainee [REDACTED] right leg. In the holding cell he heard Detainee [REDACTED] make a sound. In looking at the video he saw Detainee [REDACTED] body move. He was walking out of the cell looking the other way. He did hear the hear the sound "Zu" from the video,

REDIRECT EXAMINATION

Officer [REDACTED] testified that he heard the word "Zu," he did not know who said that word. He also heard a grunt on the video he did know where that come from. He also did not see Officer Zuniga kick Inmate [REDACTED]

DIRECT EXAMINATION

[REDACTED], he is currently employed as a Correctional Officer with the Cook County Sheriff's Department at the Department of Corrections. He has known Officer Zuniga for 12 years. In his opinion Officer Zuniga is very professional, he was always willing to learn everything about the job. In Division IX use of force incidents are frequent, as an officer he had good common sense and the ability to make decisions on what to do as each occurrence happened. He was fair and truthful.

CROSS-EXAMINATION

Officer [REDACTED] was not present on January 4th, 2012, with the incident with Detainee [REDACTED]

DIRECT EXAMINATION

[REDACTED] testified, currently employed as a correctional sergeant in the Cook County Department of Corrections. During his time in Division IX he knew Officer Luis Zuniga. In his opinion Officer Zuniga was a good worker, always followed orders that were given to him, treated all the detainees fairly, treated his fellow officers with respect. He always requested to work in the difficult areas, because he was even tempered, and he was able to treat all situations with an open mind and fairness.

CROSS-EXAMINATION

Sergeant [REDACTED] testified he was not present on January 4th, 2012, with the incident with Detainee [REDACTED] and Officer Zuniga.

DIRECT EXAMINATION

[REDACTED]:
[REDACTED] testified, he is currently employed as a Correctional Officer with the Cook County Sheriff's Department at the Department of Corrections. He worked in Division IX for 3 1/2 years. He met Officer Zuniga in Division IX. He never observed Officer Zuniga engage in any type of use of force incident. In his opinion Officer Zuniga was fair to the detainees and he was able to deescalate situations, talk to the detainees, help them work out their problems they were facing.

CROSS-EXAMINATION

Officer [REDACTED] was not present on January 4th, 2012, with an incident with Detainee [REDACTED] and Officer Zuniga.

DIRECT EXAMINATION

[REDACTED]:
[REDACTED] the respondent testified, he is currently employed as a correctional sergeant with the Cook County Sheriff's Office. On January 4, 2012, he was working an overtime shift, his regular shift was the midnight shift. He was working 15 hours straight when the incident occurred.

He was told to go see an inmate [REDACTED] the inmate felt that the cuffs were on too tight. Detainee [REDACTED] was irate about the handcuffs being tight. As he approached, Detainee [REDACTED] spat on Officer Zuniga who then struck him with an open hand stun. Detainee [REDACTED] then came up with the cuffs and started swinging at Officer Zuniga. Other officers then joined and he was taken to the ground. He was then carried down the stairs to the holding area. The other officers were carrying him; he was signaling for the video camera. Once he had the handheld camera, he opened it and attempted to also push his talk button on his radio. When he went to change hands his finger obstructed the lens on the camera.

When they reached the elevator he once again switched the hand-held camera to the other hand, and his finger was over the lens of the camera. There was no ill intent to block the lens.

Sergeant [REDACTED] testified he attempted to video the inmate the entire time it was difficult the officers were carrying Detainee [REDACTED] and they were constantly moving. When the Officers reached the holding cell he did not see a kick to inmate [REDACTED] by Officer Zuniga. He was not aware of any kick, if there was a kick he would have notified his superior officer. It was two years later that he was made aware a kick was alleged.

Once the incident is over the video is reviewed by the lieutenant then it goes to the next in the chain of command. Officers or sergeants, are not allowed to review the video.

The use of force that he documented to everyone was the video taken on what happened on the tier. At no point did he see Officer Zuniga or anyone else kick or punch the inmate. How can he fail to report something he didn't see? The incident occurred on January 4, 2012, and he was first interviewed on April 3, 2014 by OPR. Investigator [REDACTED] never showed him the video during the interview. His first review of the Video is at the Merit Board hearing.

In his review of the video from the tier he can clearly see the struggle among the officers. The hand held video clearly shows his finger is in front of the viewer twice and both times he can also hear his voice communicating on the radio. He was switching hands to press the push to talk button. He did notice the inmate's body move and heard a sound.

CROSS EXAMINATION

Sergeant [REDACTED] testified, he has been a sergeant since 2009. He has attended trainings on the use of force.

The tier video shows he was the closest Sheriff's employee to Detainee [REDACTED] when the fight started between him and Officer Zuniga. He held the hand held camera in his right hand when he began to video the incident. General Order 9.28 requires that the incident is to be videotaped uninterrupted. As the video begins his finger is covering the lens. His finger came over the lens a second time at about 31 seconds. During his operation of the video camera, the camera was moving around as he was also moving with it. The camera was not always pointed direct at the inmate. Several times he states "Camera's on" while he is videotaping the incident.

In his review of the video he did see the body of detainee [REDACTED] move in the holding cell after he was dropped by the officers. He also heard a sound come from detainee [REDACTED]

Sergeant [REDACTED] testified he reviewed Officer Zuniga's response to resistance/use of force report. There was no mention in the incident report of Officer Zuniga kicking detainee [REDACTED] in the face. The video clearly shows that when Detainee [REDACTED] stands up at the end of the video, he has blood on his shirt. It was not noted on Officer Zuniga's statement; Sergeant [REDACTED] did not remember any blood at all on the inmate.

Findings of Fact

Correctional Officer Zuniga has stated that nothing occurred in the holding cell on January 4, 2012, in Division 9, the hand-held recording, which was shot by Sergeant [REDACTED] provides the circumstantial evidence that this board needs to find by a preponderance of the evidence that Officer Zuniga kicked detainee [REDACTED] in the face. Detainee [REDACTED] did testify that he was kicked in the face in the holding cell and a medical report also confirms he had injuries sustained from the incident. The first sign of blood on his shirt is clear in the video at the end of the incident when he stands up in the holding cell.

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

Order:

Wherefore, based on the foregoing, it is hereby ordered that the Sheriff's request to terminate and remove Luis Zuniga, respondent, from the Cook County Sheriff's Office is granted effective November 18, 2014

[REDACTED]

James P. Nally, Chairman

[REDACTED]

Vincent T. Winters, Board Member

[REDACTED]

Patrick Brady, Board Member

[REDACTED]

Brian L. Riordan, Board Member

[REDACTED]

John Dalicandro, Board Member

[REDACTED]

Kim R. Widup, Board Member

[REDACTED]

Byron T. Brazier, Board Member

[REDACTED]

Jennifer E. Bae, Board Member

[REDACTED]

Gray Mateo-Harris, Board Member

Dated: February 22, 2016

