

COOK COUNTY SHERIFF'S MERIT BOARD

In the Matter of:

**CORRECTIONAL SERGEANT
JAMES ELWOOD**



Employee # [redacted] Star #1057

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Docket No. 1765

DECISION

This matter coming on to be heard, by Board member Brian J. Riordan, pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

1. Sgt. James Elwood (hereinafter "Respondent" or "Elwood"), was appointed a Cook County Correctional Officer on May 29, 2001;
2. On May 24, 2009, the Respondent was appointed a Correctional Sergeant;
3. On October 26, 2010, the Respondent was assigned Division IX of the Cook County Department of Corrections ("CCDOC") located at 2934 W. 31st Street, Chicago, Illinois 60608;
4. On January 6, 2013, the Respondent was assigned to the Records Department of the CCDOC located at 2700 S. California Avenue, Chicago, Illinois 60608;
5. On January 18, 2012, at approximately 0515 hours he was on duty in Division IX of the CCDOC where he was part of a team moving detainee Kevin Robinson through the facility;
6. Respondent's position as a Correctional Officer involves duties and responsibilities to the public;
7. 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;
8. The Board has jurisdiction of the subject matter and of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes;
9. Respondent was personally served with a copy of the Complaint against him and a Notice of Hearing and appeared before the Board to contest the charges contained in the Complaint; and

10. 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

The Sheriff's Office alleges that on January 18, 2012, the Respondent along with other Correctional Officers [REDACTED], [REDACTED] and [REDACTED] were moving detainee [REDACTED] through the facility after there had been a previous altercation. It is alleged that Respondent witnessed [REDACTED] use excessive force against the detainee by kneeling him on the right side of the head area while he was handcuffed, bending over and causing injury to [REDACTED], specifically abrasions to the face and left hand contusion.

The Sheriff further alleges that the Respondent did not report the excessive force per his requirements as a sergeant.

The Sheriff is seeking a suspension of 120 days 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. The Sheriff specifically alleges that the Respondent violated:

**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.

E. 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.

GENERAL ORDER 4.1

ETHICS AND STANDARDS OF CONDUCT, 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 or 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.

GENERAL 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 on 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.

VIII. PROCEDURES

C. Intervention during excessive force incidents. If an officer knows that another officer is using excessive force against a subject, the officer must take appropriate action. The action required by the officer shall depend upon the circumstances of the incident. However, appropriate actions may include, but are not limited to, verbal or physical intervention, immediate notification to a supervisor, or a direct order by a supervisor to cease the use of excessive force.

D. 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.
2. Witnessing a use of force incident shall be required to complete and submit to the responding supervisor a Witness Statement as part of the Data Collection Form completed by the watch commander to the end of the shift.

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.

B. Incident Report Requirements

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.

SHERIFF'S ORDER 11.2.20.2 (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.

GENERAL ORDER 9.21

RESPONSIBILITIES OF SUPERVISORS, in its entirety, including but not limited to, the following subparts:

I. POLICY

It shall be the policy of the Cook County Department of Corrections (CCDOC) that Supervisory personnel be provided standards to perform their official duties. Supervisors are responsible of ensuring compliance with CCDOC policy and procedures, as well as professional and ethical standards.

Section #3 – Responsibilities of Sergeants

I. PROCEDURE

A. Personnel Management Responsibilities of Sergeants include:

6. When appropriate ensure they provide written documentation on any incident.

C. Disciplinary Responsibilities of Sergeants include:

1. Prepare disciplinary reports on subordinates under their command found in violation of the Department Policies and Procedures.
2. Recommend disciplinary action for any subordinate found in violation of the Departmental Policy and Procedures in accordance with General Order 4.2 (Disciplinary Action – Summary Punishment) and General Order 4.2.1 (Disciplinary Action – Major Cause).

D. Administrative Responsibilities of Sergeants include:

2. Collect, review and examine reports submitted by subordinates under their supervision to ensure reports are legible and contain all pertinent information.
3. Ensure all required notifications have been made pertaining to any incidents having occurred during their tour of duty.

Furthermore, the Sheriff alleges the Respondent's actions violated the Rules and Regulations of the 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.

Prosecution Case

The prosecution case consisted primarily of a video of the incident that was taken by one of the officers. The video clearly shows that detainee [REDACTED] was handcuffed and being led down the hallway by Officer [REDACTED] to an elevator. There appeared to be approximately four sheriff officers involved in this move. Sgt. Elwood was identified on the video by various

witnesses. However, it is clear from the video that Sgt. Elwood was not looking in the direction of Officer [REDACTED] or the detainee when it appears that Officer [REDACTED] kned the detainee and moved him towards the elevator. But with the close proximity of the detainee and other officers it is obvious that he heard the kneeling of [REDACTED] and the groans and moans of the detainee. In fact, Officer Elwood then taps on [REDACTED]'s back and points out that they are being videoed. This clearly shows that he was aware of the kneeling, or at least something that occurred, in terms of physical use of force against the detainee.

Joint exhibits included the video and Respondent's exhibits included training certification, evaluations and accommodations. The Sheriff's exhibits included the General Orders regarding use of excessive force, General Orders regarding personnel and reporting and those of supervisors.

The Sheriff's Office presented investigator [REDACTED] from the OPR to testify regarding the review of the incident and review of the tape and witness statements. His testimony stated that Sgt. Elwood admitted that after reviewing the tape there was excessive force used by Officer [REDACTED]. However, he maintained throughout the investigation in front of the Merit Board that he was not a witness to the excessive force at the time it occurred. They further testified that no incident report was completed by Sgt. Elwood. They do admit that a previous incident report completed by Officer Ferrell was presented to them at some point.

Respondent's Case

Testimony of Sgt. James Elwood

Sgt. James Elwood testified that he has been with the Sheriff's Office for 14 years at the jail in Division I and Division IX. He stated that he came upon this situation of moving this detainee after there had been an altercation between Officer [REDACTED] and the detainee earlier near the cells. He stated they were moving a detainee down the hallway towards an elevator and he went through the video several times. It was clear from the video that he was not looking directly at the officer or the detainee when the officer allegedly kned the detainee. He denied pointing out the camera to [REDACTED] and others and that we aware of the excessive force. Officer Elwood's testimony that he did not know what happened or that his pointing to the video camera and to the other deputy in an attempt to warn him was not credible. It was clear he was warning the others about the camera.

He went through all the various excessive force training and escalation and de-escalation of use of force. He also testified about reporting and OPR investigations.

Findings of Fact

Based on the evidence presented, the testimony and the video that was shown and produced into evidence, it is the Board's decision that the Respondent did violate the Sheriff's Orders or the Cook County Merit Board Rules and Regulations. It was clear from the video that Officer Elwood was aware that some sort of physical confrontation occurred between [REDACTED] and the inmate. Respondent clearly points to the tape and taps the other officer on the shoulder to "remind" him they are being taped. He is the highest ranking officer on the scene. Even though he may not have originally seen the knee to the inmate his responsibility does not end. He either

did, or should have known, what was going on and investigated it. His testimony to OPR and at the hearing that he was totally unaware is not credible. He admitted after reviewing the tape that the acts of Ferrell were excessive force on an inmate. He should have also coordinated the reporting of the incident and provided the others with direction.

CONCLUSIONS OF LAW

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence and the record, the Board finds that the Respondent did violate the Rules and Regulations of the Cook County Sheriff's Office and the Merit Board.

Wherefore, based on the foregoing, it is hereby ordered that Respondent James Elwood be suspended 30 days from employment with the Cook County Sheriff's Office effective June 10, 2014.

James Elwood CO #1765



James P. Nally, Chairman



* Brian J. Riordan - Hearing Officer



Kim R. Widup, Board Member



Jennifer E. Bae, Board Member



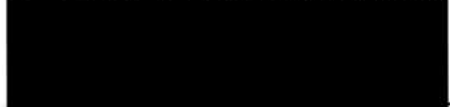
Byron Brazier, Vice-Chairman



John Dalicandro, Board Member



Vincent T. Winters, Board Member



Patrick Brady, Board Member

Date May 15, 2015