

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County

vs.

Leka M. Vukmarkaj  
Correctional Officer  
Star # 8988

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Docket No. 1809

DECISION

This matter coming on to be heard pursuant to notice before Kim R. Widup, Board Member, on April 25, June 27, August 2, and August 29, 2016, the Cook County Sheriff's Merit Board finds as follows:

**Jurisdiction**

Leka M. Vukmarkaj, hereinafter Respondent, was appointed a Correctional Officer on July 24, 2006. 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 (Complaint)**

On July 24, 2006, the Respondent was appointed a Correctional Officer and on February 8, 2009, was assigned to the Receiving and Classification Center (RCDC) of the Cook County Department of Corrections (CCDOC), located at 2700 S. California Boulevard, Chicago, IL. On November 9, 2014, the Respondent was assigned to Division IX of the CCDOC, 2834 W. 31<sup>st</sup> St, Chicago.

On August 19, 2012, at approximately 17:23 hours, while on duty in RCDC of the CCDOC, the Respondent used excessive force against detainee [REDACTED] (detainee [REDACTED]) by striking detainee [REDACTED] several times in the face/head area and in the body with a closed fist while the Respondent held detainee [REDACTED]'s right arm and detainee [REDACTED] held on to

the fence with his left arm. The Respondent also used excessive force against detainee [REDACTED] by striking him several more times while detainee [REDACTED] was on the ground and being restrained by Correctional Officer [REDACTED] (CO [REDACTED] – respondent in a parallel manner, docket 1808).

On August 19, 2012, the Respondent completed and submitted a Use of Force Report. In the narrative of that report, the Respondent failed to document that he struck detainee [REDACTED] several times in the face/head area and in the body with a closed fist while he held detainee [REDACTED]'s right arm and detainee [REDACTED] held on to the fence with his left arm. The Respondent also failed to document in the narrative of that report that he struck detainee [REDACTED] several more times while detainee [REDACTED] was on the ground and being restrained by CO [REDACTED].

On August 19, 2012, the Respondent completed and submitted a Use of Force Report. In the narrative of that report, the Respondent falsely reported that detainee [REDACTED] "squared up" to the Respondent and that the Respondent gave detainee [REDACTED] several open-hand strikes to gain control and compliance from detainee [REDACTED].

A videotape recording from stationary cameras in RCDC of August 19, 2012, shows the Respondent grab detainee [REDACTED]'s right arm and strike detainee [REDACTED] with a closed fist several times in the face/head area and in the body while detainee [REDACTED] holds on to the fence with his left arm. The videotape recording also shows CO [REDACTED] strike detainee [REDACTED] with a closed fist several times in the face/head area. The videotape recording shows the Respondent and CO [REDACTED] take detainee [REDACTED] to the ground. The videotape recording then shows the Respondent strike detainee [REDACTED] with a closed fist several more times while CO [REDACTED] is restraining detainee [REDACTED] on the ground.

On August 19, 2012, the Respondent failed to maintain a professional demeanor while on duty and the Respondent's conduct throughout the incident with detainee [REDACTED] was unbecoming of an officer of the CCSO.

By complaint dated March 13, 2015, upon a finding of guilt, the Petitioner sought the removal of the Respondent from the Cook County Sheriff's Department.

### **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 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;

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 - 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.

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

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 fail [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.

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 of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections, or any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Department.

## **Findings of Fact**

This matter was called for trial on April 25, June 27, August 2, and August 29, 2016, after the case was continued on several occasions 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 Sheriff introduced the following exhibits: Exhibit 1 was a DVD containing 12 separate files showing video from an incident in RCDC, dated August 19, 2012; Exhibit 2 was Sheriff's Order 11.2.1.0, Response to Resistance/Use of Force Policy; Exhibit 3 was General Order 3.8, Ethics and Standards of Conduct; Exhibit 4 was General Order 24.9.1.0, Reporting Incidents, which, by agreement of the parties, was only applicable to CO [REDACTED] (since struck from the case as CO [REDACTED] resigned and his culpability was removed from consideration in this order based upon his resignation as the Board no longer maintained jurisdiction over him in this matter); Exhibit 5 was General Order 4.1, Internal Investigations; Exhibit 6 was Article X of the Merit Board Rules and Regulations; Exhibit 7 was the incident report prepared by CO [REDACTED] Exhibit 8 was the use of force report prepared by CO [REDACTED] Exhibit 9 was to be addressed later and not stipulated to; Exhibit 10 was a group exhibit for CO [REDACTED] including, notification of allegations, administrative proceedings rights, waiver of legal counsel and OPR statement of CO [REDACTED] Exhibit 11 was the Respondent's use of force report; and Exhibit 12 was a group exhibit for the Respondent including, notification of allegations, administrative proceedings rights, waiver of legal counsel and OPR statement of the Respondent. Exhibits 1-12, were admitted without objection, minus Exhibit 9 and the clarification that Exhibit 4 was only applicable to CO [REDACTED] as stated above.

Additionally, through further stipulation of the parties, the Respondent introduced the following exhibits: Respondent's Exhibit 1 (R-Exhibit 1) was the Collective Bargaining Agreement (CBA) between the Sheriff and its employees; and R-Exhibit 2 was Sheriff's Order 11.2.2.0, Use of Force, Response to Resistance, Notifications and Reporting Procedures. Both exhibits were admitted.

After a brief opening statement, the first witness called by the Sheriff was [REDACTED] (Expert [REDACTED]) expert witness, who testified via Skype (video conferencing). The Respondent's counsel objected to Expert [REDACTED] testifying via Skype, based on the fact that he was in another state, and her understanding of the legislation regarding him being sworn as a witness authorized court reporters to only swear witnesses in from within the state. The objection was overruled by the Board.

Expert [REDACTED] testified that he was employed with the University of Tennessee, County Technical Assistance Service, as a jail management consultant. In this position, he was responsible for providing technical assistance on jail operations and jail management to the 95 counties in the State of Tennessee, interacting with the jail administrators, sheriffs, county legislative bodies and county attorneys. He has held that position for approximately eight years and four months. He testified he had been involved in law enforcement since 1975, with the exception of six years, all this experience had been in corrections. He identified a copy of his CV which was marked as Exhibit 13 and admitted.



Expert [REDACTED] was taken through his background by the Sheriff in order to attempt to qualify him as an expert witness. He testified that he was the Chief of Corrections, Hamilton County Jail, Chattanooga, TN, from September 1998 through December 2007. His responsibilities were overall operation and management of the Hamilton County Jail. Prior to this position he was the Jail Captain at the Hamilton County Jail where he was responsible for the day-to-day operation of the facility. Expert [REDACTED] testified that as part of these positions he had to address or interact with incidents of use of force, which included the review of incident reports, injury reports, use of force reports or disciplinary reports written by staff. He testified that he was responsible for reviewing the reports and in some instances conducting a basic or informal inquiry into the incident or referring the incidents either to internal affairs or the chief of corrections for action. He testified when he held the position of Chief of Corrections he would report to the sheriff on any types of significant or serious incidents or uses of force that occurred. He would make decisions on making adjustments to training, policies, or procedures, if not previously addressed in their training or procedures.

Expert [REDACTED] testified that he was responsible for investigating incidents of excessive or use of force. He estimated that he had investigated approximately 20 use of force matters and had referred several others to the Sheriff's Office of Internal Affairs that they deemed to be criminal in nature. He testified that he was responsible for the training on the use of force. This included overseeing the training program, approving various lesson plans and observing/monitoring the training to ensure it was consistent with their policies and procedures. Expert [REDACTED] testified the use of force policies were drafted for his review and then he would forward them to the Sheriff's legal counsel and then to the Sheriff for approval.

Expert [REDACTED] testified that he had held several other positions in correctional facilities where he was responsible for overseeing training; reviewing various use of force reports and incidents that occurred; as a line-level corrections officer personally involved in the use of force; and as a shift supervisor in two different facilities. As a shift supervisor, he was responsible for the initial inquiry into a use of force incident that may have occurred during his shift in order to ensure the appropriate documentation was gathered, reviewed and followed up through the chain of command.

Expert [REDACTED] testified he had received training throughout his career on the use of force, including report writing. He had provided training on the use of force and report writing through the Tennessee Risk Management Pool which insures 30-40 counties in the State of Tennessee. In the past two years, he had been providing training to jail administrators and sheriffs across the State on use of force and documenting the use of force.

Expert [REDACTED] testified he had been retained in this matter as an expert by the Cook County State's Attorney's Office and was being compensated at a rate of \$90 per hour. He testified in four other matters involving the CCDOC and in each of those matters had been deemed an expert by the Board.

The Respondent's counsel conducted a Voir Dire Examination of Expert [REDACTED]. Expert [REDACTED] testified he had never worked in the CCDOC other than participating in an audit of the CCDOC on behalf of The American Correctional Association over a five-day time period. He had never trained the CCDOC in use of force or report writing regarding the use of force. He was asked in the majority of his work in corrections was in the military and he responded that approximately 22 years was in the military and 19 years was in outside corrections.



Expert [REDACTED] testified that the audit he participated involving the CCDOC was in September of 2003. He last worked inside a correctional facility in December of 2007 with the Hamilton County Jail. He testified, at the time he was there, the Hamilton County Jail had approximately 159 staff members. Expert [REDACTED] testified he personally was involved in three use of force incidents. He testified he was not trained in the John C. Desmedt Use of Force Model. He further testified that he was not trained in the employment of the Confrontational Continuum, the CAPRA Use of Force Model, or the Sector Model. He further testified that he had never been employed in a corrections facility for the State of Illinois. Expert [REDACTED] testified that besides the four occasions before the CCSD Merit Board he had not testified elsewhere in the use of force. He testified that he had not been retained to testify against the Sheriff in any previous case.

In a follow-up question by the Sheriff, Expert [REDACTED] testified that while he had not been trained in the John C. Desmedt Model for use of force he had worked with other models that were similar to it. He testified all of the models he had worked with and that he had seen all start with the low-level officer presence, verbal communication, and escalate based on the actions of the inmate, all the way up to and including the use of force. He did not believe the fact that he had not work with the Desmedt Model would have any impact on his ability to interpret and offer opinions regarding the Desmedt Model as all use of force protocols he had worked with in the past were similar.

Expert [REDACTED] was found to be an expert for this case by the Board.

Expert [REDACTED] testified in order to form his opinions in the matter involving the Respondent, he had been sent a variety of documents that included: use of force reports; OPR investigations; videos; various Sheriff's Orders, reviews by various supervisors; and a 2011 Use of Force Training PowerPoints. Based on the review of these materials, Expert [REDACTED] testified in his opinion CO [REDACTED] and the Respondent used excessive force against detainee [REDACTED] on August 19, 2012. Expert [REDACTED] testified the Respondent used excessive force by throwing multiple strikes to the head and body of the detainee which he determined to be excessive.

Expert [REDACTED] testified CO [REDACTED] used excessive force as, according to Sheriff's General Order 11.2.1.0 (Exhibit 2) Response to Resistance/Use of Force Policy, which states:

"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."

Expert [REDACTED] testified, in his opinion,

*"The repeated closed hand strikes to the head and body of the detainee by (CO) [REDACTED] while he had the detainee around the neck and the arm and the – Officer Vukmarkaj (the Respondent) held the detainee's right arm while the detainee basically was just holding onto the cage were considered excessive...I also took a look at their use of force statements, and I believe that those are the Sheriff's documents stamped 00024 to 25 (Exhibit 11) and that was for the Officer Vukmarkaj (the Respondent) and then for Officer [REDACTED] on 0026 and 0027 (Exhibit 8), both of them state and that they gave...In his narrative section on 00027 (Exhibit 8), he stated that R/O gave detainee several open hand strikes to gain compliance from detainee while he was actively resisting. I took a look at the Sheriff's Order on use of force, and specifically on page Sheriff's document stamped 00080 (Exhibit 2) ...and again that is the Sheriff's Response*



*to Resistance/Use of Force Policy...there's defined two resisters, and it states that a resister is 'A subject who does not respond to social or verbal control, but who does not act as an assailant,' and it gives two definitions specifically, and a non-moving resister basically states that 'The subject's behavior does not attempt to flee or to create distance but simply (just) tries not to be moved.' ...Detainee [REDACTED] was observed in a video being held by the officers. [REDACTED] had him around the neck and the arm while the inmate held onto the cage with his left hand. So, the resistance, at least as I viewed in that video, consisted of holding the cage and basically ducking his head to try to, in my opinion, to try to duck the strikes that were being received by the officers. The first of that, the incident talk – or the second definition under a resister talks about moving resister, and it basically talks about 'This subject resists by moving away from the officer(s). In this area, the subject attempts to run, create distance, or to avoid physical control by (the) officers.' ...I took a look at the PowerPoint on – the Training Use of Force PowerPoint from 2011, and it talks about addressing moving resisters, and it says, 'This subject actively resists in a defensive manner, by attempting to avoid physical control by the officer and create space between the officer's reach and himself. This type of resistance ranges from slight evasive movement of the arm, through flailing, to full flight.' Again, in that – in the video footage, it's clear that the initial contact made by the officers to the – shows detainee [REDACTED] flailing his arm fleeing from one of the C/O's and then starts walking away to create the distance."*

Expert [REDACTED] testified that pursuant to the Desmedt Use of Force Model the amount of force an officer can use is dependent on the actions of the detainee or inmate to include the elevating or deescalating the use of force based on the response of that detainee or that inmate.

Expert [REDACTED] testified he reviewed the video of the incident and in the video, he noticed detainee [REDACTED]'s arm come up, which is what he described as his arm flailed. He testified at this point detainee [REDACTED] was a moving resister according to the John C. Desmedt Model. Expert [REDACTED] testified the type of force to be used, "as you start moving down the model," is officer presence, verbal control, warning, guidance telling him to stop, stop moving; moving down through Low Pressure Impact; down through the model to Chemical Agents and Taser. He testified that detainee [REDACTED] as a moving resister, could receive a mechanical strike to the body from Officer [REDACTED] as an appropriate recourse. This is referred to as a low-pressure impact or stunning technique. Expert [REDACTED] testified this technique is consistent with the Use of Force PowerPoints Training form 2011, which has a slide that "points to exactly the stunning techniques" and it shows the palm heel strike to the head, a strike to the lower rib cage or solar plexus or strikes to the large muscles in the arms and legs.

Expert [REDACTED] was played a portion of the video and was asked in what part of the video caused him to opine that Officer [REDACTED]'s use of force was excessive in nature? Expert [REDACTED] testified,

*"The strikes – the strikes that he made were almost immediate upon the detainee turning, so he escalated it immediately to – strikes in that use of force. The detainee was not aggressively resisting once they got him up against the cage or was not being aggressively offensive towards the officers. In fact, it appeared to me that he was holding onto the cage with his left arm and trying to duck his head from being struck. The officer was just throwing multiple blows to the head and face area or the head area of the detainee along with several blows to the stomach area...He did not stop those blows until the detainee was physically taken to the ground."*



Expert [REDACTED] testified that a low-pressure impact, according to the training provided in the Use of Force PowerPoints, are strikes that to gain control, strikes to disorient, or to disrupt the inmate's actions to gain control of that inmate. Mechanical Direct Mechanics Against Body Structure are strikes to the thighs, arms, maybe to the lower rib cage area, to disrupt the inmate's aggressive behavior to subdue the inmate to take him down. Expert [REDACTED] testified the strikes by CO [REDACTED] were not low-pressure impact strikes, they were closed fist strikes.

A break was taken in the trial with this witness as it was discovered certain documents, specifically the PowerPoint referenced in Expert [REDACTED]'s testimony, may not have been furnished to the Respondent. The rest of the trial for this date was vacated and set for hearing on April 26, 2106, at which time the issue with the PowerPoint would be addressed and a date for the continuation of the trial would be set.

The trial resumed on June 27, 2016, with the Respondent making a motion that the testimony of Expert [REDACTED] be excluded. The motion was denied. The issue regarding the disclosure by the Sherriff regarding a certain PowerPoint presentation regarding training was cured by the Sheriff providing it to the parties with adequate time for the parties to prepare for the continuation of the trial. The Respondent and CO [REDACTED] then argued relevance of the PowerPoint materials and the Board ruled that the case would continue to see what, if any, impact it had on the matter regarding [REDACTED] as the trial progressed.

The testimony of Expert [REDACTED] continued via Skype (video conference) with Expert [REDACTED] being asked by the Sheriff as to his opinion regarding whether CO [REDACTED] used excessive force against detainee [REDACTED]. Expert [REDACTED] testified:

*"That the detainee was initially, according, in the video and the statements that I reviewed, was initially what I classified as a moving resister in that he was – had moved himself or flung his arm away from the officers and started to move away. The – he, almost immediately, he was grabbed by Officer [REDACTED] and strikes were started – he started throwing strikes to the detainee head, head area of him. At the point – at that point in time, I felt that those strikes were unnecessary. He had grabbed him by both the neck and the arm to try to gain control of this moving resister. The strikes at that point in time were unnecessary...Based on the use of force model, the Desmedt Use of Force Model that reflects the types of – the types of responses based on the actions of the individual, of the inmate they are dealing with...He (detainee [REDACTED]) started off as a moving resister and then became a nonmoving resister...On the moment that he, detainee [REDACTED] was basically facing away from Officer [REDACTED] and with his left hand grabbed the holding or the bullpen cage and basically started to duck his head, at that point in time I determined he was a nonmoving resister...In the video I reviewed, I did not see what was pointed out as a low level assailant. I did not see that as a low-level assailant in accordance with the Sheriff's use of force policies of one who closes the distance or moves toward the officer to put them in jeopardy, rather he turned and started walking away from the officers...The maximum amount of force, in accordance with that model (Desmedt Model, would have been some low-pressure impact, but with progressively increasing or decreasing that use of force. His first response was to grab him, which the officers did, he grabbed him to start to gain control, but he immediately went from grabbing to start throwing the strikes...I would classify those, based on the close fist strikes to the head area, as a direct impact strike...Direct mechanical to the head."*

Expert [REDACTED] was asked by the Sheriff as to his opinion regarding whether the Respondent used excessive force against detainee [REDACTED]. Expert [REDACTED] testified:

*"Again, with Officer Vukmarkaj (the Respondent), as the detainee turned – the detainee made a movement with his right arm, a swinging motion with his right arm as if breaking free from a grasp and turned. At that point that he started turning is when Officer Vukmarkaj (the Respondent) grabbed – started to grab the detainee and immediately began throwing those direct strikes to the head and body of the detainee. At that point in time that the detainee became a moving resister, the officer continued to – he became a nonmoving resister and his resistance consisted of grabbing the cage with his left hand and basically ducking his head sort of to – lower to the left. Officer Vukmarkaj continued to throw strikes as a nonmoving resister...According to the Sheriff's policy – the Sheriff's use of force policy that addresses escalation or de-escalation use of force based on the resistance of the offender, of the detainee or the inmate, the detainee was on the ground, the officers were on top of the detainee basically restraining that detainee. According to Officer [REDACTED] he indicated that there was no resistance, in one of his statements, there was no resistance being made by the detainee at that point. The three blows that I observed, being strikes to the body area, of Officer Vukmarkaj were unnecessary...they were direct mechanical strikes, closed fist strikes to the head and body area...He (CO [REDACTED]) did not articulate in his report the need for the multiple strikes to the head and body, even though the detainee had – he had the detainee around the neck area and arm while Officer Vukmarkaj (the Respondent) had the detainee by the other arm, so he didn't – he didn't articulate why – what – the need for strikes at that point in time..."*

Expert [REDACTED] was asked about CO [REDACTED]'s use of force report (Exhibit 8) and he testified:

*"...in his part of the statement (CO [REDACTED]) says that Officer Vukmarkaj attempted to es (sic) – or, I am sorry R/O was escorting detainee [REDACTED] to Bullpen No. 3 when he pulled away from the R/O. The officer assist – had assistance from Officer Vukmarkaj (the Respondent), attempted to escort him to Bullpen 3, at which time he squared up with Officer Vukmarkaj. He states that he gave several open-hand strikes to gain compliance with the detainee while he was actively resisting, when, in fact, when the detainee – the detainee was turning and moved away, had started moving or walking away when the first strike was – occurred from behind him. So, he had not – he was not squared or, in my opinion, not face to face where he had squared up with the officers to throw that direct below...He, in his report, he did not indicate – or he indicated that he had given the detainee several open-hand strikes, when the video indicated that he had given those three – at least three closed hand strikes to the head area..."*

Expert [REDACTED] was asked about his opinion regarding the Respondent's reporting of the incident (Exhibit 11) and whether it was appropriate. Expert [REDACTED] testified:

*"...His re – Officer Vukmarkaj's report was similar to Officer [REDACTED]'s in that he indicated that the detainee had squared up with him and he gave several open-hand strikes to gain compliance while he was actively resisting. The, again, the detainee had already turned his back and was moving away from them when they initially grabbed him before the first blow was thrown by – Officer Vukmarkaj. He fail – he also did not indicate any – articulate his rationale for the strikes that were thrown when the detainee was on the ground and both officers were on top of him, there was no mention of his*



*actions or rationale for those strikes...He indicated in his report, he checked the box of low-level assailant and thought – or indicated that he gave some closed hand strikes or punches. He didn't articulate that in his incident report, and, in fact, he did not articulate that the strikes did not begin until the detainee had turned away from him and the strikes were coming from behind...*

Expert [REDACTED] testified that, from the video he saw (Exhibit 1), he did not observe detainee [REDACTED] closing the distance between himself, the Respondent and CO [REDACTED] instead he said, "from the video footage I saw, he (detainee [REDACTED]) was separating himself from the – the officers, sir." Expert [REDACTED] was asked if he formed an opinion as to whether the Respondent and Officer [REDACTED] acted in a professional manner with their interactions with detainee [REDACTED]. Expert [REDACTED] testified:

*"...their conduct – the violating of the policies in that the, in my opinion, the detainee did not appear to be a low-level assailant, he was turning and moving away, their conduct did not – complying with their policy and procedure, was not conducting themselves in a professional manner or in compliance with the Sheriff's orders or the policies of the agency."*

On cross-examination by CO [REDACTED]'s counsel, Expert [REDACTED] testified that detainee [REDACTED] was pulling away from the officers and in the pulling away his right arm was swinging in the direction of CO [REDACTED]. It was his opinion that detainee [REDACTED] was trying to pull away from CO [REDACTED]. Expert [REDACTED] agreed that under Desmet Model and officer was entitled to move up their efforts a step if detainee was resisting. He testified that detainee [REDACTED] was a moving resister. Expert [REDACTED] testified, in his opinion, detainee [REDACTED] did not become an assailant based on his actions. He testified that the act of "flinging his arm" by detainee [REDACTED] was to break free or move away. Expert [REDACTED] testified that the movement with his arm by detainee [REDACTED] was an aggressive movement.

On cross-examination by the Respondent's counsel, Expert [REDACTED] testified that he did not believe at any point detainee [REDACTED] was an assailant. He based this on his review of the video (Exhibit 1), the Respondent's and CO [REDACTED]'s statements to OPR (Exhibits 10&12) and the Respondent's and CO [REDACTED]'s use of force reports (Exhibits 8&11), which he testified was addressed in the Sheriff's Order (Exhibit 2). He testified that he had no information that detainee [REDACTED] swung at the officers. Expert [REDACTED] testified that he understood an active resister is "one that is trying to create distance between themselves and the officer by pulling, tugging, moving away, just trying to separate themselves to get away." He testified this was different from a low-level assailant as defined by the Sheriff's General order. He testified that detainee [REDACTED] ceased being a moving resister when he grabbed the fence as depicted in the video (Exhibit 1). Expert [REDACTED] testified that at one point in his OPR statement (Exhibit 10) CO [REDACTED] identified detainee [REDACTED] as being a compliant once he was on the ground. Expert [REDACTED] testified, in response to a question from the Respondent's counsel, that he could identify on the video at least three occurrences in which the Respondent struck detainee [REDACTED] with a closed-fist strike.

[REDACTED], Investigator, CCSO, OPR, testified that he had been with the CCSO since October of 2005. He was a correctional officer from October of 2005 until November 2010 when he became an investigator for OPR. He was currently assigned to the squad within OPR that was responsible for excessive force investigations. He estimated he had conducted over one hundred excessive force investigations. He was assigned the investigation of the Respondent. He testified that he interviewed the Respondent and CO [REDACTED]. He did not



interview detainee [REDACTED] as they already had a recorded interview of him. He interviewed each of the correctional officers (the Respondent and CO [REDACTED]) after first executing a waiver with them and then prepared a summary statement for each of them (Exhibits 10&12) which they each signed individually.

Investigator [REDACTED] testified that CO [REDACTED] told him on April 4, 2014, which he documented in CO [REDACTED]'s statement to OPR ((Exhibit 10), that detainee [REDACTED] was refusing to go to the bullpen and refused several orders. They attempted to grab detainee [REDACTED] and he pulled away. CO [REDACTED] told Investigator [REDACTED] then squared off on the Respondent and raised his arm as if he were going to strike the Respondent. At this time both officers used closed hand strikes to the detainee's body until they were able to get him to the ground at which time he ceased resisting. Investigator [REDACTED] wrote this in summary form into a statement which CO [REDACTED] signed (Exhibit 10). Investigator [REDACTED] could not recall that CO [REDACTED] desired to make any changes to the statement, he did give CO [REDACTED] a chance to review the statement.

Investigator [REDACTED] testified the Respondent told him that he had no recollection of the event with detainee [REDACTED].

Investigator [REDACTED] was asked about the video of the incident (Exhibit 1) and testified that:

*"Well, I, as the video begins, I - I see - I was - I saw what I guess I saw documented in the officer's reports, which is I see the detainee pull away; however, at that time, he then, as he's pulling away, he turns his body away and he begins to walk away from the officers, the officers grab him and then immediately start striking him. I believe Officer Vukmarkaj (the Respondent) begins striking him first. I would have to watch it again to be certain."*

The video of the event was played (Exhibit 1) and Investigator [REDACTED] testified:

*"...Well, to start where I left off, or about where I left off, as he is walking away, Officer [REDACTED] grabs him from behind, Officer Vukmarkaj who was behind him and to the side I think he grabs detainee [REDACTED]'s arm and then begins to strike detainee [REDACTED] in the face and body with a closed hand. And then as this is happening, detainee [REDACTED] sort of grabs onto the gate and holds on as he is struck by both officers' multiple times. Then they take detainee [REDACTED] to the ground. After he's on the ground, it looks like Officer Vukmarkaj strikes detainee [REDACTED] three more time while he is on the ground."*

Investigator [REDACTED] was asked after reviewing the video, did he observe any differences between what CO [REDACTED] told him or put into his reports. Investigator [REDACTED] testified:

*"...Yes, there were several. The - it began with right after detainee [REDACTED] pulls away, in the reports and in his statement, he (CO [REDACTED]) says detainee [REDACTED] pulls away, then he turns to face the officer, squares up and then pulls his arm back and that's when they engage the detainee. However, the video shows that detainee [REDACTED] pulls away, then turns away and walks away, at which time the officers grab him and begin to strike him, which is where another indiscretion comes in, where in the narrative of the use of force reports they say they're using open-hand strikes, the video indicates they're using closed hand strikes. Then as - after he's taken down, there is no mention of any more strikes in the reports; however, the video shows three more strikes."*



Investigator [REDACTED] testified that at the end of his investigation he found that CO [REDACTED] had violated the Sheriff's orders regarding, filing a false report and using excessive force against detainee [REDACTED]. Investigator [REDACTED] found that the Respondent had violated the Sheriff's orders on use of force and a false report.

On cross-examination by CO [REDACTED]'s counsel, Investigator [REDACTED] testified that he found that the Respondent completed the incident report regarding this matter (Exhibit 7) and that CO [REDACTED] did not complete an incident report nor was he required to complete one since the Respondent had already done so. He testified that in watching the video he did see an abrupt movement of the detainee's arm in a direction opposite the direction of the officers. He testified that the difference between CO [REDACTED]'s statement (Exhibit 10) and the video was in the video detainee [REDACTED] walks away from the officers and is grabbed by them as opposed to squaring up with the officers. Investigator [REDACTED] testified that he did not know if CO [REDACTED] had any previous use of force incidents. Investigator [REDACTED] identified the Investigation Initiation Form opening this matter for investigation by OPR as being dated August 20, 2012 (R Exhibit - [REDACTED] 2).

On cross-examination by the Respondent's counsel, Investigator [REDACTED] testified that he knew once the investigation was assigned to him that he was going to interview the Respondent and CO [REDACTED]. He was shown the watch commander's preliminary finding form (LV Exhibit 1) and identified it as being applicable to the incident involving the Respondent and CO [REDACTED]. The form identified the watch commander's, LT [REDACTED], findings as being "All officers acted in accordance with department policy." Investigator [REDACTED] said he did not interview Lt [REDACTED]. Investigator [REDACTED] was shown the video and was asked if he knew the security classification of the detainees in the video, he said that he did not. He testified that he did not interview detainee [REDACTED]. Investigator [REDACTED] testified that the Respondent prepared an incident report regarding the event with detainee [REDACTED] (Exhibit 7). He testified that he believed the report was prepared by CO [REDACTED] as it referred to the Respondent as CO Vukmarkaj and refers to himself as R/O. Investigator [REDACTED] testified that he did not show the video of the incident to the Respondent. Investigator [REDACTED] was shown a copy of the Respondent's response to resistance/use of force report (Exhibit 11). Investigator [REDACTED] testified that in section 41, the Respondent checked off the boxes related to the apparent level of risk on the form; checked off number of subjects present who were involved or may have become involved; checked off known history of violence by the subject; checked off nature and stability of the event, environment or location; under moving resister he indicated diffused-pressure Strike/Stun used; under low-level assailant that a close-hand strike/punch was used; in the narrative refers to several open-hand strikes; and in the final line said several strikes without defining if they were open or closed.

On re-direct examination, Investigator [REDACTED] testified that CO [REDACTED] never mentioned anything about being in fear of other detainees coming out of their cells and attacking them; he never mentioned anything about detainee [REDACTED]'s criminal background or gang affiliation; nor did he mention that use of force was used because the door to Bullpen NO 3 was opened.

The Sheriff rested its case.

CO [REDACTED] called [REDACTED] as a character witness before making an opening statement so the witness could be excused. [REDACTED] testified he was a sergeant with the CCDOC and had been for eight years. He was a corrections officer for 14 years prior to becoming a sergeant. Sgt [REDACTED] testified that he knew CO [REDACTED] and had worked with him

on a daily basis and considered him a good officer with no attendance or discipline issues. He had no knowledge of the underlying facts of this matter.

The trial was recessed until August 2, 2016, at 10:00 am, based on a conflict with some of the witnesses to include one of the Respondent's experts.

The trial resumed on August 2, 2016, with the Respondent presenting an opening statement.

██████████ testified that he was a sergeant with the CCDOC and had been so for three years. Prior to being promoted to sergeant Sgt ██████████ was a correctional officer for 17 years. Sgt ██████████ testified that he knew the Respondent and had supervised him in the past. He said the Respondent's overall work performance was excellent and he had a very strong work ethic. Sgt ██████████ testified the Respondent was never insubordinate and was never a discipline problem. He testified the Respondent was always fair to detainees.

On direct-examination by CO ██████████'s counsel, Sgt ██████████ testified that he had worked with CO ██████████ at different times. He testified in summary that he believed CO ██████████ was a good officer.

On cross-examination by the Sheriff, Sgt ██████████ testified that he had no knowledge of the incident involving the Respondent or CO ██████████

CO ██████████ testified that he had been employed by the CCDOC for a little over six years. He had also served in the U.S. Marine Corps for four years and then was honorably discharged.

CO ██████████ testified that he had use of force training while in the CCDOC training academy. He said prior to the incident involving detainee ██████████ he has never had to apply the use of force. He had never been a witness and had had to fill out a use of force report in the past. He had never been interviewed by OPR nor had he ever had any accusations by a detainee against him for use of force. CO ██████████ testified that he had prior discipline against him for attendance issues, he said they showed as no calls but they were actually late calls (R ██████████ Exhibit 3). The Officer Disciplinary History (R ██████████ Exhibit 3) showed on November 11, 2011, he received a reprimand for absent late call, which he successfully grieved and no discipline was imposed; on March 22, 2013, he was reprimanded for absent no call; on December 9, 2013, he was suspended one day for absent late call; and on December 20, 2013, he was suspended two days for absent no call. Co ██████████ testified he had no discipline pending against him.

Co ██████████ said he first encountered detainee ██████████ on August 19, 2012, at which time CO ██████████ gave detainee ██████████ certain commands that were followed by him. Co ██████████ testified that as time went on he noticed that detainee ██████████ was becoming agitated as he was waiting to see the medical staff for routine in processing. CO ██████████ knew detainee ██████████ was categorized with a "maximums" designation as a letter "M" was written on the back of his hand which was an indication to the other corrections officers that he could be a risk to be an aggressive detainee. CO ██████████ said because detainee ██████████ was yelling he moved him to another area and detainee ██████████ complied with his direction but kept yelling. CO ██████████ testified that detainee ██████████ began not complying with his direction and he asked the Respondent for assistance. CO ██████████ said detainee ██████████ began to pull away from him as



CO [REDACTED] is giving detainee [REDACTED] verbal commands to go in the overflow bullpen. CO [REDACTED] testified and pointed out on the video (Exhibit 1) that:

*"...At that point, he (detainee [REDACTED]) is refusing to go into the overflow bullpen at that point, and once he starts refusing to go in there, that's when we tried to gain control of him by, you know holding – by grabbing onto his arm. At that point, that's when he becomes as aggressive offender..."*

CO [REDACTED] testified the "we" was the Respondent and him. CO [REDACTED] said detainee [REDACTED] told them he was not going into the cell and kept saying so until they got into the altercation with detainee [REDACTED]. CO [REDACTED] said he initially tried to grab detainee [REDACTED] by the arm. CO [REDACTED] said this is when "...he (detainee [REDACTED]) became the aggressive offender and squared up with Officer Vukmarkaj and that's when the altercation happened." CO [REDACTED] described squared up as an aggressive, ready-to-fight-stance. CO [REDACTED] said detainee [REDACTED]'s fists were closed. CO [REDACTED] said he tried to grab detainee [REDACTED] which did not work, then "I gave him the open-hand strikes." CO [REDACTED] testified, "Initially they were open – and but the last one, which was a total of three strikes from myself, was a closed." CO [REDACTED] testified that he did not administer any more strikes to detainee [REDACTED] after these three. Once detainee [REDACTED] was on the ground, CO [REDACTED] said he did not see the Respondent deliver any strikes to detainee [REDACTED]. After the incident CO [REDACTED] testified that he made oral notification to Sgt [REDACTED]. CO [REDACTED] testified he prepared a use of force form (Exhibit 8), in which he described the subject's actions as being assailant, low-level, and imminent threat of battery. CO [REDACTED] said he used these terms based on detainee [REDACTED] starting to throw a punch at the Respondent. CO [REDACTED] testified that the Respondent assisted him in developing the narrative for the report. CO [REDACTED] said he completed an incident report regarding the incident (Exhibit 7).

CO [REDACTED] testified he did not hear anything further regarding this incident until he was interviewed by OPR two years later. He provided OPR a statement regarding the event (Exhibit 10). He did not mention the open-hand strikes to OPR because it was two years later and he was recalling the best he could. He testified that he thought most of the statement was accurate but he was not 100 percent sure about the strikes.

On direct-examination by the Respondent, CO [REDACTED] testified the Respondent gave detainee [REDACTED] verbal commands during the incident. CO [REDACTED] testified that when the detainee was holding on to the fence it was to keep from going down to the ground. He said when they were preparing the use of force report (Exhibit 8) the Respondent was not giving him orders on what to write he was sharing his knowledge of the incident.

On cross-examination by the Sheriff, CO [REDACTED] testified up until the time detainee [REDACTED] squared up with the Respondent he was a moving resister. CO [REDACTED] was asked if according to the Sheriff's Order on Use of Force (Exhibit 2) that if a detainee's a nonmoving or moving resister, that an officer cannot use mechanical direct mechanical strikes against the body? CO [REDACTED] testified, "It doesn't tell you not to, but it tells you that you're preferred to use the ones there." CO [REDACTED] admitted to using closed-hand strikes against detainee [REDACTED] in which a closed-hand strike would fall under the category of direct mechanical strikes against the body. CO [REDACTED] said he did not write that detainee [REDACTED] swung at the Respondent in the use of force report (Exhibit 8).

[REDACTED], Police Officer, Chicago Police Department (CPD), was called as an expert witness by the Respondent (Expert [REDACTED]). He testified that he had been with CPD for

17 years and was currently assigned to the CPD Education and Training Division for the last ten years as a use of force and control instructor. Prior to employment with CPD he was a corrections officer with the CCDOC for approximately five years.

Expert ██████ testified that the CPD uses the Desmedt use of force model which is the same one as used by the CCDOC. Expert ██████ detailed his curriculum vitae and resume (R-Exhibit 3), which was entered into evidence.

Expert ██████ testified that he reviewed the reports regarding CO ██████ and the Respondent's use of force; the videos of the incident with detainee ██████; and the Sheriff's General Orders.

Expert ██████ testified that in regard to CO ██████ he reviewed the video of the incident, his written reports, oral statement, the general orders of the Sheriff and prepared his opinion off them. Expert ██████ testified that in his opinion CO ██████ did not use excess force. He testified, "*I thought it was objectively reasonable due to the totality of the circumstances.*" Expert ██████ said he determined that CO ██████ employed three strikes against the detainee. Expert ██████ says he employees the Supreme Court standard in reviewing use of force ("objectively reasonable" is standard from Graham v Conner – not mentioned by expert).

Expert ██████ testified that he determined the detainee became an assailant against CO ██████ when he:

*"...ripped his arm away, threw his elbow strike, raising his arm his elbow was up high and he's throwing it at the officers, which would put them in fear of receiving a battery. Actions are aggressively offensive without weapons, likely to cause injury and that is a low-level assailant...it would entail using direct mechanical strikes. He could also use impact weapons. He could also use Taser, of which the Sheriff's Department doesn't have those inside due to the safety of the facility, so they are left with only direct mechanical strikes..."*

Expert ██████ testified the use of force was appropriate as, "*the subject displays actions of an assailant and the timeliness of the officer's use of force decision-making wasn't too early or too late, it was right on where they were supposed to be, and then they made their decision to use direct mechanical strikes on him, which is reasonable.*"

On direct examination by the Respondent's counsel, Expert ██████ testified that individuals under stress recalled less than those who were not under stress. He testified he had reviewed the reports and the video as they applied to the Respondent. His opinion regarding the Respondent was that "*he used objectively reasonable force*" during the incident. In Expert ██████'s opinion he characterized detainee ██████ as being either a level 1 and 2 of an assailant and was not at any point in time during the incident a cooperative subject. Additionally, he would not characterize detainee ██████ as ever having been a nonmoving resister during the time frames displayed on the video (Exhibit 1).

Expert ██████ testified, during the playing of the video, that none of the strikes used by the Respondent against detainee ██████ were excessive as the detainee was at the assailant level. He testified that even when the detainee was on the ground the strikes thrown by the Respondent were not excessive as the detainee was not controlled by the officers.



Once Expert ██████'s direct testimony was concluded, the trial was adjourned until August 29, 2016, based on the lack of time remaining and conflict in schedules. Once the trial resumed the Sheriff would begin cross-examination of the witness.

On August 29, 2016, the trial resumed with the cross-examination by the Sheriff of Expert ██████. Expert ██████ testified that he did not discuss his opinions with the Respondent's counsel prior to drafting his report. He testified that it was his belief the amount of force used by CO ██████ and the Respondent was reasonable given the totality of the circumstances and that he considered detainee ██████ an assailant under the Desmedt Model. He testified that once detainee ██████ was on the ground he was no longer an assailant.

Expert ██████ testified that the elbow strikes he referred to which was thrown by detainee ██████ is not referred to in either of the officer's reports or statements, it came from his observation of detainee ██████'s actions on the video (Exhibit 1). Expert ██████ said that he did not talk to either CO ██████ or the Respondent. He agreed that if the detainee was a moving resister and an officer used a direct mechanical strike it would be a violation of the Desmedt Model, no matter where the officer strikes the detainee on the body. Expert ██████ agreed there was nothing in either of the officer's reports indicating that detainee ██████ throwing a punch at any of the officers. He testified if a detainee was trying to get away from an officer that would make him a moving resister. Expert ██████ testified that when detainee ██████ was taken to the ground he moved down a category from an assailant to a moving resister. He testified that in his opinion the strikes thrown by the Respondent at detainee ██████ were appropriate as they were not direct mechanical strikes. Expert ██████ testified that if you are using assailant control options on a resister that would be excessive.

On redirect examination by the Respondent's counsel, Expert ██████ testified that his perception of detainee ██████ throwing an elbow strike was based on his review of the video and not from any communication with the Respondent.

The Respondent testified that he had been employed by the CCDOC for ten years and prior to that was a police officer for the City of Des Plaines, IL. He was also in the U.S. Marine Corps for six years and was honorably discharged in December 2008. The Respondent said he received use of force training from the CCDOC several times and he was familiar with the Sheriff's Orders on use of force and reporting procedures in addition to being familiar with the Desmedt Use of Force Model. The Respondent testified that he understands the difference between a closed-hand strike and an open-hand strike. He testified that he has used force on the job and has completed use of force/response to resistance forms in the past.

The Respondent was shown a package of information (R LV Exhibit 4) in which the top form was an OPR Officer Disciplinary History. The second entry was entitled OPR Investigation and dated October 18, 2013. It showed that he was suspended for 10 days with options that was sustained through a grievance that he filed. There was another entry ██████, for a two-day suspension for insubordination. He testified it says completed but denied that he ever served a suspension for it. The Respondent said he did file a grievance regarding the matter. The document also reflected a reprimand for inattention to duty on March 30, 2009 and a reprimand on November 14, 2014, for no holiday time that he was not asked about. The remainder of the package was an assortment of commendations, certificates and an accounting of his work hours.

The Respondent testified that he first encountered detainee ██████ on August 19, 2012, when he noticed detainee ██████ was involved in a discussion with CO ██████. He testified

that he attempted to assist CO [REDACTED] in escorting detainee [REDACTED] when the detainee broke away from them. The Respondent said detainee [REDACTED] swung his arm towards him and he perceived it as being an immediate threat to his safety from detainee [REDACTED]. The Respondent was shown the video of the incident (Exhibit 1) and testified he made contact with detainee [REDACTED] and was giving him verbal commands in an attempt to escort him toward the bullpens.

The Respondent testified that when detainee [REDACTED] swung his arm toward him:

*"...I perceived it as him swinging his right arm in a way as to strike myself, be it either with his hand or his elbow, but made a wide swing towards myself and in a close proximity...I as it goes forward, I had responded by using a defense strike after he attempted to strike myself..."*

The Respondent testified the incident with the detainee [REDACTED] concluded after he was placed in handcuffs. He testified after his initial strike on detainee [REDACTED] he did use some additional strikes but he could not recall how many. He was asked if they were open-hand or closed hand strikes. The Respondent testified, *"After the initial closed, they were open-hand strikes to the chest-shoulder area and the solar plexus rib cage area."*

The Respondent testified that detainee [REDACTED] would not let go of the fence so he delivered multiple strikes to the detainee's solar plexus rib cage area to disrupt his grip. He testified the blows were not meant to injure the detainee and cause tissue damage but were delivered as a stunning technique. He testified that detainee [REDACTED] was taken to the ground and in an attempt to gain detainee [REDACTED]'s compliance in controlling his arms to be handcuffed he said,

*"...I had delivered I believe it was three stunning blows to his shoulder area, his rear shoulder area. They were used as a diffused pressure strike, kind of like a hammer, so it wasn't the knuckle, I wasn't bearing down with the knuckle area, it was more like the side of the hand and it was like a loose strike to the shoulder..."*

The Respondent testified after the incident, he completed a response to resistance report (Exhibit 11). He testified to checking certain blocks on the form or writing certain information on it. He testified that in Section 40, subject's actions, under moving resister he had pull away checked off *"because inmate [REDACTED] pulled away, he pulled out of my escort grip."* He checked creates space between the officer's reach and self, *"Because inmate [REDACTED] after he pulled away, he then continued to walk out of my control area and kind of furthered the distance from myself and him."* The Respondent testified that he checked off assailant, low level, threat of battery, *"Because with inmate [REDACTED], with his physical posturing, the – everything with his clenching of the fist to the physically pulling away from myself, breaking my grip, and, more specifically, the swing of his arm in close proximity of myself, I was in fear of a battery, I was afraid inmate [REDACTED] was going to – that he was trying to strike me – or I should say attempt to strike."* He testified that he checked the seriousness of crime committed by subject he was referring, *"That would be aggravated battery – or, I'm sorry the aggravated assault that he had committed against myself, that would be him attempting to strike me."* The Respondent testified that under Officers Response, non-moving resister, he checked off three boxes, Officer presence, Verbal commands and escort holds and then under moving resister, diffused-pressure, strike stun which he said, *"That would be a – so a diffused-pressure strike, a stun, that would be, for our example, for this incident, was my open-handed strike and my diffused strike that was delivered from the side of my hand to inmate [REDACTED]'s shoulder area."* He testified that he had the closed hand-strike punch checked in the low-level category as, *"that would be*



*referring to the first initial strike that I delivered to inmate [REDACTED] immediately after him attempting to strike me.” The Respondent testified that he did not indicate anywhere in his narrative any language that he issued a closed hand-strike. He testified, “again it was based off my best recollection doing this report immediately after the incident. Also, not having the privilege at the time of being able to review any video evidence, it was based off of what I could remember immediately after that.”*

The Respondent said he was involved in use of force incidents before and after the even with detainee [REDACTED]. He testified that when he was interviewed by OPR he was unable to recall the incident with detainee [REDACTED] without the benefit of the video. He testified that he could not recall how many strikes he issued against detainee [REDACTED]. He said that he did not issue any strikes once detainee [REDACTED] was in handcuffs. He testified that he did not complete an incident report as, in accordance with the general order, only one officer was required to submit one and that was CO [REDACTED]

CO [REDACTED]'s counsel had no direct examination questions for the Respondent.

On cross-examination by the Sheriff, the Respondent testified that he had three prior use of force incidents prior to the incident of August 2012 and half a dozen or so since the incident. He testified in one of the other use of force incidents by him he was hit in the head by a swing from an inmate. He testified the use of force he used was an emergency take-down. He could not recall if he threw any strikes at the detainee in that incident which he believed was “somewhere in 2010.”

The Respondent testified that during the incident with detainee [REDACTED] detainee [REDACTED] did not make any verbal threats towards CO [REDACTED] or the Respondent. The Respondent testified that detainee [REDACTED] “bladed up” towards him and swung his arm in his direction which caused the Respondent to respond with a direct mechanical strike. He testified all the other strikes he threw were open-handed strikes. The Respondent testified that he had written at least six use of force incident reports while assigned in Division 9 and at least four prior ones for a total of ten use of force reports during his career. The Respondent testified that he did not write in his report (Exhibit 11) that detainee [REDACTED] took a swing at him, or that detainee [REDACTED] threw a punch at him or swung his elbow at him. He testified that throwing a punch at an officer was a big deal but he did not include anything about it in the narrative of his report. The Respondent testified at OPR he that he was given the opportunity to review the CCDOC use of force reports, incident reports and a photo of detainee [REDACTED] at the time of the interview. He testified that at the time of the OPR interview he had no recollection of the incident.

On re-direct examination, the Respondent testified that he could not recall if he was given the opportunity to make any changes to his statement at OPR.

After a discussion between the parties if there was a an additional video that was not produced to the Respondent based on his recollection of a video that was shown at the Loudermill hearing, the Respondent and CO [REDACTED] counsel said they were not making an issue of it not being available.

The Respondent rested and both parties 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 August 19, 2012, incident (Exhibit 1); and the supporting evidence that the Respondent used excessive force, was less than credible in his testimony and inaccurate in his written reporting of the event (Exhibit 11). The video shows that inmate [REDACTED] was hit with a closed fist by the Respondent at least one time when he was moving away from the Respondent as a moving resistor. The detainee was taken to the ground by the Respondent and CO [REDACTED] and was struck three times by the Respondent with at least one blow being with a closed fist. The detainee, who at most was a moving resistor, did not fit the category of becoming an assailant. There is a lack of evidence that the detainee became an assailant by making an aggressive move against the Respondent, through the swinging of his arm, throwing a punch or throwing an elbow strike. A reasonable person would believe that if any of these actions were true regarding detainee [REDACTED], that they would have been noted or otherwise documented in the Incident Report prepared by CO [REDACTED] (Exhibit 7), and on the Response to Resistance Use of Force Forms that were jointly prepared by the Respondent and CO [REDACTED] and separate copies were signed by each of them (Exhibits 8 & 11). The Response to Resistance and Use of Force forms prepared by each of the officers contained almost the same verbatim narratives (Exhibits 8 & 11) regarding the incident on the date of the incident and were prepared shortly after the incident occurred. It was only after being interviewed by OPR on April 4, 2014, did CO [REDACTED] state that detainee [REDACTED] raised his arm back as if he were going to strike the Respondent (Exhibit 10). The Respondent claimed to OPR that he had no memory of the incident with detainee [REDACTED] when he was interviewed on April 7, 2014 (Exhibit 12).

The Board recognizes that the safety of the correctional officers is paramount to successfully executing their duties and the mission of the CCDOC and the use of force may be required, authorized, and the appropriate action to take; however, in doing so it is a necessity for the correctional officers to properly follow their orders/procedures, training and to deescalate when necessary and appropriate. Once force is used, it is incumbent on all participants to accurately and fully report the facts of the use of force. The Respondent and others did not fully report the events regarding the use of force applied against detainee [REDACTED].

Although CO [REDACTED] was tried together with the Respondent, he resigned after the trial, which removed the Board from having any further jurisdiction regarding his conduct.



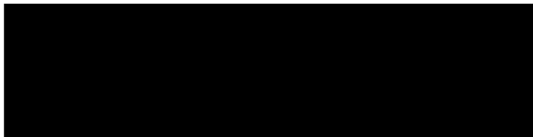
**Conclusions of Law**

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 Leka M. Vukmarkaj, Star Number 8988, CCDOC, did violate Sheriffs Order 11.2.1.0, Section II, Section V, E, Section VII, A, B, C and E, Section X A 5, 6 and 7 and Section XIII A, B, C; General Order 24.9.1.0, Sections II and VII, A1-2, C and F-2 and Section VIII; General Order 3.8, Sections I and III, A4, D2; General Order 4-1, Section III, A17-18; and Article X, Paragraph B-3, of the Rules of the Cook County Sheriff's Merit Board.

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Leka M. Vukmarkaj, be and is separated from employment with the Cook County Sheriff's Office effective March 13, 2015.



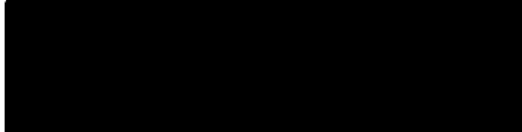
**James P. Nally, Chairman**



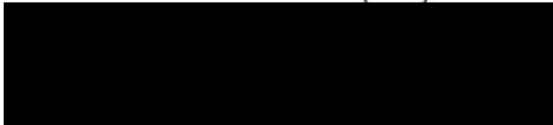
**Vincent T. Winters, Board Member**




**Byron Brazier, Vice Chairman**



**Kim R. Widup, Board Member**



**Gray Mateo-Harris, Board Member**



**Patrick Brady, Board Member**



**John J. Dalicandro, Secretary**

Dated:

August 22, 2017