

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)	
)	
vs.)	Docket # 1800
)	
James R. Anderson)	
Cook County Deputy Sheriff)	

DECISION

THIS MATTER COMING ON to be heard pursuant to notice, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction:

The Respondent's, James R. Anderson, (hereinafter "Respondent") position as a Cook County Deputy Sheriff 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 and 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 Amended Complaint and Notice of Hearing and appeared before the Board to contest the charges contained in the amended complaint; and
The Board has heard the evidence presented by the Sheriff and the Respondent, and evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background:

By complaint dated January 26, 2015, the Cook County Sheriff Thomas J. Dart sought to impose a ninety (90) day suspension of Respondent. The complaint alleges that Respondent on September 23, 2013 at approximately 9:35 AM while on duty at the Transportation Unit of the CCDOC used excessive force against a detainee, [REDACTED] by striking him in the head with an open hand. The detainee The complaint alleges that this violated several rules and regulations of the Cook County Sheriff's Department, and the Cook County Sheriff's Merit Board, specifically: Sheriff's Order 11.2.2.0 II, VA1, VB 1, 2, 4 and 6, VIII A, B and C, Sheriff's Order 11.2.1.0 II, V E and VII A, B, E, X A 6 and 7, XIII A, B, and C, Sheriff's Order 11.2.20.0 II, III, and VI A2 and D3, and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B 3.

Issues Presented: Whether the actions of the Respondent violated any of the General or Sheriff's Orders or Merit Board Rules set forth above and what if any discipline is appropriate if a violation occurred.

Resolution of Issues Presented: The Merit Board finds that a violation of Sheriff's Order 11.2.2.0 II, VA1, VB 1, 2, 4 and 6, VIII A, B and C, Sheriff's Order 11.2.1.0 II, V E and VII A, B, E, X A 6 and 7, XIII A, B, and C, Sheriff's Order 11.2.20.0 II, III, and VI A2 and D3, and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B, did not occur.

Findings of Fact: Evidentiary hearings were held on January 20, 2016 and February 8, 2016 at the Cook County Administration Building, 69 West Washington Street, Room 1100, Chicago, Illinois before James P. Nally. Present were Petitioner by counsel and Respondent by counsel. Two witnesses testified for the Sheriff: [REDACTED] and [REDACTED]. The Respondent testified on his own behalf and called [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as witnesses.

Sheriff Exhibits 2-7 and Respondents Exhibits 5, 7, and 9-12 were admitted into evidence.

Evidence:

Witness [REDACTED] testified that she is currently employed as an Investigator for the Cook County Sheriff where she gathers evidence facts and documents to either prove or disprove an allegation. Witness testified that she in 2014 she investigated a grievance filed by [REDACTED] [REDACTED] alleging excessive use of force by Officer [REDACTED]. Witness testified that she interviewed detainee [REDACTED] and Respondent as witnesses and Officer [REDACTED] as the accused. Witness testified that she interviewed Officer [REDACTED] and learned at that time that there was video of the incident. She stated that after the interview of Officer [REDACTED] she obtained and reviewed the video. Witness testified that after viewing video of the incident she again interviewed Respondent as an accused and he was informed of the allegations against him. Respondent signed a statement describing the incident that occurred on September 23, 2013. Witness testified that after conducting the interviews and viewing the video of the incident she made a finding sustaining the allegations. On cross examination the Witness testified that when assessing whether or not an officer has used excessive force, you must look at the totality of the circumstances. Witness testified that she would be required to consider the "Presence of victims or potential victims in the area", an officer's "Reasonable belief of harm to another or self," the "Nature and stability of the event, environment, or location," and "The number of subjects/officers.". The witness testified that there were 22 detainees on the bus, 9 of whom were maximum security and the two unarmed Cook County correctional officers. Additionally, the Witness testified that she would be required to consider the "Amount of time available to reasonably establish control." available to the officer. The Witness testified that by General Order definition, the detainees were not restrained from movement. The Witness testified that, in her opinion, the detainees were "walking backwards to their seats" and "weren't offering any resistance". The Witness testified that detainee [REDACTED] had his hands up in "a defense mode" as Respondent approached him. Witness testified that in his interview Officer [REDACTED] informed her that he heard Respondent give the detainees verbal commands to sit down and that detainees did

not obey. Witness stated that she reviewed reports from Lieutenant [REDACTED] and Sergeant [REDACTED], Respondent's supervisors in which they found no use of excessive force. On redirect the Witness testified that she focused her investigation on the point that the use of force occurred and that what occurred after on the video did not necessarily support her conclusion to sustain the use of excessive force because there was no force used after that point.

Witness [REDACTED] testified that his last place of employment was as Warden of the Illinois River Correctional Center. Witness testified that he started in corrections in 1983 as a correctional officer and held various positions such as Correctional Lieutenant, Correctional Captain, Statewide Tactical Commander, Superintendent and, finally, as Warden when he retired in 2015. Witness testified that he was involved in writing use of force programs, evaluating tapes of use of force incidents and evaluating excessive force incidents. Witness stated that he has testified in review board hearings as a management rep and as a hearing officer hearing the testimony. Witness was tendered and accepted as an expert witness. Witness testified that his opinion was that at the point Respondent used the open hand strike on one of the detainees that the fight was actually over and that his force at that point was excessive. Witness stated that he based his opinion of the documents provided to him and the Integrated Use of Force Model. Witness stated that he reviewed the reports in the record and viewed the video of the incident when producing his report. Witness testified that it appeared to him that when Respondent enters the gate of the bus that the two offenders involved in the attack were actually retreating to where they came from at the back of the bus. The Witness testified that the open hand strike delivered to the detainee by Respondent occurred two seconds after the fight between the three detainees had ended. Witness testified that he did not observe any of the inmates attempt to swing at Respondent. Witness testified that during the incident Respondent's physical being was place in harm at some point. Witness testified that he would classify detainees [REDACTED] and [REDACTED] as being in the Assailant category in the Integrated Use of Force Model because they are aggressively offensive without weapons. Witness testified that once the detainees disengaged from their assault on the third detainee that they would then be classified as Cooperative Subjects because, "their force has dropped down, they're no longer in the fight, they're actually retreating back to where they came from." The Witness testified that at the time of Respondent's open hand strike to detainee [REDACTED]'s head he would classify detainee as a Cooperative Subject and an appropriate response from Respondent would be verbal direction or just presence. On cross examination the Witness testified that he was not aware of the total number of detainees on the bus, he was not aware that the detainees' jumpsuits were color coded to indicate security risk, he was not aware how many detainees on the bus were considered maximum security risks, he was not aware how many detainees on the bus were considered medium security risks, and he was not aware of the security status of either [REDACTED] or [REDACTED]. Witness testified that his estimate of the total time from the beginning of the incident until the detainees had been seated by Respondent was, "Probably a minute and a half maybe." Witness was allowed to review the tape and testified that the incident lasted 33 seconds. Witness testified that the time in which an officer has to act or respond does play a part in trying to evaluate whether force they use is excessive or reasonable. Witness testified that he did not know what, if any equipment Respondent carried with him on that day. Witness stated that he did not request that this information be provided. Witness testified that the detainees did not respond to Respondent's commands to sit down as they retreated to the back of the bus. Witness stated that detainees do not have to be assailants for an officer to use low pressure impact and that they can be a moving

resister. Witness was asked, "Now, if a person is a Moving Resister, going back to Sheriff's Exhibit No. 7, which is the Integrated Use of Force Model, the appropriate officer reaction, which is a Probable Logical Control Mode, allows for low pressure impact, is that correct?" Witness responded, "Yes." Witness was asked, "And that's exactly what Officer Anderson (Respondent) used, which is an open hand stun, it's a low pressure impact, correct?" Witness responded, "Correct."

The Sheriff rested and the Respondent presented his case.

The Respondent testified that he is currently employed by the Cook County Sheriff's Department as a transportation officer. He testified that he has been a transportation officer for the last 13 years. He testified that he started with the Sheriff's Department in 1991. Respondent testified that he was working with his partner Officer [REDACTED] on September 23, 2013 and that they have been partners for 12 years. Respondent testified that on the 23rd he and his partner were transporting approximately 20 prisoners by bus to their court dates. Respondent testified that the detainees were dressed according to security level with general population detainees in brown, juvenile detainees in green, detainees dressed in yellow signifying maximum, protective custody. Respondent stated that some detainees were handcuffed individually with their hands cuffed in front and some were handcuffed together right hand to right hand. Respondent testified that the detainees are not restrained to the seat once they are placed on the bus. Respondent stated that the bus stopped at the Central Kitchen to pick up lunches for the detainees on the bus. Respondent stated that he stopped the bus and Officer [REDACTED] exited the bus to retrieve the lunches. Respondent testified that while sitting in the driver's seat he observed through the rearview mirror two maximum security detainees leave their seats and move towards the front of the bus. Respondent stated that he ordered the detainees to sit down but they continued to walk forward. Respondent stated that he used his radio to notify his sergeant that there was a fight and to come in person. Respondent testified that he called Officer [REDACTED] back to the bus and yelled to him that detainees were fighting. Respondent stated that he could see three inmates fighting through the gate. Respondent stated that the two maximum security detainees were yelling and punching a detainee that was sitting in the front seat next to the security gate. Respondent stated that he stood and stepped to the gate and waited for Officer [REDACTED] to get on the bus. Respondent stated that when Officer [REDACTED] got on the bus he used his keys to remove the padlock from the gate and entered the rear of the bus. Respondent testified that he was still giving the detainees verbal commands to sit down but the two detainees remained standing. Respondent testified that the detainees were facing him and still standing and facing him. Respondent stated that he then used an open hand stun on the first detainee striking him on the side of the head. Respondent stated that the first detainee did not sit down and he pushed him into a seat and turned to the second detainee. Respondent stated that he then delivered an open hand stun to the second detainee who was still standing and facing him. Respondent testified that the second detainee blocked his open hand stun because he had his hands up and that he then pushed him into a seat. Respondent testified that the two detainees were both seated but not in their original seats. Respondent testified that once the detainees sat down he started to walk away but that they started to stand up again and he told them to sit down. Respondent stated that he did not strike the detainees because they were sitting down. Respondent turned around and pulled the third detainee who was the object of the assault off the bus and waited for the sergeant to come. Respondent stated that the first two detainees were removed from the bus by Officer [REDACTED].

Respondent testified that when Officer [REDACTED] returned to the bus they proceeded to deliver the remaining detainees to Markham and Bridgeview court houses. Respondent testified that upon returning to the bus yard around 12:00 pm that he wrote his reports about the incident. Respondent stated that from the time he saw the two detainees attack the third detainee until the time that he got them to sit down was 7 or 8 seconds. Respondent testified that at the time he struck the first detainee he was familiar with the General Orders that accompany the Use of Force Model and that at the time he considered the detainee a moving resister or active resister. Respondent testified that at the time he attempted to strike the second detainee that the detainee had his hands up and that he considered him a low level assailant. Respondent stated that he did not use excessive force with regard to either detainee. On cross examination Respondent testified with regard to the incident report that he prepared following the incident, the disciplinary reports prepared for each detainee and his Response to Resistance/Use of Force form. Respondent stated that he was trained in and familiar with the Integrated Use of Force Model used by the Sheriff's Office and that he described the first two detainees as moving resisters because they were moving to avoid physical control. Respondent testified that the physical control that they were attempting to avoid was his order for them to sit down. Respondent, when asked, "And the definition of the cooperative subject is "Regardless of risk posed, a subject who complies with the officer's appropriate verbal direction, non-verbal cues, or social presence," correct?" responded, "Correct." On redirect the Respondent testified as follows:

Q. Now, going back to Exhibit 8, which is the Response to Resistance Form, on the side of the report - - the form itself where it says "Risk Factors"?

A. Yes.

Q. There is in the middle of that form preprinted language which says "Presence if victims or potential victims in the area" as a risk factor, correct?"

A. Yes.

Q. So who were the victim or victims that were still at risk when you came in and attempted to, I guess, defuse the situation?

A. It would be me and my partner then.

Respondent testified that when he gave the order to the two detainees to sit down they did not sit down but backed away from him while facing him and that it was at that point that he struck the first detainee. Respondent stated that when he attempted to strike the second detainee he was still standing and was facing Respondent. Respondent testified that there were other detainees on the bus and that he and Officer [REDACTED] were outnumbered approximately 10-1. Respondent stated that the other detainees were yelling.

Witness [REDACTED] testified that he is currently employed by the Cook County Sheriff's Office and that he is presently in his 25th year. Officer [REDACTED] testified that he works as a transportation officer and has been in that assignment for the last 12 years and that Respondent has been his only partner for that entire period. Officer [REDACTED] testified that on the day of the incident he was working with Respondent to transport detainees to several courthouses when two detainees attacked a third detainee. Officer [REDACTED] testified that he heard Respondent order the detainees to stop fighting, entered the rear of the bus behind Respondent and ordered the detainees to stop fighting as well. Officer [REDACTED] stated that the detainees did not sit down and

that he saw Respondent throw a stun punch but did not see the punch strike the detainee as he was behind Respondent and he was also looking around because of the other detainees. On cross examination Officer [REDACTED] testified that he “had no impact or firearms”.

Witness [REDACTED] testified that he is a retired Chicago Police Officer of 42 years currently working two jobs, one of which is with the Chicago Fraternal Order of Police, Lodge 7 as a field representative for police involved in shooting situations. Witness testified that he also worked for Street Crimes Training Program putting on seminars for small to mid-sized police departments across the country. Witness testified that both jobs mandate him to know use of force issues. Witness testified that while with the Chicago Police Department he was trained on the use of force model that is the same one used by the Sheriff’s Office. Witness testified that while with the Chicago Police Department he was a supervising sergeant with the responsibility for investigating the use of force by officers under his command. Witness estimated that he had reviewed 100, maybe 200 incidents. Witness testified that as a commanding officer he also was responsible for reviewing reports and making determinations submitted by subordinate police officers with respect to their potential alleged use of excessive force. Witness testified that as a lieutenant and commander he dealt with in excess of 1,000 use of force reports from officers. Witness stated that he filed complaint registers against officers for use of force and forwarded reports of use of force to Internal Affairs, the Independent Police Review Authority or Office of Professional Standards. Witness testified that in 2013 he attended the Force Science Institute at Minnesota State University and was certified as an analyst in the use of force. Witness stated that he was qualified as an expert in the use of force for testimony five times. Witness was tendered and accepted as an expert witness. Witness testified that he was provided the material produced through discovery in the matter and the video of the incident and the follow up interviews of the “two offenders and a victim in this case.” Witness stated that he was also provided the Integrated Cook County Use of Force Model, the Cook County Sheriff’s Use of Force Order and another tied to the use of force involving restraints. Witness testified as follows:

Q. Now, tell us first what your opinion was with respect to whether or not Officer Anderson used the proper amount of force for an incident that we asked you to review on September 23rd.

A. My review of this incident, review of all the information that I was given, the videos, the reports, my opinion is that Officer Anderson used proper force, in fact, he used minimal force that he could have used during this situation. My opinion is also he did not violate any policy, orders of the Cook County Sheriff’s Office.

Witness testified, “During the incident where Officer Anderson and Officer [REDACTED] were present, at no time in there while the officers were present at no time did they fit the definition of a cooperative subject.” Witness testified as follows when asked about his opinion of the situation when Respondent approached the detainees:

Q. So you considered in your expert opinion based on all of the evidence and your experience that that incident was not over, is that correct?

A. It was not over.

Also,

Q. - - - you hear Officer Anderson give verbal commands.

A. Yes, I do.

Q. And the verbal commands are important to you?

A. Very important.

Q. And why is that?

A. Because he is giving them direction, giving them orders, and the inmates at the time are not compliant with the orders being given...

Also,

Q. And would you consider - - and did you hear yelling coming from [REDACTED]?

A. Definitely.

Q. And would you consider that to be part of the ongoing fight?

A. Most definitely.

Q. Why is that?

A. Because Mr. [REDACTED], you know, was the verbal agitator in this incident. He didn't physically go after the other - the other offender inmates, but he was the agitator verbally. He was - - at that point early before that and still at that point when the officers are closing the gap on the two offender inmates, Mr. [REDACTED] was loudly taunting and threatening the two inmates, the two offender inmates. That incident was not over, had not deescalated enough to say it's over, and in fact with this taunting and threatening, making threats, that incident was escalating at that point.

The Witness testified that the officers were outnumbered, there was immediacy of danger, there was distance from the subject present, known history of violence by subjects, presence of victims or potential victims in the area, reasonable belief of harm to another or self, nature and stability of the event, environment, or location, and the amount of time available to reasonably establish control as factors from Sheriff's Order 11.2.1.0 that were met in the incident justifying Respondent's use of force. Witness testified that under the portion of 11.2.1 that prevents an officer from using force on a handcuffed individual in certain circumstances that the order states "handcuffed and non-combative" and the detainees were combative and under that definition the use of force is justified. Witness testified that the video of the incident shows Respondent's attempt to strike the second detainee and the detainee raise his hands and block the strike. Witness stated that the detainee fits the definition of an assailant under the Use of Force Model at that time. On cross examination the Witness testified that the detainees had approximately a second to respond to the commands given. Witness stated that more than once second would not necessarily be needed for the detainees to comply with the commands given. Witness testified that he agreed that the Sheriff's General Order read as follows when describing the "totality of circumstances", "That it describes the facts and circumstances confronting the officer at the time that the force is contemplated or used, correct?" On redirect the Witness agreed that the Totality of Circumstances also includes the Use of Force Model and further states, "The Model cannot account for all factors constituting a totality of circumstances by which a specific use of force is

evaluated. The Model is to be used only in conjunction with Federal law, Illinois law, case law, directives, and training.”

██████████ and ██████████ were called as character witnesses on behalf of the Respondent, who testified credibly as to the good reputation of the Respondent.

Findings:

The Board finds that the evidence shows that Respondent did not violate Sheriff's Order 11.2.2.0 II, VA1, VB 1, 2, 4 and 6, VIII A, B and C, Sheriff's Order 11.2.1.0 II, V E and VII A, B, E, X A 6 and 7, XIII A, B, and C, Sheriff's Order 11.2.20.0 II, III, and VI A2 and D3, and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B. The testimony of the witnesses, as well as the videotape evidence of the incident, clearly show that the Respondent acted appropriately under the circumstances and within the General orders and Sheriff's orders governing use of force, as well as within the parameters of the use of force model. In particular the Respondent and Officer ██████████, his partner, are found to be extremely credible in their testimony and description of the circumstances. Further, the testimony of the Sheriff's witnesses did not necessarily fail to support the account of the Respondent, and the expert witness ██████████, called by the Respondent, demonstrated through his background and experience that on reviewing all the evidence including the videotape, the actions of the Respondent were justified under the circumstances.

Conclusions of Law: Based on the evidence presented, and after assessing the credibility of witnesses and the weight given to the evidence in the record, the Merit Board finds that the Respondent did not violate Sheriff's Order 11.2.2.0 II, VA1, VB 1,2,4 and 6, VIII A, B and C, Sheriff's Order 11.2.1.0 II, V E and VII A, B, E, X A 6 and 7, XIII A, B, and C, Sheriff's Order 11.2.20.0 II, III, and VI A2 and D3, and the Rules and Regulations of the Cook County Sheriff's Merit Board, Article X paragraph B.

Order: Wherefore, based on the foregoing, it is hereby ordered that the Respondent James Anderson is found to be not guilty of any of the charges brought against him in this cause, and should not be suspended without pay for a period of ninety (90) days.

[Redacted]

James P. Nally, Chairman

[Redacted]

Byron Brazier, Vice Chairman

[Redacted]

Kim R. Widup, Board Member

[Redacted]

Gray Mateo-Harris, Board Member

[Redacted]

Jennifer E. Bae, Board Member

[Redacted]

John J. Galicandro, Secretary

[Redacted]

Patrick M. Brady, Board Member

[Redacted]

Vincent T. Winters, Board Member

Dated October 20, 2016