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March 23, 2015
DEPARTMENTAL ORDER OF DISCIPLINARY ACTION
Case No. P2014-0340

CHOICE JOHNSON (P03021)
Officer in the Classified Service
of the Denver Police Department

This is before the Executive Director of the Department of Safety to approve, modify or disapprove the Chief of Police's Written Command ordering disciplinary action for Officer Choice Johnson. The Chief has determined that Officer Johnson violated RR-306, Inappropriate Force, of the Denver Police Department Operations Manual, when he shoved a bar patron to the ground while working on an off-duty assignment in a LoDo bar. The Written Command determined that this was a Conduct Category E violation and imposed a penalty of thirty (30) suspended days without pay for this rule violation.

On July 26, 2014, Officer Johnson was working off-duty at the 1UP Bar located at 1925 Blake Street, in Denver, Colorado. The complainant, Brandon Schreiber, was at the bar with other friends and relatives, for his brother, Matthew Schreiber's, bachelor party. At approximately 11:30 p.m., Matthew Schreiber, who was sitting at the bar, fell asleep or passed out from drinking to excess. A glass of water was next to him. The bar had two security guards, Justin Dellinger and Matthew Roland, working that evening as well. Mr. Dellinger woke Matthew Schreiber up and told him to finish the water so that he could leave. He told Mr. Dellinger that he was going to take his time. The security guards were escorting him out of the bar and, when he was near the gated exit, Mr. Dellinger told Matthew Schreiber to finish the water quickly. Matthew verbally challenged him. At this point, Officer Johnson, who was observing this exchange, took the glass of water from him and escorted him out. Officer Johnson placed Matthew Schreiber in handcuffs and called for a transport vehicle to take him to detox.

While the complainant was closing the tab with the bar, his cousin, Nate Meyer, informed him that Officer Johnson had Matthew Schreiber in custody and that they were outside the bar. When the complainant went outside, he saw his brother in handcuffs and tried talking to Officer Johnson about his brother's predicament. According to the complainant, Officer Johnson was very short and rude and would not discuss the matter with him. The complainant acknowledged that he had consumed several drinks prior to his contact with Officer Johnson. In his statement to Internal Affairs, the complainant said he felt that he had to stand up for his brother and wasn't going to let his brother, who never gets into trouble, go to detox on the night of his bachelor party. He said that the more he "rehashed the issue" with Officer Johnson, the more Officer Johnson became "pissed off." The complainant indicated that the conversation he was having with Officer Johnson became heated and acknowledged that he might have said that the situation involving his brother

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"was ridiculous." The complainant stated that the next thing that he remembered was Officer Johnson "thrusting" at him, "with his hands straight to his neck" and then "being thrown to the ground," and, after a brief struggle, being arrested.

Matthew Schreiber told IAB that once they were outside the bar, Officer Johnson handcuffed him and told him he was going to detox. He indicated that, soon thereafter, his brother, the complainant, came out of the bar and told Officer Johnson, "Whoa, what's going on?" He stated that Officer Johnson would not talk to the complainant and instead told him to leave. Matthew Schreiber indicated that the complainant would not leave and when he put his hand up to get Officer Johnson's attention and started to talk to him, Officer Johnson "used both of his hands to shove Brandon in the chest" knocking him down to the ground.

Mr. Meyer told IAB that, as he and others were preparing to leave the bar, he noticed that Matthew Schreiber was in handcuffs and the complainant was paying the bar tab. He stated that he and the complainant walked out of the bar and went over to where Officer Johnson had Matthew Schreiber. Mr. Meyer indicated that he and the complainant told Officer Johnson that they wanted to ride their bikes home but that Officer Johnson displayed "a real short temper," was "verbally aggressive" and "threatened to take Mr. Meyer to detox." He stated that he was pleading with Officer Johnson to let Matthew Schreiber leave with them, and then was getting ready to leave the area when it became obvious to him that Officer Johnson was determined to take Matthew Schreiber to detox, no matter what was said to him. Mr. Meyer indicated that as he was getting ready to leave, he saw Officer Johnson leaning against the wall of the bar, texting or "doing something on his phone," when suddenly, Officer Johnson circled around Brandon and "tackled him right onto the stairs." Mr. Meyer indicated that he called 911 after Officer Johnson tackled Brandon onto the steps and indicated that Officer Johnson picked the complainant up and slammed him back down onto the ground. Mr. Meyer stated that Officer Johnson kept telling the complainant to quit trying to stand up.

Mr. Roland, one of the bar's security guards, told IAB that he escorted Matthew Schreiber from the bar because he was intoxicated and that at the door, he was detained by Officer Johnson because "he continued to be a problem." Mr. Roland indicated that the complainant began to "harass and verbally berate" Officer Johnson and was telling another person to call 911 "on Officer Johnson." Mr. Roland stated that this behavior continued "in spite of multiple warnings." Mr. Roland indicated that it was his impression that Officer Johnson had concluded that the complainant "needed to go to detox as well." Mr. Roland indicated that the complainant had threatened "to come after Officer Johnson's career for deciding to take [his brother] to detox." Mr. Roland stated that the complainant "was making a scene and trying to cause a crowd to gather and get on board with them and video tape the situation." He stated that Officer Johnson "detained [the complainant] after taking him to the ground" and that the complainant "continued to be hostile and aggressive until the arrival of other officers." Mr. Roland indicated that he had heard "from other guards and Officer Johnson" that Officer Johnson had told the complainant that he was going to detox and to put his hands behind his back, but the complainant said "something like, 'I'm not going fucking anywhere,' so Officer Johnson took him down." Mr. Roland stated that "right before Officer Johnson took [the complainant] down, [the complainant] was in Officer

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Johnson's face posturing." Mr. Roland described what he meant by "posturing" to include that the complainant had his "shoulders forward, chin up and [acted] arrogant, [and was not displaying]... a submissive or compliant stance."

Officer Johnson prepared a written statement and subsequently was interviewed by IAB. In his written statement, Officer Johnson indicated that the complainant came out of the bar and went to where Officer Johnson was waiting for transport to take Matthew Schreiber to detox. Officer Johnson indicated that the complainant approached to say that he wanted his brother released. Officer Johnson stated that he told the complainant several times that his brother was going to detox. According to Officer Johnson, the complainant "became verbally abusive" and indicated that he "would run with his brother." Officer Johnson stated that he told the complainant to leave several times but he "refused and continued to curse" at him. Officer Johnson indicated that "due to his level of intoxication and his refusal to comply with verbal direction," the complainant was told that he could leave or be sent to detox. Officer Johnson stated that the complainant continued to refuse to leave so he told him to "turn around and be handcuffed for detox." According to Officer Johnson, when the complainant refused this order, he stepped in front of the complainant. Officer Johnson stated that the complainant "pushed his chest out in a defensive manner and told him to "get the fuck away" and not to "touch him." Officer Johnson indicated that he pushed the complainant back and the complainant fell over steps behind him. Officer Johnson stated that he was "on top of [the complainant] trying to gain control."

Officer Johnson told IAB that when the complainant approached and wanted his brother released, he told the complainant that his brother was going to detox and provided information about how he could be contacted there. Officer Johnson stated that the complainant told him, "You're a fucking piece of shit. You're a fucking piece of shit. You know, you're - you're - there's no wonder why you Denver cops are in trouble. You don't want to listen to anybody."

Officer Johnson indicated that he told the complainant to leave because, "I'm not going to be able to talk to you," but the complainant "continue[d] with the verbal, you know, berating, you know, and stated, 'You cops are all a piece of shit. Fuck you. You're not going to do anything. Just let him go.'" Officer Johnson indicated that he told the complainant to leave again but the complainant refused and continued to "stand by and he continue[d] to cuss, and his other family members are like, 'Hey, just calm down. You're making this worse. He's not even - he's not going to listen to us if you keep cussing him out.'"

Officer Johnson stated that he took "a step back and I go back to the wall where - where Matthew is and he's like, 'Hey, I'm drunk. Just let us all go.'" Officer Johnson stated that when he informed Matthew Schreiber and the others that he wasn't going to release Matthew Schreiber, the complainant "continue[d] with his - with his berating and - and cussing and - and being pissed off and he's just agitated and he continues to escalate." According to Officer Johnson, "the family members are like, [telling the complainant], 'Come on, let's go.'" Officer Johnson stated that instead of leaving, the complainant was "telling his brother, 'Hey, let's just fucking run. He ain't going to do shit.'" Officer Johnson indicated that when he heard this, he told the group of individuals, "'Hey, you need to leave,' and I'm telling his friends, 'Hey, get him out of here before he ends up going to detox or he goes to

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jail.” Officer Johnson stated that “[the complainant’s] family members start telling him, ‘Come on, let’s go’ and he doesn’t listen.” Officer Johnson indicated that he then told the complainant, “Hey, you don’t have to be here. You can leave. I’m not holding you. You’re not in handcuffs. You have your back towards Blake Street. At any point you can walk away, you can just leave.” According to Officer Johnson, the complainant continued to say “Mother fuck – fuck you,” and “so on and so forth.”

Officer Johnson stated:

He’s telling his brother, ‘Let’s just run. He ain’t going to do shit,’ and so at which point I step to him, I – I close the gap and I tell him, ‘Turn around. Put your hands behind your back.’ And when he – he looks at me, looks me dead in the eye and he says, ‘Fuck you and don’t put your fucking hands on me,’ so at which point, since I had closed the gap, I knew if I reached to one of his arms or anything like that or if I did anything else, we were – we were going to be in a fight. So I figured, hey, quick movement, a quick thrust – if I do a quick thrust, it would throw him off. I can re-engage, grab his arms, handcuff him, and there won’t be a fight. We won’t be on the ground wrestling – wrestling or fighting. His family won’t get pissed off. I won’t be having to worry about the rest of the family or his brother that’s already handcuffed – I won’t have to worry about him taking off. If I do a quick move, just a quick pop, quick thrust, he’s going to be off balance and then I can put him in handcuffs and take him – he’ll be going to detox also. So when I thrust him, he goes backwards. I immediately re-engage, get on top of him, hit him with my forearm, and all the time, I was saying, ‘Give me your arms, give me your hands, give me your hands.’ And he’s not listening. He’s still kind of trying to struggle. But he realized that I’m not going to get off of him – I’m on him. So my body weight – and I weigh 260 pounds – so I have him pinned down. He’s not going to be able to go anywhere. Don’t hit him, don’t kick him, no knee thrusts or anything like that, just simply just pin him while we’re on the ground. He finally gives up his hands. I handcuff him, stand him up. And he wants to kind of move around and all that other stuff. So I keep trying to sit him down.

Officer Johnson indicated that before he shoved the complainant to the ground, he and the complainant were “chest to chest” and that when he told the complainant to turn around so that he could be handcuffed, they were “face to face.” Officer Johnson stated that the complainant then said, “Don’t fucking touch me. Fuck you.” Officer Johnson stated:

And at that point, I knew that I had stepped – I – I had closed the gap. I was too close. So I knew that if I reach for an arm, he’s going to see that. The fight’s on. He had looked – he – he had been staring at me, he’s staring at me saying – cussing me out... Psychological intimidation, the verbal non-compliance when I told him to leave. And I said, all right, since I closed the gap, I’m too close now. So my options are to create some distance... Well, through training, it’s all right, it could be a quick distraction, make – make – make some space and then re-engage and do what I want to do... So I knew

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he was going to be handcuffed, so as soon as I do the thrust, the hands are open, it's right up at the shoulder level, it's going to take him off balance. As soon as he's off balance, I can grab an arm or something like that... [I] [thrust him too hard so he went to the ground. I immediately went to the ground with him and pinned him with my forearm. At no time am I hitting him or anything like that. I'm above him. I have my forearm on him telling to him to give me his hands – 'Give me your hands, give me your hands,' and I'm yelling it so that he can hear. So once I get him handcuffed – it shows me trying to stand him up.

During his IAB interview, Officer Johnson was shown the video from the HALO camera. The interviewer asked Officer Johnson to explain what he meant when he said that when he stepped in front of him, the complainant "pushed his chest out in a defensive manner." The interviewer indicated that the camera didn't support this claim, and instead showed that the complainant was merely standing with his hand in his pocket. Instead of retracting this, or explaining what he meant, Officer Johnson stated:

So I step to him. When I step to him, I say – well, I'm telling him as I'm stepping to him, 'Turn around. Put your hands behind your back.' And he's looking at me dead in the face and he's saying, 'Fuck you,' and, 'Don't put your hands on me.' So it's – those are indicators that say, hey, this is going to be a fight – this is going to be a fight. If – it – it – it would be different if he didn't say anything, but he – he makes the statement, 'Fuck you. Don't put your hands on me.'

And so – and like I said, I closed – I was in too deep. I was too close to him so I needed to create distance. So like I said, a quick thrust. That's what – that was my intention, a quick thrust that would take him off balance. That would allow me to grab his hands, put them in a twist lock, gain control, put him into handcuffs. The thrust was too much and he went to the ground. I immediately re-engaged and put my forearm on him so that I could put the handcuffs on him.

But he looked at me in the face, and like I said, he stated, 'Fuck you,' and, 'Don't put your hands on me.' And so he was giving all the indicators from – I've been a cop for 11 years – if someone's – if someone's going to comply, they're going to comply. If – if you're – if you're talking to them and you're giving them opportunity, an out, and the out was Blake Street, he had the opportunity to leave, he didn't. He – he was there to get his brother to go – go home or go to another bar or something like that. So when I was giving him the opportunity to leave and he – he wasn't – he was standing there, continued looking at me up and down, and his family members are like, 'Just go on, just leave, you're only going to make this worse,' he – he ignores them, he ignores me. And when I'm telling him, 'Hey, you need to leave or you're going to go to detox or jail,' and when he tells his brother, 'Run, why don't you just run?' I step to him. And like I said, I was trying to – since I had stepped too close, I closed the gap too far, I needed to create some distance

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so that I could operate – so that I could work – so that I could take – take him into custody because there was no doubt after he kept telling his brother to run, he was going to go to jail or detox. And I told him, 'Turn around. Put your hands behind your back.'

He looked at me and said, 'Fuck you,' and, 'Don't put your hands on me.' So I knew if I reached down, if I reached across him, that was the indicator – that was going to be a cue for him that he could – he could hit me or he could do whatever he was going to do, or if he was going to run. If I reached either way, I felt my best option was to give him a quick thrust, a quick pop and then be able to grab him. So that's what I did.

Officer Johnson indicated that when he shoved the complainant, he did not intend for him to fall down the stairs. He stated:

I didn't intend that, but I would say just with – with – with the body positioning – obviously, I'm bigger than him – adrenalin because like I said, I was anticipating a fight. Those things came into play and it was – my intentions were, like I said, a quick thrust, he'd be off balance, handcuff, grab an arm, hold on, handcuff. That way he doesn't have the ability to fight or anyone else in his – in his – in the – his cousin or his – but his cousin couldn't – couldn't engage either, and Matthew would be able to run. So I figured the faster I took care of this, the better. That would be the best results for me... So I mean it – it rapidly evolved and I figured my best – my best bet, so that I don't injure myself, injure him or have, you know, a guy running in handcuffs, or I'm fighting with two family members and having to worry about somebody else taking off, if I do a quick thrust, like I said, in my mind, from all the indicators that I perceived from him, him not wanting to leave, him being verbally – verbally abusive, him saying, 'Fuck you,' and, 'Don't put your hands on me,' those – that was my option. That's what I thought would be best, if I do a quick thrust, knock him off – off balance –

Officer Johnson indicated that he approached the complainant because he kept "telling his brother – he's – he's – he's egging his brother on, he's encouraging his brother to take off, and so that's when I was like, 'You know something? Enough of this. I've had enough of it. I've – I've allowed you to – to stand by and make sure your brother gets to detox, I've allowed to do that,' which most people like, well, they've been – they're like, 'All right, we'll – we'll just take care of this later,' I've allowed to do all that... He – he stood there, and so I closed the gap – "

When Officer Johnson first told the complainant to put his hands behind his back, there was still some distance between Officer Johnson and the complainant. Rather than maintain a safe distance, Officer Johnson decided to "close the gap" between himself and the complainant and got "chest to chest" and "face to face" with him. Officer Johnson indicated that it was at this point that the complainant "wasn't backing down. He looked at me in the eyes and said, 'Fuck you,' and, 'Don't put your hands on me.'"

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Officer Johnson did not step away or make any attempt to create a safe distance between himself and the complainant. Instead, Officer Johnson decided to shove the complainant to the ground. Officer Johnson explained it this way:

So that's when I figured, well, if I reach across, if I do – if I make any – if I make any other movement that's not going to be quick, it's going to be a fight. He was tense... So like I said, I – I decided to make the quick thrust, hands – my palms were open – there were no strikes in the face or anything like that – a quick thrust that would take him off balance. Then I would be able to re-engage real quick, just as fast, and take him and gain control since we're face to face so that he's at – he's at the disadvantage – I'm at the advantage and I'm able to put him in handcuffs.

Officer Johnson acknowledged that he likely got too close to the complainant and explained why he did so by stating:

I – I don't know – I'm just excited at the time or just – just right there I was wanting to let him know, 'Hey, you're going to detox.' So I think that was my realization, like, well, I'm too close, so training is that, hey, create some distance so that you're not – you're not getting – you're not getting smacked, so that you're not getting hit, that you're on the offensive still because he was going – he was going to be handcuffed. I told him that... So when I realized that, well, I'm in – I'm in too close, I'm in too deep, so now I need to create some distance so that I can – I'll be able to get hands on him as opposed – because we're chest to chest, so that's the quick thrust. That was – that was my reasoning for the thrust. That was my explanation. That was my thinking in my mind when all this was happening quickly. It was like, all right, I need to – I need to create some distance. If I reach for an arm or something, this is – this isn't going to be good. I'm in too close.

Officer Johnson stated that he decided to shove the complainant to the ground because he needed "to create some separation." During the IAB interview, Officer Johnson was asked why he didn't create separation between him and the complainant by "taking a step back and then doing some other maneuver to get him to turn around and grab his hand." In response, Officer Johnson stated:

I didn't – just I kind of go back to training, is that you don't give up ground or you don't give up something if you don't have something that's already solid. So if we're face to face, like I said, I had the element of surprise that I – in my mind, that's an element of surprise – I'm going to give him a quick thrust. He's not – he's not going to be ready for that. Then I can put him in handcuffs... It wasn't like, all right, well, if I take a step back, I'm opening myself up to be hit, I'm opening myself up to be kicked because it's happened in the past. So if I'm not – training dictates – you don't give up something for – for nothing. So I'm in close – I need to create the distance. So I create the distance and immediately he's like – well – since he's down on the ground, I immediately need to re-engage and get him in handcuffs. And that was my thinking.

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Officer Johnson was asked, "So tell me what your training has taught you about the options you – you had there about the idea of separation and not giving up ground like you're talking about? Tell me what the training was." He stated:

I'm not – I'm not going to give up anything if – if I don't have anything, if – so like I said, my hands immediately went up, so I'm in fighting stance and I'm engaging, so at any point, I could go up, I could increase the amount of – of force, I could go to a baton, I could go to mace or anything like that. But since he was – he was off kilter, he was – he was – he was going down, I didn't go up. I immediately just put an arm on him... I would say it's from Krav Maga, the training that – that we receive, it's all right – if – if you know that this is going to be a fight, if these are indicators, then you end the fight quickly. So like I said, looking at him, the verbal – the verbal – he verbalized it, the psychological intimidation, I felt this was going to be a fight, so I wanted to end the fight quickly without risk to me or – or to him. And I don't – and from the explanation that the EMS, when they arrived, he wasn't injured, he never complained of any injuries or anything like that. So my thinking is, all right, this is going to be a fight. I need to end it quickly for – for my benefit as well as his. The longer this goes on, if we're on the ground rolling around, the likelihood of one of us getting hurt, it – it just keeps – it continues to grow. So I would say just training from Krav Maga is that you end the fight quickly.

At least one of the security guards was observing Matthew Schreiber while Officer Johnson confronted the complainant. Officer Johnson did not call for other officers to assist him with the complainant. Officer Johnson stated, "Since I was a solo officer, I didn't have back-up. I didn't have to call for back-up. I figured, hey, take care of the situation fast so it doesn't – so it doesn't prolong – so it doesn't go longer. It's not a fight, a knockdown, drag-out fight, or it's not – I'm not outnumbered or anything like that."

During the IAB interview, Officer Johnson was asked, "[H]ad you given any thought to calling for assistance, or like when the bouncer came out, had he asked whether you needed help?" He stated:

I don't – I don't recall. Saturday nights, LoDo, we're usually pretty – they're always busy, so your – your cover is – it might be minutes away, it might be across the street, but like I said, I don't know what the call volume was that night, but – ... During the summer, the call volumes always are usually really high, they're busy, and I felt I could handle the situation... Like I said, it wasn't like – it – it just continued – my perspective was that it – it continued to evolve. He continued to escalate... So I decided, hey, he's just going to go in handcuffs, he's going to go to detox. And then when I stepped to him, and the look in his eyes and the verbal, the way he verbalized it, is that he wasn't without a fight. And so that was my interpretation of it. So I acted. .. I – I thought I could handle the situation by myself. I didn't want to involve other officers that are – that are taking care of busy downtown District 6 crowd and everything else that comes out in District 6. So I just figured I'll just take care of it myself – I can handle this myself. I didn't anticipate – I didn't anticipate

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the thrust, him going flying, and I just figured it would be a simple fact of I step to him, 'Hey, put your hands behind your back,' and he would comply once he figured – once he realized that I wasn't joking around. But I would say when he – when he looked me in the eye and said, 'Fuck you,' and, 'Don't put your hands on me,' I realized, well, I'm in it now. So take care of the situation and then call for – for cover if it – if it's needed.

HALO Camera video captured some of the interaction between Officer Johnson and the complainant. During the incident, several patrons of the bar entered and left the establishment. At approximately 4:23 of the video footage, Officer Johnson is seen quickly approaching the complainant and, almost immediately, in an aggressive manner thrusting his hands on the complainant's upper chest or shoulder area and forcefully shoving him to the ground. The complainant is seen falling backwards down stone or concrete steps. Just prior to being shoved, the complainant is standing with his hands in the pockets of the shorts he is wearing. He makes no threatening gestures or movements toward Officer Johnson. He does not try to run or escape. The video does not support Officer Johnson's claim that the complainant "pushed his chest out in a defensive manner."

RR 306 Inappropriate Force, of the Denver Police Department Operations Manual, provides that,

Officers shall not use inappropriate force in making an arrest or in dealing with a prisoner or any other person.

This departmental rule must be viewed against the backdrop of relevant provisions of the Denver Police Department's Operations Manual (OMS). RR-306 is violated whenever a DPD officer breaches the Department's Use of Force policy, found in OMS 105.01.

OMS 105.01 contains these provisions:

- When deciding whether to use force, officers shall act within the boundaries of the United States and Colorado constitutions and laws, ethics, good judgment, this use of force policy, and all other relevant Denver Police Department policies, practices and training. With these values in mind, an officer shall use only that degree of force necessary and reasonable under the circumstances. . . .
- When reasonable under the totality of the circumstances, officers should use advisements, warnings, verbal persuasion, and other tactics and recognize that an officer may withdraw to a position that is tactically more secure or allows an officer greater distance in order to consider or deploy a greater variety of force options
- Use of force that is not lawful, reasonable and appropriate will not be tolerated. Department policy as well as relevant Federal, State, and Local laws shall govern use of force by officers.

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- The level of force must reflect the totality of circumstances surrounding the immediate situation. The officer need only select a level of force that is within the range of "objectively reasonable" options. Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed.
- The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties.
- The level of force employed must be commensurate with the threat posed by the suspect and the seriousness of the immediate situation.
- Officers should recognize that, when reasonable to do so with safety to Officers and other persons in the vicinity, disengagement, repositioning, cover, concealment, barriers or retreat, although not required by law, may be a tactically preferable police response to a confrontation.

Officer Johnson used inappropriate force and violated departmental policies when he aggressively shoved the complainant to the ground at a time when the complainant was posing no credible threat to officer safety and was not engaged in any action that indicated that he was an escape risk. The complainant, who had been drinking, was angry that his brother was in handcuffs awaiting transport to detox and because Officer Johnson would not reconsider his decision to detain him. The complainant became verbally abusive to Officer Johnson and would not leave the area despite being told by Officer Johnson to do so. Although he was encouraging his brother, who was in handcuffs, to run, the complainant was not threatening Officer Johnson, or anyone else, with physical harm. Other than telling his brother to run, the complainant was doing nothing that indicated that he would help his brother escape from custody. Moreover, Matthew Schreiber was not reacting to what the complainant was saying or taking any action that indicated that he was going to act on the complainant's requests or pleas to run. No evidence exists to indicate that that would occur. Although he could have called for other officers to come assist him, Officer Johnson made no such effort. Officer Johnson could have issued verbal orders and commands, threatening the complainant with arrest if he refused to comply. Officer Johnson issued no such orders or commands.

Officer Johnson had had enough of the complainant's behavior so he decided that the complainant would be taken to detox. Officer Johnson indicated that he approached the complainant after he refused his commands to place his hands behind his back.

When he approached him, Officer Johnson found himself, "chest to chest" and "face to face" with the complainant. Officer Johnson claimed that the complainant "pushed his chest out in a defensive manner." The video does not support this claim and shows instead that the complainant was simply standing there with his hands in his pockets. At the time, he was not gesturing in any way or engaged in any behavior that indicated he was a threat to anyone. Officer Johnson stated that, since he "had closed the gap" between himself and the complainant, he expected a "fight," if he were to "reach to (sic) one of his arms or

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anything like that or if I did anything else," so he decided he needed to create "distance" between himself and the complainant. To accomplish this, Officer Johnson violently shoved the complainant into the ground.

As noted above, at the time that Officer Johnson made the decision to shove the complainant to the ground, the complainant was not threatening physical harm to Officer Johnson and although he was refusing to place his hands behind his back, he was not threatening to run, or taking any physical action to prevent Officer Johnson from taking him into custody. Officer Johnson indicated that when he closed the "gap" between himself and the complainant, he expected a fight. Nothing in the evidence supports this. The complainant was not making any gestures or exhibiting any behavior that would reasonable be construed as fighting behavior. In fact, at the time, the complainant had his hands in his pockets. Officer Johnson stated that he shoved the complainant to create distance. Officer Johnson had other more reasonable options to deal with the obnoxious behavior the complainant was exhibiting. Officer Johnson was not required to put himself "chest to chest," "face to face" with the complainant in order to take him to detox. It would have been more appropriate and reasonable to call for other officers to assist in dealing with the complainant. Once Officer Johnson put himself in close proximity to the complainant, it was not necessary or reasonable to violently shove the complainant to the ground in order to create the distance between himself and the complainant that Officer Johnson claimed he needed to create. Officer Johnson did not consider stepping away from the complainant to ameliorate the situation he created. Given that the complainant was not an escape risk and was not threatening physical harm or engaged in any conduct that would reasonably lead Officer Johnson, or any other police officer, to believe that physical harm was imminent, shoving the complainant to the ground was not an "objectively reasonable use of force" and the force used was not "commensurate with the threat posed by the [complainant] and the seriousness of the immediate situation."

Moreover, the DPD Use of Force Policy is more restrictive than the "objective reasonable" standard. The departmental policy requires that officers "use only the force necessary to perform their duties." As noted above, it was not necessary for Officer Johnson to get as close to the complainant as he did. There was distance between himself and the complainant and because of this, Officer Johnson had opportunity to observe whether the complainant's behavior was a credible or real threat and take action to stop it in accordance with DPD Use of Force Policy. Once he "closed the gap" and put himself in that position, it was not necessary or reasonable for Officer Johnson to shove the complainant to the ground in order to "create distance." Officer Johnson could have easily and safely stepped back to give himself more space to assess the situation and consider other options that didn't require the level of force he used. The departmental policy requires officers to "recognize that when reasonable to do so, with safety to Officers and other persons in the vicinity, disengagement, repositioning, cover, concealment, barriers or retreat, although not required by law, may be a tactically preferable police response to a confrontation." As discussed above, Officer Johnson could easily and reasonably have summoned additional officers to assist in dealing with the complainant. By stepping away from the complainant, instead of shoving him to the ground, exposing him to serious injury, Officer Johnson could easily and reasonably have stepped away to create a safe distance. This would have

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enabled Officer Johnson to consider and use other more reasonable options that did not require the serious level of force he used. The force that Officer Johnson employed was grossly disproportionate to the "seriousness of the immediate situation" Officer Johnson faced. Officer Johnson

As noted above, Officer Johnson was being berated by the complainant. The complainant was ignoring commands to leave the area. He was telling his brother to run. Officer Johnson reacted to this behavior by rushing up to the complainant and then shoving him with a tremendous amount of force to the ground. Officer Johnson's decisions were driven by impatience and unwarranted assumptions rather than a reasonable belief that a threat was imminent. Given the totality of the circumstances, this was more likely than not an impatient, if not angry, response to the complainant's offensive behavior, and not a reasonable and appropriate use of force. In conducting himself in this manner, Officer Johnson failed to "maintain courageous calm in the face of danger, scorn or ridicule," as is required by the DPD's Law Enforcement Code of Ethics. In the process, Officer Johnson also violated the DPD Use of Force Policy, as discussed above.

A violation of RR-306 appears in Conduct Categories D through F of the disciplinary matrix. As discussed above, it was not necessary that Officer Johnson use force given the circumstances in this case. In determining the appropriate Conduct Category for this rule violation, Section 15.0 of the disciplinary matrix instructs that several applicable factors should be considered:

- What is the general nature of the misconduct? Officer Johnson used a disproportionate level of force to address behavior of an individual that posed little or no credible threat to officer or public safety and did not pose an escape risk.
- How does the misconduct relate to the mission, vision and values of the department, including the Law enforcement Code of Ethics? The disproportionate and inappropriate use of force has a direct and adverse impact on the Department's Mission, which is to deliver "High Quality Public Safety Services," Vision, which is to promote accountable employees, Values of Justice, Equity, Accountability and Respect and violates the Department's Law Enforcement Code of Ethics, which requires officers to "maintain courageous calm in the face of danger, scorn or ridicule."
- How does the misconduct impact the operations and image of the Department and its relationship with other agencies or the community? The disproportionate and inappropriate use of force adversely impacts the operations of the Department in that enormous resources are required to review and evaluate the misconduct and tarnishes the image of the Department with other agencies and the community.

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- What is the actual and demonstrable harm or risk of harm involved? The actual and demonstrable risk of harm is significant. Inappropriate use of force situations severely strain relationships with the public and places individuals at risk of serious bodily injury. The individual against whom inappropriate force was used in this case was propelled backwards onto concrete steps and risked significant injury.
- Does the misconduct involve an actual and demonstrable impact on officer or public safety, or a demonstrable serious risk to officer or public safety? This incident involved demonstrable serious risk to public safety in that an individual was pushed with such force that he was propelled backwards into some concrete stairs and risked serious bodily injury.

The rule violation committed by Officer Johnson had consequences far beyond placing the complainant at an unreasonable risk of serious bodily injury. The misconduct adversely tarnished the professional image of the Department in that this happened in public and was witnessed by several individuals and it had a serious and adverse impact on relationships with the community. As Appendix D to the disciplinary matrix (pg. 10) notes, "... due to the myriad consequences that can flow from [an inappropriate use of force incident], no issue is likely to impact the public's relationship with a law enforcement agency more than an officer's use of force." By using force that was grossly disproportionate to the situation presented by the complainant, Officer Johnson engaged in "conduct that involve[d] the serious abuse or misuse of authority ... or an act that result[ed] in an actual serious and adverse impact on officer or public safety or to the professionalism of the Department." As such, this was a Conduct Category E violation.

Officer Johnson has been the recipient of 16 commendations and the subject of six prior sustained disciplinary actions. Pursuant to the disciplinary matrix for a discipline level of six (6), the mitigated penalty is an eighteen (18) to twenty-two (22) day suspension, the presumptive penalty is a thirty (30) day suspension, and the aggravated penalty is a thirty-eight (38) to forty-two (42) day suspension. Officer Johnson has not taken responsibility for his actions and the level of force he used was grossly disproportionate to the circumstances he faced. The mitigating factors present are not sufficiently weighty to warrant any penalty other than the presumptive one.

Accordingly, the Written Command is hereby approved. Officer Johnson shall receive a presumptive penalty of thirty (30) days suspension without pay for the violation of RR-306. The thirty (30) day suspension without pay shall begin on Sunday, April 19, 2015, through and inclusive of Monday, May 18, 2015.

Pursuant to Denver City Charter § 9.4.15(A), Officer Choice Johnson has ten (10) days from receipt of this order to file an appeal with the Civil Service Commission.

BY ORDER:

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

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of the Denver Police Department

Jim Vigil
Deputy Director of Safety

3-23-15
Date

OFFICER'S RETURN

I hereby certify that I received the within Departmental Order of Disciplinary Action and have delivered a true copy thereof to the within-named Choice Johnson this 26 day of March, 2015.

RAO 83017