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DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No. IC2014-0075

JAMES MEDINA (P99072)
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 James Medina. The Chief has determined that Officer Medina violated several departmental rules and regulations of the Denver Police Department Operations Manual, as set forth below, in connection with an encounter he had with a female prisoner in a holding cell:

- RR-306 – Inappropriate Force

The Written Command determined that Officer Medina used inappropriate force when he engaged in a physical struggle with a female prisoner in an attempt to remove her belt and shoes. In the course of this encounter, Officer Medina placed his knee across the prisoner's neck and likely caused her to become unconscious. The Written Command categorized this rule violation as a Conduct Category F violation and determined that the penalty should be termination held in abeyance for two years.

- RR-102.1 – Duty to Obey Departmental Rules and Mayoral Executive Orders, as it pertains to OMS 105.02, Use of Force Procedures

The Written Command determined that Officer Medina violated this rule when he failed to seek medical attention for the female prisoner after causing her "obvious" injury and did not prepare a Use of Force report detailing the circumstances of the physical struggle. The Written Command determined that this was a Conduct Category E violation and imposed a penalty of thirty (30) suspended days without pay.

- RR-105 – Conduct Prejudicial

The Written Command determined that Officer Medina engaged in "conduct prejudicial" to the Department and "unbecoming an officer" when he made inappropriate and insensitive remarks to the prisoner after he disengaged from the physical struggle to remove her belt and shoes. The Written Command determined that this was a Conduct Category E violation for which it imposed a penalty of thirty (30) suspended days without pay.

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On July 10, 2014, Denver Police Officer Ramone Young was called to assist an ambulance that had responded to the Burger King at 3200 N. Downing Street on a report of a sick and intoxicated male party. Denver Firefighters were already on the scene. Officers Cheryl Smith and James Medina responded to the scene. A firefighter informed Officer Young that a female, later identified as Seryina Trujillo, and her boyfriend, Daniel Adams, who were in the Burger King, had come over to ask what was going on. The firefighter told Officer Young that Ms. Trujillo and Mr. Adams seemed intoxicated or high on drugs and were interfering with the efforts to provide assistance to the intoxicated party. A decision was made to transport Mr. Adams to Denver Cares because of his state of inebriation. As officers were attempting to handcuff Mr. Adams, Ms. Trujillo interfered and attempted to pull Mr. Adams away from the officers. Officers Smith and Young were able to handcuff Ms. Trujillo after a brief struggle. As she was being walked to the police car, Ms. Trujillo became angrier and spat on Officer Smith's face. Officer Medina grabbed Ms. Trujillo and was placing her in the back of the patrol car when she kicked him in the face. Officer Medina reacted by punching Ms. Trujillo in the face. Officer Medina asked the emergency personnel on the scene to provide medical attention to Ms. Trujillo. Sergeant J. Hausner responded to the scene to conduct a Use of Force investigation. Officer Medina prepared a Use of Force Report, as required by departmental policy, for his actions in punching Ms. Trujillo in the face.

Officer Medina thereafter transported Ms. Trujillo to the District 2 station for booking and processing of charges, which included Second Degree Assault on a Police Officer, Interference and Resisting.

OMS 113.02, Prisoners in Police Facilities, of the Denver Police Department Operations Manual, governs what officers must do prior to placing a prisoner in a holding cell. OMS 113.02(1)c provides that,

Before a prisoner is placed in a holding room/cell, the arresting officer will search the prisoner and the room/cell for weapons and contraband. Any item that might be used to cause harm or injury, or damage to the room/cell, shall be removed, without exception. When the arrestee is departing the room/cell, the arresting officer will conduct another inspection looking for damage, as well as contraband inside the room that the arrestee may be involved with. **A second officer should be present during both of these processes to monitor the prisoner during the searches.** (emphasis added.)

OMS 113.02(1)f provides that,

To enhance the safety of officers and prisoners and to reduce property damage and the possibility of escape, all prisoners will be restrained while detained in holding cells/rooms. This may be accomplished by handcuffing one of the prisoner's hands to an eyebolt or rail, where the room/cell is so equipped, or by handcuffing the prisoner's hands behind the back.

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OMS 113.02(1)g provides that,

Officers may enter an occupied cell for the following reasons. If the prisoner is female, a female officer will be present when possible:

- (1) To assist a prisoner
- (2) To restrain a prisoner
- (3) To accompany medical personnel
- (4) To conduct official police business.

OMS 113.02(1)h provides that,

Unless it is unavoidable to do so, officers will not enter a holding room/cell alone while armed or in possession of room/cell keys.

Section (1) B of the DPD Division Directive issued March 12, 2004 provides that " Unless it is necessary to do so, officers should not enter a holding cell alone while armed or in possession of cell keys. Officers may enter an occupied cell for the following reasons:

1. To assist a prisoner.
2. To restrain a prisoner.
3. To accompany medical personnel.
4. To conduct official police business.
5. A female officer should be present, when possible, or if prudent, if the prisoner is female.

Section (1) f of the DPD District/Bureau Directive issued November 21 ,2004 provides,

Officers will remove all of the prisoner's personal property, including, but not limited to, shoes, belt, cell phones, bulky clothing or any object that can be used as a weapon or contraband . . .

As Officer Medina was escorting Ms. Trujillo into a holding cell at the District 2 station, he requested that she provide her shoes and belt. She refused. Officer Medina did not have another officer present and did not request that a female officer assist with this process. According to Officer Medina, Ms. Trujillo was complaining about the holding cell not being "a jail" and claimed that she was not under arrest. Officer Medina indicated that he told her that she was under arrest "for spitting on the female officer and kicking [him] in the face with her foot." Officer Medina stated that he told Ms. Trujillo to "sit on the bench so that [he] could place her wrist into the handcuff." According to Officer Medina, Ms. Trujillo moved away from the eye bolt on the bench. Officer Medina indicated that when she continued to refuse to comply with his request, he "had to place the female on the bench so I could handcuff her." Officer Medina stated that Ms. Trujillo "put her feet on the wall so she could

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push away from the cuff on the bench." Officer Medina indicated that as he "grabbed the female, she tried to bite [him] several times." Officer Medina stated that he told Ms. Trujillo, "Do not bite me" and then he "pushed her to the wall and was able to get the cuff on her wrist." Officer Medina indicated that he then removed her shoes and belt.

A camera in District 2 holding cell into which Ms. Trujillo was placed video recorded significant portions of the interaction Officer Medina had with Ms. Trujillo. The video shows that, prior to Officer Medina's and Ms. Trujillo's entry into the holding cell, there was some conversation between Officer Medina and Ms. Trujillo just outside the doorway. Officer Medina directed her to remove her shoes, but she refused, stating that it should occur at intake. She was then led inside the cell to a bench. She sat on the bench and started to remove her belt. Ms. Trujillo stood up and held the belt with both of her hands, but it appeared that it was still laced through a front belt loop on her pants. She started asking Officer Medina a series of questions, but did not relinquish the belt. He asked her to take off her belt several times, to which she replied, "Or what?" She sat down on the bench and Officer Medina said, "All people are handcuffed" (or words to that effect), and he reached for her left wrist area. Ms. Trujillo pulled her hand away and Officer Medina leaned in to gain control. Officer Medina and Ms. Trujillo struggled back and forth as she was seated on the bench and he tried to gain physical control.

Officer Medina slid her across the bench toward an adjacent wall and leaned into her as a means of exerting control. Ms. Trujillo yelled, and they continued to struggle. Officer Medina could be heard repeatedly telling her not to bite him. At one point, it sounded as if he said, "Do not bite me, do you understand?" Toward the end of the struggle she said, "Okay." He was finally able to pin her down and he removed her belt and her shoes. The video shows that Officer Medina placed his right knee against the right side of Ms. Trujillo's neck as he struggled with her. The video shows that Ms. Trujillo's left arm fell away or went limp as Officer Medina applied pressure to her neck. Officer Medina was able to handcuff Ms. Trujillo's right wrist to the eye bolt on the bench and he was able to remove her belt and shoes. The video shows that when Officer Medina got off of Ms. Trujillo, she went completely limp, stopped moving and slid to the floor of the holding cell. On the floor, Ms. Trujillo appeared to be momentarily unconscious. The manner in which Ms. Trujillo slid off the bench and onto the floor, without any movement, or any effort or attempt on her part to prevent her free fall to the floor, indicates that it is more likely than not that she was momentarily rendered unconscious by the pressure to her neck from Officer Medina's knee. Ms. Trujillo was on the floor a few seconds and then got up, sat on the bench and started to sing. A pair of handcuffs, likely dropped by Officer Medina during the struggle, can be seen on the floor. The video shows that Officer Medina picked up Ms. Trujillo's belt and shoes and walked just outside the doorway. As he did so, Officer Medina said something to the effect of, "You're getting another charge," and, "Tell that to God," as Ms. Trujillo appeared to be complaining of how she had been treated.

The video shows that a short time later the cell door opened and Officer Medina was in the doorway. He asked Ms. Trujillo, "Why did you try to bite me? I told you, all I want [sic] your belt and shoes." He also said, "Don't cry now." Ms. Trujillo then appeared to be speaking to herself and/or praying, and said, "... Forgive them father, for they know not what they do."

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Officer Medina responded, "I know what I did. I know what you did. You spit on an officer, kicked me in the face and then you just tried to bite me, you just tried to bite me." He came back inside the cell for a brief period, picked up the pair of handcuffs from the floor, lectured her, and then left.

Officer Medina did not obtain any medical attention for Ms. Trujillo at any time after she blacked out. Officer Medina did not report his use of force to any command staff and he did not prepare a Use of Force Report about the physical struggle he had with Ms. Trujillo.

The incident in the holding cell did not come to the attention of any of Officer Medina's supervisors until July 14, 2014, when Sergeant Mike Cody was approached by Detective Phil Coleman to discuss a case he was investigating. He informed Sergeant Cody that Officer Cheryl Smith had mentioned to him that there had been an incident inside a jail cell involving Officer Medina and Ms. Trujillo and that "something might have happened" during that incident. Detective Coleman informed Sergeant Cody that he had reviewed a copy of the Use of Force Report that had been prepared in regard to the July 10, 2014 arrest of Ms. Trujillo but there was nothing in the report about the incident that had occurred inside the holding cell. Sergeant Cody was informed that Detective Coleman had contacted Officer Medina to inquire if Ms. Trujillo had "attacked" him in the cell. Detective Coleman indicated that Officer Medina had told him that Ms. Trujillo had, indeed, "attacked" him. Detective Coleman advised Sergeant Cody that he was looking into accessing the cell video so that he could review it. On July 15, 2014, Sergeant Cody viewed the holding cell video. He wrote in his report that he observed that Officer Medina struggled with Ms. Trujillo and "eventually positioned his knee on Ms. Trujillo's upper chest or neck and, shortly after, Ms. Trujillo stopped struggling." He also noted that Officer Medina "took [Ms. Trujillo's] belt off and stood up, and Ms. Trujillo slid off the bench and onto the floor and appeared to be unconscious." Sergeant Cody indicated in his report that he had viewed the entire video and did not see a sergeant or any paramedics enter the cell to investigate the incident or check on Ms. Trujillo's medical condition. Sergeant Cody also indicated in his report that he had reviewed the Use of Force Report prepared on the night of Ms. Trujillo's arrest and "found no mention of anything that happened in the holding cell anywhere in the report."

Sergeant Cody immediately contacted IAB to report what he had seen in the video. Officer Medina was thereafter contacted and he was asked to prepare a report about the incident in the cell with Ms. Trujillo. On July 15, 2014, Officer Medina prepared a "Follow-Up Report" where for the first time he reported that he had engaged in a struggle with Ms. Trujillo. In this report, Officer Medina provided only scant information and left out a detailed description of both Ms. Trujillo's actions as well as his own.

During the IAB investigation, Officer Medina was interviewed twice. On July 21, 2014, Officer Medina described trying to control Ms. Trujillo in the holding cell. He related how she partly removed her belt, but refused to give him her shoes. He then directed her to the eye bolt on the bench in order to handcuff her to it. Ms. Trujillo said, "No, I'm not under arrest ... I'm not doing this." She pushed away from him and he pushed her to the other side and was trying to handcuff her. He tried to hold her wrist in order to apply handcuffs and she pushed off using her feet on the walls. He stated that he pushed her back, put his

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knee in her chest and handcuffed her. He also took her belt and shoes. He added that when he removed his knee from her chest, Ms. Trujillo slid off the bench and, "... she laid there for a couple of seconds, got up, sat back on the bench."

When shown a still photo from the video, Officer Medina was asked whether she was unconscious. Officer Medina replied, "No." He further explained that Ms. Trujillo was only there for a couple of seconds and that he thought she was faking. He said, "... I gave her a couple of seconds, she got up, sat on the bench and she goes, 'You got my socks – ah (?) my belt and my shoes'." He said that she did not have injuries from the incident in the holding cell and that he had some scratches on his arm. He was shown photographs of himself taken on the date in question at the district station that showed scratches on his face and neck. He did not know how they occurred, or at what location. When shown photographs that depicted scratches to his arm, Officer Medina said that he thought they occurred in the holding cell.

Officer Medina was asked whether he notified his sergeant of the incident in the holding cell and he said that he did not. He explained that it was a "little resistance" during which he did not strike or injure her, and she did not make an outcry of injury. Therefore, Officer Medina did not believe it was a use of force. When asked about telling Ms. Trujillo there would be extra charges, Officer Medina said that he did not add any and he related that the scratch marks were common and there was no need to do anything further.

Officer Medina related being called on his day off by the detective handling the case and being asked to complete a statement. Officer Medina thought that his probable cause statement connected with the use of force incident was adequate, but did make an additional statement on July 15 (included information concerning the holding cell incident).

On August 8, 2014, Officer Medina was asked what he was specifically trying to do during the holding cell incident. Officer Medina replied that per policy, prisoners are not allowed to retain their belt and shoes and they are to be handcuffed to an eyebolt. Officer Medina further explained that the purpose of taking shoes and belts is to protect the prisoner from suicide attempts. Handcuffing is meant to restrict a prisoner's movements. He was also asked whether he was trying to render Ms. Trujillo unconscious, to which he replied, "No." When asked about his knee being placed on Ms. Trujillo, Officer Medina explained that he was applying pressure to her chest as a means of restraining her.

Officer Medina said that she did not suffer injuries, and when asked about her slumping to the floor, he said, "Her eyes were open and I, I kept on looking at her, and then she kind of like smirked at me, and then she got up and sat on the bench." Officer Medina estimated that Ms. Trujillo was on the ground for 7 to 10 seconds. He added, "And then she just jumped up and she goes, 'Oh you got my shoes and my belt'."

He did not believe there was a need to call an ambulance, and that she neither complained of, nor had visible injuries. Lastly, Officer Medina stated, "And like I said, I, she was high on something plus, I don't (?), I know she has mental issues. I hope she gets help for those."

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As part of the IAB investigation, Sergeant Glenn Mahr, who is on the DPD Tactics Review Board, was asked to review the video tape of the incident in the holding cell. He opined that Officer Medina used "appropriate force" against Ms. Trujillo because she was displaying "active aggression" toward him. Sergeant Mahr also indicated that it was imprudent for Officer Medina to have taken his service revolver with him to the cell because Ms. Trujillo "could access the weapon during the struggle, especially as the struggle continues." Sergeant Mahr also opined that "this situation could have possibly been prevented or mitigated by the use of sound tactics." He noted that, given Ms. Trujillo's prior assaultive behavior, it would have been more "appropriate to have at least two officers dealing with [Ms. Trujillo]. Sergeant Mahr also opined that, since Ms. Trujillo was not complying with Officer Medina's orders, Officer Medina should have left Ms. Trujillo "handcuffed in the cell and [gone] to get an additional officer(s) to assist." He indicated that Ms. Trujillo could be monitored by using the camera in the cell. Sergeant Mahr indicated that using "tactical options," other than struggling with Ms. Trujillo, "would have likely resulted in a safer situation for the officer involved and could have prevented this incident from escalating."

IAB also asked Marc Scherschel, Division Chief of Denver Health Medical Center, to review the video tape. He opined that Officer Medina was attempting to gain control of Ms. Trujillo when he placed his leg on her torso and that as Ms. Trujillo continued "to resist, Officer Medina's leg does end up on/near [her] throat." He noted that the "technique of using a leg on the torso and arm(s) combined with body weight is a common technique when people are resisting, fighting or attempting to harm an officer."

Mr. Scherschel did, however, indicate that there were medical concerns about where Officer Medina had placed his leg on Ms. Trujillo while trying to restrain her. He opined that "[t]here is concern for injury to the carotid artery, carotid body or barrow receptors and structures of the upper airway in that area." Nevertheless, Mr. Scherschel indicated that because it did not appear to him that Officer Medina placed "full body weight" on Ms. Trujillo, he had limited "concern for, or potential for, unintended injury." Finally, although he opined that Officer Medina used "appropriate force and techniques" against Ms. Trujillo, Mr. Scherschel expressed "concern with the decision to approach the verbally combative [Ms. Trujillo] without some additional assistance."

Officer Medina has not taken any responsibility for his conduct. He refuses to acknowledge that he committed any wrongdoing.

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.

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C.R.S. § 18-8-804 requires that public entities which employ peace officers promulgate a use of force ("UOF") policy, which shall be complied with by the officers. The DPD UOF policy contains many provisions. The relevant provisions of the policy are set forth verbatim below:

. . . 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. . . .

Excerpts from OMS 105.01(1)(a), 1st para. and 3rd para., respectively. (emphasis added).

. . . 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.

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.

Excerpts from OMS 105.01(1)(b). (emphasis added).

The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties.

Excerpts from OMS 105.01(2)(b), 2nd para. (emphasis added).

The level of force employed must be commensurate with the threat posed by the suspect and the seriousness of the immediate situation.

Excerpts from OMS 105.01(4)(d)(1). (emphasis added).

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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.

Excerpts from OMS 105.01(4)(d)(3), top para. (emphases added).

DPD's UOF policy also contains provisions relating to the landmark U.S. Supreme Court case of *Graham v. Connor*, 109 S. Ct. 1865 (1989), a civil lawsuit filed in federal court. The plaintiff in *Graham* made a claim under federal law that law enforcement officials had used excessive force in the course of arresting him. *Id.* at 1867. The U.S. Supreme Court held that, when civil claims seeking money damages arising from an allegation of excessive force during an arrest are brought under federal law, those claims are properly analyzed under the "objective reasonableness" standard of the Fourth Amendment to the U.S. Constitution. *Id.* at 1867-68. Application of that "objective reasonableness" standard:

requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

Id. at 1871-72. Significantly, the U.S. Supreme Court was careful to point out that the "objective reasonableness" standard applies specifically to claims of excessive force brought in civil suits pursuant to federal law. *Id.* at 1870 ("In addressing an excessive force claim brought under [42 U.S.C.] § 1983 ..."). Because the Denver Police Department has incorporated *Graham v. Connor's* objective reasonableness standard into various provisions of the DPD UOF policy including OMS 105.01(1)(a) and 105.01(4)(c)(1), any use of force by a DPD officer must comply with the provisions of *Graham v. Connor*.

Of course, besides complying with the *Graham v. Connor* standards, any use of force by a DPD officer must also comply with all other provisions of the DPD UOF policy. See C.R.S. § 18-8-804. The DPD UOF policy includes a number of provisions other than those from *Graham v. Connor* which include protections beyond those in *Graham v. Connor*. See *Turney v. Civil Serv. Comm'n*, 222 P.3d 343 (Colo. App. 2009) ("[P]olice departments may – indeed, they should – impose higher internal standards on their officers than simply not violating state criminal law and avoiding federal damages liability [by complying with *Graham v. Connor's* objective reasonableness standard]." Among the provisions of DPD's UOF policy that contain standards that go beyond those of *Graham v. Connor* are the provisions referenced above: DPD Operations Manual sections 105.01(1)(a), 105.01(1)(b), 105.01(2)(b), and 105.01(4)(d).

All provisions of OMS 105.01 are in effect and any use of force utilized by an officer must comply with all of those provisions.

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Here, provisions such as the first sentence of OMS 105.01(2)(b) ("The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties.") must be considered with other provisions of the UOF policy. For example, that first sentence of OMS 105.01(b) provides that the "totality of the circumstances" must be considered in making UOF choices. (OMS 105.01(2)(b)). In the context of the DPD UOF policy, the "totality of the circumstances" must include, among other things, the requirement that "Officers use only the force necessary to perform their duties." The fourth sentence of OMS 105.01(2)(b) states, "Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied." That statement requires an officer, besides relying on his/her training and experience, to make an "assessment of the situation" that considers options available to the officer so that he/she uses only the force necessary to perform his/her duties. Finally, an officer's actions must be "objectively reasonable" in light of the facts and circumstances confronting them ..." In the context of the DPD UOF policy, "the facts and circumstances" confronting an officer includes options available to the officer so that he/she uses only the force necessary to perform his/her duties.

Provisions requiring officers to use only the force necessary to carry out their duties and to consider alternative UOF options prevail over the more general language of *Graham v. Connor*.

§ 105.01(1)(a) includes the following statement: "Officers must rely on training, experience and assessment of the situation to decide an appropriate level of force to be applied." That provision and other provisions relating to an officer's training, however, must be read in light of the third and fourth sentences in the first paragraph of the DPD UOF policy.

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. (emphasis added).

Acting within the boundaries of Colorado law requires officers to comply with C.R.S. § 18-8-804, which itself requires officers to comply with DPD's use of force policy. The language of C.R.S. § 18-8-804 does not give officers discretion to decide which portions of the DPD UOF policy they will comply with. While the third sentence of § 105.01(1)(a) identifies an officer's training as one of the items on which an officer should rely in deciding whether to use force, in doing so, the officer must remain within the boundaries of the DPD UOF policy. If the officer selects a force option from those presented during his/her training that does not fall within the boundaries of the UOF policy, the officer: (a) has not properly applied his/her training; (b) has violated the DPD UOF policy, RR-306, and C.R.S. § 18-8-804 and (c) is subject to discipline for those violations.

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Multiple provisions of the DPD UOF policy require officers to consider available force options and/or to utilize only the force necessary to perform their duties. Among those provisions are:

- OMS 105.01(1)(a), 1st para. ("an officer shall use only that degree of force necessary and reasonable under the circumstances")
- *Id.*, 3rd para. ("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.")
- 105.01(2)(b) ("The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties.")
- 105.01(4)(d)(1) ("The level of force employed must be commensurate with the threat posed by the suspect and the seriousness of the immediate situation . . . Officers should rely on their training, experience, and assessment of the situation, to decide the appropriate level of force.")
- 105.01(4)(d)(2) ("If time and circumstances reasonably permit, officers will use distance, time, verbal tactics, or other tactics, to de-escalate the situation when dealing with [a person who may be mentally ill, developmentally disabled, or emotionally disturbed].")
- 105.01(4)(d)(3), 1st para. ("Officers should recognize that, when reasonable to do so with safety of 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.")

(emphasis added). OMS 105.01(2)(b) is particularly noteworthy because it contains one of the strongest statements limiting an officer's use of force and recognizes the community's stake in police use of force – "The community expects and the Denver Police Department requires that peace officers use only the force necessary to perform their duties."

A review of the OMS provisions set out above, makes it clear that Officer Medina used extremely poor judgment when he made the unreasonable decision to forcibly remove Ms. Trujillo's belt and shoes, without seeking the assistance of other officers, and this bad decision escalated into the inappropriate use of force when Officer Medina engaged Ms. Trujillo in a physical confrontation and struggle that placed her at great risk of serious bodily injury or death. In doing so, Officer Medina violated RR-306.

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Officer Medina had been assaulted by Ms. Trujillo. He led Ms. Trujillo into the holding cell at the District 2 station by himself. He did not seek the assistance of other officers, even though Ms. Trujillo had previously demonstrated violent behavior by spitting on an officer and kicking Officer Medina in the face. Alone with her in the cell, Officer Medina repeatedly requested Ms. Trujillo's belt and shoes. She repeatedly refused to relinquish these items. Officer Medina did not, at anytime while he was in the cell with Ms. Trujillo, as DPD Use of Force policy mandates, "withdraw to a position that [was] tactically more secure or that allow[ed] [him] greater distance in order to consider or deploy a greater variety of force options." Instead of requesting the assistance of a female officer, as departmental policy provides should be done when possible, Officer Medina decided that he would gain compliance with his orders by physically removing those items from Ms. Trujillo. Officer Medina wrestled with Ms. Trujillo, as he attempted to gain compliance with his directives. In engaging her in this physical struggle, Officer Medina did not, as is required by policy, use a level of force "commensurate with the threat posed by [Ms. Trujillo] and the seriousness of the immediate situation . . ." The holding cell was equipped with a camera. Any legitimate concern that Ms. Trujillo could use her belt or shoes to harm herself could easily have been ameliorated by Officer Medina's, or other officers', use of the cell camera to monitor her actions until such time as she could be persuaded to turn over her belt and shoes. There were other officers in the station, including female officers, who could have assisted in persuading Ms. Trujillo to relinquish her belt and shoes. It was not necessary, and the urgency of the moment did not require, that Officer Medina undertake, without any assistance by other officers and without consideration of other options that might accomplish what was desired, to forcibly remove those items from Ms. Trujillo.

Yet, with tenacious resolve and an unshaken determination to remove her belt and shoes, Officer Medina escalated the physical struggle with Ms. Trujillo, even as she continued to resist and made attempts to bite him. He did not retreat, or make any effort or attempt to disengage from Ms. Trujillo so that he could summon help, or evaluate how best to handle this situation with the least amount of force necessary. Instead, Officer Medina continued to struggle with Ms. Trujillo. The struggle escalated. The video shows that as he continued to struggle with her, Officer Medina placed his knee on Ms. Trujillo's neck and applied pressure to her neck as he tried to handcuff her to the eyebolt on the bench. Officer Medina succeeded in applying sufficient pressure to Ms. Trujillo's neck with his knee to get her to stop resisting. She stopped moving and her arm went limp. Officer Medina was able to handcuff Ms. Trujillo to the bench and he succeeded in removing her belt and shoes. As Officer Medina moved his knee off of her neck, Ms. Trujillo slid motionless off of the bench and onto the floor, where she appeared to be rendered unconscious for a short period of time. In using his knee to restrain Ms. Trujillo in the manner in which he did, Officer Medina failed to use only that "force necessary to perform [his] duties" as is required by DPD policy. The force that Officer Medina employed was grossly disproportionate to Ms. Trujillo's lack of cooperation, disobedience of orders to turn over her belt and shoes and physical resistance to Officer Medina's actions to forcibly gain compliance.

Even under the "objective reasonableness" standard, which is less restrictive than DPD's standard requiring the use of only that "force which is necessary", Officer Medina's actions constituted the use of inappropriate force. Even if Ms. Trujillo was "displaying active aggression", she posed only a minimal, objectively reasonable threat to officer safety or to

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herself. Whatever credible threat she posed was subject to being mitigated, if not entirely eliminated, by Officer Medina simply disengaging and removing himself from the potential of harm or danger and by seeking the assistance of other officers to deal with Ms. Trujillo's refusal to give up her belt and shoes. DPD's Use of Force policy requires officers to deescalate the use of force and Officer Medina failed to do so. Instead, Officer Medina used a level of force that was not the least amount of force necessary to do his job but was also not objectively reasonable in relation to Ms. Trujillo's actions and the minimal threat she posed. Had he disengaged, Officer Medina would have been able to use options that were far more reasonable than the level of force he employed and he would not have placed Ms. Trujillo at risk of injury to the "carotid artery, carotid body or barrow receptors and structures of the upper airway in that area." In using more force than was necessary and in failing to retreat to consider other more reasonable options, Officer Medina violated RR-306.

A violation of RR-306 appears in Conduct Categories D through F of the disciplinary matrix. As discussed above, Officer Medina had been assaulted by Ms. Trujillo prior to the incident in the cell block. It was not necessary that Officer Medina be the one who escorted Ms. Trujillo into the holding cell. There were other officers present in the station. Given the fact that Officer Medina was the victim of an assault and serious criminal charges were pending against Ms. Trujillo, Officer Medina exercised poor judgment in entering that cell and engaging Ms. Trujillo in the manner in which he did. His statements after the struggle with Ms. Trujillo, telling her she would get another charge and advising her to "tell it to God" when she voiced a complaint, were extremely inappropriate and shed light on Officer Medina's intentions when he engaged Ms. Trujillo in a physical struggle. He was angry at her because she had assaulted him and Officer Smith. When she refused to give up her shoes and belt, Officer Medina became more irate and, as demonstrated by his actions, he was determined to remove those items from Ms. Trujillo by using whatever physical force was necessary to accomplish the same. Instead of disengaging and removing himself from the struggle with Ms. Trujillo, Officer Medina escalated the incident and used force that was disproportionate to any threat she posed. Officer Medina used his knee to apply pressure to Ms. Trujillo's neck and rendered her unable to exercise any movement or control of her body. The evidence indicates that it is likely that she was unconscious for a brief time, as she slid off of the bench and onto the floor. In using inappropriate force, Officer Medina placed Ms. Trujillo at great and unnecessary risk of serious bodily injury or death. By his actions, Officer Medina committed a violation of "Policy which ... constitutes a willful and wanton disregard of Department values ... [and] involves egregious misconduct substantially contrary to the standards of conduct reasonably expected of one whose sworn duty is to uphold the law."

Officer Medina has been the recipient of 15 commendations and the subject of 9 prior sustained disciplinary actions. Pursuant to the disciplinary matrix for a discipline level of eight (8), the mitigated penalty is a ninety (90) day suspension and the presumptive penalty is termination. As noted above, he has not taken responsibility for his actions. The level of force he used against Ms. Trujillo was egregiously disproportionate and placed Ms. Trujillo at great risk of serious bodily injury or death. There are no significant mitigating factors present to warrant anything other than the presumptive penalty of termination.

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RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders, of the Denver Police Department Operations Manual, provides that,

Officers shall obey all Departmental rules, duties, procedures, instructions, and orders; the provisions of the Operations Manual; and Mayoral Executive Orders.

As it pertains to:

OMS 105.02 Use of Force Procedures

(1) Duty to Report

Officers shall immediately report the circumstances of all resistances or incidents involving use of force to a supervisor or command officer. The supervisor or command officer shall ensure that all sections of the Denver Police Department Operations Manual and the Colorado Revised Statutes have been followed.

- a. The Use of Force Report, DPD 12, related supervisory investigation and reports are required in any of the following circumstances:

...

5. An officer encounters an individual with obvious injuries, and the circumstances of the encounter coupled with the nature of the injuries are such that the person may claim the injuries resulted from contact with the officer.

...

(2) Duty to Request Medical Attention

- a. Any time there is an injury or an alleged injury as a result of force used by departmental personnel or an officer encounters an individual with obvious injuries and the circumstances of the encounter coupled with the nature of the injuries are such that the person may claim the injuries resulted from contact with the officer, the involved officer shall:

1. Visually examine any person claiming injury, request medical attention and immediately notify a supervisor. When an individual...is subjected to the carotid compression technique...an ambulance shall be called to the scene of the incident to examine the person at the earliest and safest opportunity. Medical personnel will determine whether further medical attention is required.

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As discussed above, Officer Medina used inappropriate force when he used his knee to restrain Ms. Trujillo by placing it on her neck and applying pressure. Ms. Trujillo was limp and motionless as Officer Medina removed her shoes and belt. As he got off of her, Officer Medina watched Ms. Trujillo slide off the bench motionless. He stood over her looking at her as she came to. Officer Medina violated this departmental rule because, after using inappropriate force against Ms. Trujillo, he "encounter[ed] [her after she was rendered motionless and likely unconscious as a result of his actions] ... with obvious injuries and the circumstances of the encounter coupled with the nature of the injuries [were] such that the person [could] claim the injuries resulted from contact with the officer" and did not "request medical attention [for her] and immediately notify a supervisor." Officer Medina did not complete a Use of Force Report detailing the circumstances of his contact with Ms. Trujillo in the cell. In fact, this incident did not come to the attention of the Department until several days later when Sergeant Cody became aware that there had been a use of force incident in the cell. Officer Medina violated this departmental rule by failing to request medical attention for Ms. Trujillo, by not notifying a supervisor that he had used force against Ms. Trujillo and by failing to prepare a Use of Force Report documenting his actions.

A violation of RR-102.1 appears in Conduct Categories A through F of the disciplinary matrix. By failing to request medical assistance when he used force on a prisoner who presented with "obvious injuries", and not notifying a supervisor about the incident or documenting the same in a report, Officer Medina engaged in conduct that "resulted in an actual serious and adverse impact on ... the professionalism of the Department." As such, this was a Conduct Category E violation.

Officer Medina has no prior Conduct Category E, or higher, violations that would mandatorily increase the penalty level. 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. As noted above, Officer Medina has numerous commendations and several prior sustained rule violations. He refuses to accept responsibility for his conduct. There are no sufficiently weighty mitigating factors that would justify a penalty outside of the presumptive range. As such, the presumptive penalty of a thirty (30) day suspension without pay is warranted for Officer Medina's misconduct.

RR-105 Conduct Prejudicial, of the Denver Police Department Operations Manual, provides that,

Officers shall not engage in conduct prejudicial to the good order and police discipline of the Department or conduct unbecoming an officer which:

- a. May or may not specifically be set forth in Department rules and regulations or the Operations Manual.

Immediately after the use of force incident, the video from the cell camera indicates that Ms. Trujillo was making statements to Officer Medina about her treatment. In response, Officer Medina made inappropriate and insensitive comments to Ms. Trujillo, suggesting by the

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choice of words he used that no one other than God would listen to her or be interested in what she had to say. He told her she would get more charges and told her to "Tell that to God." Officer Medina's behavior was unprofessional and inappropriate. In conducting himself in this manner, Officer Medina violated this departmental rule because he "engaged in conduct prejudicial to the good order and police discipline of the Department or conduct unbecoming an officer ... which may or may not be specifically set forth in Department rules and regulations or the Operations Manual."

A violation of RR-105 appears in Conduct Categories A through F of the disciplinary matrix. By aggravating an already traumatic situation involving his use of inappropriate force by employing insensitive, inflammatory and inappropriate comments, Officer Medina committed a Conduct Category E violation because his conduct "involve[d] ... an actual serious and adverse impact ... to the professionalism of the Department."

Officer Medina has no prior Conduct Category E, or higher, violations that would mandatorily increase the penalty level. 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. As discussed above, there are no significant mitigating factors that would justify a penalty outside of the presumptive range. The presumptive penalty of a thirty (30) day suspension without pay is warranted for Officer Medina's misconduct.

Accordingly, the Written Command is approved in part and modified in part, as follows: Officer Medina is hereby dismissed from the Classified Service for violating RR-306, Inappropriate Force, a Conduct Category F violation. Officer Medina is hereby suspended for thirty days (30) days without pay for violating RR-102.1 as it pertains to OMS 105.02, a Conduct Category E violation. Finally, Officer Medina is hereby suspended for thirty (30) days without pay for violating RR-105, Conduct Prejudicial.

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

BY ORDER:


Deputy Director of Safety 3-4-15
Date

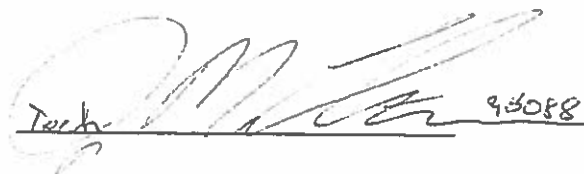
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OFFICER'S RETURN

I hereby certify that I received the within Departmental Order of Disciplinary Action and have delivered a true copy thereof to the within-named James Medina this 4th day of March, 2015.


Teck 93088

