



CITY AND COUNTY OF DENVER
DEPARTMENT OF SAFETY
FIRE • POLICE • SHERIFF
9-1-1 • COMMUNITY CORRECTIONS
CRIME PREVENTION & CONTROL • SAFE CITY

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January 10, 2013

DEPARTMENTAL ORDER OF DISCIPLINARY ACTION

Case No. P2012 08 034

GREGORY CECCACCI (06082)
Officer in the Classified Service
of the Denver Police Department

This is before the Manager of Safety pursuant to a disciplinary matter involving Officer Gregory Ceccacci. The allegations are that Officer Ceccacci violated RR-127, Responsibilities to Serve Public and RR-306, Inappropriate Force, of the Denver Police Department Operations Manual, when he struck an individual who was intoxicated and belligerent during the investigation of a hit and run incident involving that individual's parked vehicle which was randomly struck by a suspected DUI driver.

On August 6, 2012, Officer Gregory Ceccacci and two other officers, Officer Phillip Donovan and Officer Joseph Davis, responded to a hit and run accident in District Five. The driver of a truck had struck multiple parked vehicles and then fled the immediate scene. He was later apprehended nearby and taken into custody for DUI without incident. The complainant in this case, Julian Ortiz-Soliz, was the owner of a parked truck struck by the hit and run suspect.

When Mr. Ortiz-Soliz and his family returned to his residence from a family reunion at approximately 2:50 a.m., he saw the police officers nearby and noticed that his truck, which was parked on the street in front of his house, had been severely damaged. When he got out of his vehicle, he asked his son to get a flashlight so that he could inspect the damage to his truck. Mr. Ortiz-Soliz, who was visibly intoxicated, became angry at the officers when they asked him to retrieve the registration and insurance papers from his vehicle and then became extremely agitated and belligerent when he observed the officers talking to his 12-year old son without his permission. The officers asked for his registration and insurance papers to complete their accident report and were talking to his son to determine if he had been a witness to the accident.

As Mr. Ortiz-Soliz approached the officers, he argued loudly with the officers and "paced back and forth." He was also holding the flashlight and waived it back and forth in a menacing manner. The officers moved quickly to restrain him. Officers Davis and Donovan each grabbed one of Mr. Ortiz-Soliz' hands and held his arms behind his back. Officer Ceccacci, remained in front of him, approached him and then placed his foot between Mr. Ortiz-Soliz' feet. He then grabbed his shirt and "pinned him up to take away his fighting stance." Mr. Ortiz-Soliz reacted by spitting in Officer Ceccacci's face. Fearing that he would spit again, Officer Ceccacci indicated that he released his grip on Mr. Ortiz-Soliz' shirt and punched him in the face. He immediately dropped to the ground. Officer Ceccacci held Mr. Ortiz-Soliz on the ground with his foot to prevent him from spitting again. Mr. Ortiz-Soliz

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sustained injuries from the incident and was transported by ambulance to the hospital. Subsequently, he was charged criminally with assault for spitting on Officer Ceccacci. The charges are still pending.

Officer Ceccacci's actions do not fall within, and are not addressed by, the provisions of RR-127, Responsibilities to Serve Public, of the Denver Police Department Operations Manual. RR-127 states that:

Members shall serve the public by direction, counsel, and in other ways that do not interfere with the discharge of their police responsibilities. They shall respect the rights of individuals and perform their services with honesty, zeal, courage, discretion, fidelity, and sound judgment.

Officer Ceccacci may have used questionable judgment when he positioned himself directly in front of Mr. Ortiz-Soliz and got close enough to him that Mr. Ortiz-Soliz was able to spit in his face. However, in doing so, his actions did not implicate this departmental rule because the tactic that he employed did not "interfere with the discharge of [his] police responsibilities" or otherwise prevent him from "respect[ing] the rights of individuals and [from] perform[ing] [his] services with honesty, zeal, courage, discretion, fidelity, and sound judgment." Similarly, Officer Ceccacci's reaction to being spat at by Mr. Ortiz-Soliz is not addressed under this specification. Striking an individual after an assault, whether to repel or prevent further assault, is a tactic that should not be evaluated or reviewed for appropriateness by resort to a standard which measures, as does this departmental rule, whether an officer is adequately serving the public and performing police responsibilities "with honesty, zeal, courage, discretion, fidelity, and sound judgment."

Instead, Officer Ceccacci's actions in striking Mr. Ortiz-Soliz must be examined in the context of RR-306 of the Denver Police Department Operations Manual, C.R.S. 18-1-707 and Appendix D of the Denver Police Department Discipline Handbook. RR-306 provides that:

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

Series 105.01(4)d(1) of the Denver Police Department Operations Manual provides that:

The level of force employed must be commensurate with the threat posed by the suspect and the seriousness of the immediate situation. It is recognized and understood that circumstances are fluid and may change rapidly. Officers should rely on their training, experience, and assessment of the situation, to decide the appropriate level of force.

Series 105.01(1)(a) provides, in relevant part, as follows:

When reasonable under the totality of 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. When a suspect is under control, either through the application of physical restraint or the suspect's compliance, the degree of force should be de-escalated accordingly.

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C.R.S. 18-1-707(1)(b) indicates that a police officer "is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it is necessary... [t]o defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect [an] arrest..."

Appendix D of the Denver Police Department Discipline Handbook provides that "[a]ll uses of force which fall outside the standards established by Departmental policy shall be classified as 'inappropriate force'" and indicates that "[t]he term 'inappropriate use of force' encompasses ... a situation [where] [a]n officer has used force in a particular circumstance but, under Departmental policy, a lesser degree of force should have been used." Appendix D also provides that "If a person [is] unable to pose a credible threat to the officer or unable to defend himself/herself against the force used by the officer, it is more likely that the use of force would be inappropriate."

When viewed against the backdrop of the departmental policies and guidelines set forth above, it becomes clear that, given the circumstances that were in existence at the time, Officer Ceccacci's actions in striking Mr. Ortiz-Soliz involved the inappropriate use of force. As such, his conduct was a violation of RR-306. As discussed above, Mr. Ortiz-Soliz' arms were restrained behind his back by Officers Donovan and Davis. Although he had previously been pacing back and forth, waving his flashlight in a threatening manner, there is no indication that at the time he spit in Officer Ceccacci's face, Mr. Ortiz-Soliz who was being held by his arms by the two officers who were positioned on his left and right side, was either resisting, posing a safety threat, other than by spitting, to the officers or presenting an escape risk. Thus, the force which Officer Ceccacci used "was not commensurate with the threat posed by Mr. Ortiz-Soliz and the seriousness of the immediate situation." Officer Ceccacci contends that he struck Mr. Ortiz-Soliz because he was concerned that he would spit again. However, **Officer Ceccacci had other options that did not involve the degree of force that was used** to address this situation. Upon releasing his grip on Mr. Ortiz-Soliz' shirt, rather than striking him, he could have easily removed himself from any threat of being the recipient of more spit by backing away from Mr. Ortiz-Soliz. He could have moved to the side to allow the other officers to deal with Mr. Ortiz-Soliz. He could have taken Mr. Ortiz-Soliz to the ground or requested that the other officers do so. However, these "de-escalating" measures which departmental policy requires when "a suspect is under control," were not the tactics Officer Ceccacci employed.

As noted above, under Colorado law, a police officer is lawfully permitted to use physical force "to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force." Although spitting on another can be behavior subject to criminal prosecution,¹ spitting presents a different risk of harm than other assaults. If, as Officer Ceccacci contends, Mr. Ortiz-Soliz was struck to prevent him from continuing to spit, the circumstances were such that **this use of force was inappropriate because it was a disproportional response to any perceived threat of continued spitting behavior posed by Mr. Ortiz-Soliz.** Further, Mr. Ortiz-Soliz was restrained and Officer Ceccacci could easily

¹ For example, under C.R.S. 18-3-203 a person who is in a detention facility commits second degree assault if he or she, with the requisite intent, causes an employee of the facility to come into contact with blood or saliva by "throwing, tossing or expelling such fluid."

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have removed himself from any continued threat or risk that he would be spat upon again. Under the circumstances, striking him was unjustified in that Officer Ceccacci could not "reasonably believe" that Mr. Ortiz-Soliz used physical force or that the use of physical force was "imminent."

Although he stated that he struck Mr. Ortiz-Soliz to prevent him from spitting again, Officer Ceccacci has indicated that his actions were immediate and spontaneous. Mr. Ortiz-Soliz' spitting behavior was offensive and highly provoking. Officer Ceccacci's response to this is understandable, but it was not an acceptable or appropriate response.

RR-306 is a specification that appears in Conduct Categories D through F of the discipline matrix. Mr. Ortiz-Soliz spit in Officer Ceccacci's face. In response, Officer Ceccacci punched Mr. Ortiz-Soliz in the face, dropping him to the ground. At the time, Mr. Ortiz-Soliz was restrained by two other officers and posed no safety threat to any of the officers. Under these circumstances, this was an inappropriate use of force and was "conduct that is substantially contrary to the values of the Department or that substantially interferes with its mission, operations or professional image." As such, this is a Conduct Category D violation. Officer Ceccacci has no prior Conduct Category D violations within the specified time-frame of seven years that would mandatorily increase the discipline level. There are several mitigating factors present that warrant a penalty other than the ten day presumptive range penalty. Officer Ceccacci has no significant prior disciplinary history and has several commendations, including a Top Cop award. His conduct, which was spontaneous and immediate, was provoked by an extremely offensive act committed by an intoxicated and belligerent individual. Finally, Officer Ceccacci has acknowledged that other more appropriate tactics should have been employed. Given these circumstances, a mitigated penalty is warranted. Accordingly, Officer Ceccacci is hereby suspended without pay for six (6) days for violating RR-306, Inappropriate Force, of the Denver Police Department Operations Manual. The suspension without pay shall begin on January 27, 2013, through and inclusive of February 1, 2013.

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

BY ORDER:

Alex J. Mantey 1/10/13
Manager of Safety Date

John D. Gyl 1-10-13
Deputy Manager of Safety Date

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OFFICER'S RETURN

I hereby certify that I received the within Order and Command of Disciplinary Action and have delivered a true copy thereof to the within-named Gregory Ceccacci this 14th day of January, 2013.

R. S. 90001

