



**Alex J. Martinez**  
**Manager of Safety**

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September 24, 2013

**Letter updated to reflect change in suspension dates.**

Deputy Brady Lovingier, S02008  
[REDACTED]  
[REDACTED]

Re: DSD IAB Case #S201209284

Dear Deputy Lovingier:

This is official notification that you are being suspended without pay for thirty (30) days (240 hours). Your thirty (30) day suspension will begin at 0711 hours on Monday, September 30, 2013, through and inclusive of 1008 hours on Friday, November 8, 2013. You are expected to return to work on Friday, November 8, 2013, at 1009 hours and work until 1730 hours for a total of 7.36 hours. You are required to turn in your identification card to the Internal Affairs Bureau at the end of your last day of duty preceding this suspension. During this suspension, you are not authorized to work for the City and County of Denver or to enter its facilities other than to conduct official city business. This suspension is for misconduct which violates the following Career Service Rules.

**Career Service Rule 16-60 Discipline and Dismissal:**

The following is cause for discipline or dismissal of a Career Service employee:

- A. Neglect of duty.
- B. Carelessness in performance of duties and responsibilities.
- L. Failure to observe written departmental or agency regulations, policies or rules.

**Denver Sheriff Department Rules and Regulations**

**PREAMBLE**

Deputies shall obey all Departmental rules, regulations, duties, procedures, instructions, and orders; the provisions of the Operations Manual; Mayor's Executive Orders; and Rules of the Career Service Authority. Failure to comply with any of these shall be construed as a violation. Members in violation shall be subject to disciplinary action. The following provisions of conduct shall be construed as a rule violation of the Operations Manual and Directives and Orders of the Denver Sheriff Department, but not by way of limitation.

### **RR- 300.19.1 – Disobedience of Rule**

Deputy Sheriffs and employees shall not violate any lawful Departmental rule (including CSA rules), duty, procedure, policy, directive, instruction, order (including Mayor's Executive Orders), or Operations Manual section.

**As it pertains to:**

### **Departmental Order 5011.1J – USE OF FORCE**

1. Purpose: The purpose of this order is to prescribe policy and guidelines for the use of force within the Denver Sheriff Department (DSD).
2. Policy: It is the policy of the Denver Sheriff Department (DSD) that officers use physical force only as prescribed by the Colorado Revised Statutes (CRS) and internal Department standards to perform any legitimate law enforcement or detention related function. The amount of force used will be reasonable and appropriate in relation to the threat faced. In all cases, force will be de-escalated once the legitimate function is achieved or the resistance has ceased.

**Physical force will not be used as a punishment, under any circumstances.**

Officers should rely on departmentally approved use of force techniques that are taught in training.

Officers are responsible for justifying their actions and must report use of force incidents in accordance with departmental rules and CRS 18-8-111 and CRS 18-8-802 to command staff personnel or a supervisory officer as soon as the situation has stabilized.

4. Explanation: The Denver Sheriff Department (DSD) recognizes the value of all human life and is committed to respecting human rights and the dignity of every individual. The use of a firearm is in all probability the most serious act in which a Deputy Sheriff will engage. When deciding whether to use a firearm, officers shall act within the boundaries of law, ethics, good judgment, this use of force policy, and all accepted DSD policies, practices and training. With these values in mind, an officer shall use only that degree of force which is necessary and objectively reasonable under the circumstances. An officer may use deadly force in the circumstances permitted by this policy when all reasonable alternatives appear impracticable and the officer reasonably believes that the use of deadly force is necessary. However, the Denver Sheriff Department (DSD) recognizes that the objective reasonableness of an officer's decision to use deadly force must allow for the fact that Deputy Sheriffs are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.

It is important for officers to bear in mind that there are many reasons a suspect/inmate may be resisting or may be unresponsive. A person's reasoning ability, including but not limited to a mental condition, mental impairment, developmental disability, physical limitation, language, drug interaction, or emotional crisis, are some examples. An officer's awareness of these possibilities,

when time and circumstances reasonably permit, should then be balanced against the facts of the incident facing the officer when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.

Law enforcement requires that at times an officer must exercise control of a violent, assaultive, or resisting individual to make an arrest, to detain a person, or to protect the officer, other officers, or members of the general public from risk of imminent harm. Each situation is unique. Sound judgment and the circumstances of each situation will dictate the force option the officer deems necessary. Officers may either escalate or de-escalate the use of force as the situation progresses or circumstances change. Officers should recognize that their conduct immediately connected to the use of force may be a factor which can influence the force option necessary in a given situation. 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 shall be de-escalated accordingly. It is not the intent of this policy to require officers to attempt to exhaust each option before moving to the next, so long as the force option is objectively reasonable and appropriate under the circumstances.

The force option applied must reflect the totality of circumstances surrounding the immediate situation. The officer need only select a force option that is within the range of "objectively reasonable" options. Officers must rely on training, experience, and assessment of the situation in deciding an appropriate force option to be applied.

The Department will support the use of reasonable and appropriate force by officers in the performance of duty. 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 actions by officers at all times.

5. Compliance:

A. Related Colorado Revised Statutes (CRS):

18-1-703, 18-1-704, 18-1-707, 18-8-111, 18-8-802, 18-8-803

CRS 18-1-703 (Use of physical force – special relationships) states in the pertinent part:

"(1) The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:

...

(b) A superintendent or other authorized official of a jail, prison, or correctional institution may, in order to maintain order and discipline, use reasonable and appropriate physical force when and to the extent that he reasonably believes it necessary to maintain order and discipline, but he may use deadly physical force only when he reasonably believes it necessary to prevent death or serious bodily injury. ..."

CRS 18-1-704 (Use of physical force in defense of a person) states in the pertinent part:

“(1) Except as provided in subsections (2) and (3) of this section, a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose. ...”

CRS 18-1-707 (Use of physical force in making an arrest or in preventing an escape) states in the pertinent part:

“(1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:

(a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or

(b) To 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 such an arrest or while preventing or attempting to prevent such an escape.

(4) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody. A peace officer who is effecting an arrest pursuant to a warrant is justified in using the physical force prescribed in subsections (1) and (2) of this section unless the warrant is invalid and is known by the officer to be invalid.

...

(8) A guard or peace officer employed in a detention facility is justified:

(a) In using deadly physical force when he reasonably believes it necessary to prevent the escape of a prisoner convicted of, charged with, or held for a felony or confined under the maximum security rules of any detention facility as such facility is defined in subsection (9) of this section;

(b) In using reasonable and appropriate physical force, but not deadly physical force, in all other circumstances when and to the extent that he reasonably believes it necessary to prevent what he reasonably believes to be the escape of a prisoner from a detention facility.

- (9) "Detention facility" as used in subsection (8) of this section means any place maintained for the confinement, pursuant to law, of persons charged with or convicted of an offense, held pursuant to the "Colorado Children's Code," held for extradition, or otherwise confined pursuant to an order of a court."

CRS 18-8-803 (Use of excessive force)

The community expects and the Denver Sheriff Department (DSD) requires that peace officers use only the force necessary to perform their duties. Colorado law mandates the same and holds an officer accountable to do so in CRS 18-8-803; which states in part:

- "(1) ... a peace officer who uses excessive force in pursuance of such officer's law enforcement duties shall be subject to the criminal laws of this state to the same degree as any other citizen..."
- (2) ... 'excessive force' means physical force which exceeds the degree of physical force permitted pursuant to section 18-1-707. The use of excessive force shall be presumed when a peace officer continues to apply physical force in excess of the force permitted by section 18-1-707 to a person who has been rendered incapable of resisting arrest."

B. Related Case Law:

- Colorado law does not require an officer to retreat from an attack rather than resorting to physical force. A peace officer is expected to take appropriate action to handle a situation and is authorized to use the reasonable and appropriate force necessary to overcome resistance. The degree of force required may be different in different situations. (Boykin v. People, 22 Colo. 496, 45 P. 419)
- Law enforcement officers are permitted to use force only to the extent that it is "objectively reasonable" under the circumstances. (Graham v. Connor, 490 U.S. 386, 397, 109 S.Ct.1865, 104 L.Ed.2d 443)

6. Definitions and Concepts:

Excessive Force – As stated in CRS 18-8-803 (2), "'excessive force' means physical force which exceeds the degree of physical force permitted pursuant to section 18-1-707. The use of excessive force shall be presumed when a peace officer continues to apply physical force in excess of the force permitted by section 18-1-707 to a person who has been rendered incapable of resisting arrest."

Objectively Reasonable – The reasonableness of an officer's use of force is based upon the totality of the circumstances known by the officer at the moment the force is used. The force option employed must be objectively reasonable and appropriate to the threat posed by the suspect/inmate and the seriousness of the immediate situation. It is recognized and understood that circumstances are usually unpredictable and may change rapidly. Officers should rely on their training, experience and assessment of the situation in deciding on the appropriate force option.

Factors to determine "Objectively Reasonable" force options:

- a) Whether the subject poses an imminent threat of injury to an officer(s), themselves or others;  
(The greater the threat, the greater the force option used may be justified.)
- b) Whether the subject is actively resisting a lawful command/order or attempting to evade by flight;  
(Escalating the force option used may be justified when controlling a tense, uncertain and rapidly evolving circumstance.)
- c) The severity of the crime or act at issue.  
(The more severe the crime, the greater the force option used may be justified.)

Reasonable Belief – When facts or circumstances the officer reasonably believes, knows, or should know are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

Safety – Above all, the safety of the public and the officer must be the overriding concern whenever the use of force is considered.

13. Provision Statement:

- B. As officers commissioned with authority to use force to protect and serve the public, we must reach decisions that will ensure that the lives and rights of citizens are preserved when the use of force is necessary.
- A. It is imperative that officers have an understanding of exactly what authority they do have regarding the use of force in situations where resistance, interference, or threats to the physical well being of another or themselves exists. Officers must also be cognizant of what the limitations are with respect to their authority in use of force situations.

14. Accountability:

- A. It will be the responsibility of all employees, officers, and supervisors to be familiar with, and to comply with, this order.

**And, as it pertains to:**

**RR- 300.22 – Inappropriate Force**

Deputy Sheriffs and employees shall not use inappropriate force in making an arrest, dealing with a prisoner or in dealing with any other person.

- Z. Conduct prejudicial to the good order and effectiveness of the department or agency, or conduct that brings disrepute on or compromises the integrity of the City.

**Findings of Fact**

The following is a summary, but not an exhaustive description, of the facts and circumstances surrounding the alleged misconduct upon which discipline is being imposed:

On Tuesday, September 11, 2012, inmate Anthony Waller (CD# 269588) was escorted to his court appearance by you and Deputy Eric Miller, S04055. While in Courtroom 2300, you became involved in an inappropriate use of force situation with inmate Waller. As a result of this interaction, inmate Waller sustained an injury to his forehead and was ultimately transported to Denver Health Medical Center (DHMC) for treatment. The case was presented to the Denver District Attorney's office for review. The case was refused for filing by the District Attorney's office, citing "no reasonable likelihood of conviction" as the reason.

Also present in the courtroom for the incident were the Honorable Doris Burd, Ms. Vernell Bearden, DPD Detective Darlene Vita, Deputy William Hurt, Deputy Frank Espinoza, and Deputy Eric Miller. Present in the gallery area was Deputy Michael Woodard. All of the above mentioned individuals were interviewed in the course of this investigation. The deputies and Detective Vita all essentially indicated in their statements that your decisions and reactions were based on your perception of the incident in its totality. Judge Burd described the force used as "heavy duty," and Ms. Bearden described the incident as "a little excessive."

In your IAB interview on January 9, 2013, you stated you recalled the incident in question. You stated that on the day in question, you were performing an Emergency Response Unit (ERU) transport with Deputy Eric Miller on inmate Robert Desersa. You stated you have been on the ERU for approximately eight years. You further stated that ERU members receive 80 hours of additional training per year in areas related to ERU functions such as transporting inmates, moving crowds, and mass arrests.

You were shown DDC surveillance video from camera 2 South Court NW View from September 11, 2012, beginning at approximate time index 11:47:05. The audio recording from inmate Waller's court appearance was also played for you. You were also shown DDC surveillance video from camera 2 South Court SE View from September 11, 2012, beginning at approximate time index 11:52:00.

You stated that on the day in question, you were approached by a sergeant, informed that inmate Waller was refusing to go to court, and asked to assist in transporting inmate Waller to his court appearance. You further explained that one of the ERU's primary roles and responsibilities is to support the jail staff in their functions as requested and that escorting inmate Waller to court would prevent DDC supervisory staff from having to pull additional jail staff to assist with the transport.

You stated you contacted the sergeant at Court Services to communicate that you would be moving inmate Waller. You further stated you attempted to contact ERU Captain Oliva by phone and left him a voicemail advising him that you and Deputy Miller would be escorting inmate Waller to his court appearance. You stated that Captain Oliva did not call you back so you ultimately made the decision to escort inmate Waller.

You elaborated that part of your decision making process included a previous experience with inmate Waller. You further explained that during a previous incarceration, inmate Waller was appearing in court and the deputy in the court had to call you for assistance because inmate Waller was exhibiting intimidating and threatening behavior and refusing to leave the courtroom. You stated that inmate Waller was recommended for addition to the ERU transport list at that time but because inmate Waller's trial was almost at an end, he was not added to the ERU transport list. You stated that as of this interview, inmate Waller has been added to the ERU transport list.

You stated you and Deputy Miller met with inmate Waller at his cell on the day in question prior to his transport, per standard ERU protocol. You further explained that the purposes of this meeting are to establish a rapport with the inmate and explain the rules and expectations associated with being an ERU transport. You stated you also explain to the inmate that their behavior will dictate the ERU's reaction and that "any act of aggression; any hostile movement; any attempt to cause a disruption will be dealt with immediately using the appropriate force necessary." Inmate Waller was interviewed on January 2, 2013 regarding this incident. He stated in his interview that he did remember you tell him that any act of aggression would be met with by force.

You stated that inmate Waller initially refused to go to court but you were ultimately able to get inmate Waller to comply. You further stated you applied handcuffs, leg irons, a black box, and a belly chain to inmate Waller without having to use any force. You stated that once inmate Waller got to his feet, he began to exhibit "threatening" and "intimidating" behavior and body language. You further elaborated that inmate Waller stated that he "was not afraid of [you]," and then "puffed his chest up" and made a growling noise. Inmate Waller stated he did initially refuse to go to court but denied puffing up his chest and growling at you.

You stated that inmate Waller repeatedly complained about having to go to court as an ERU transport. You further stated you tried to assure inmate Waller that the entire process can be completed quickly and easily with his (Waller's) cooperation. You stated that once inmate Waller was restrained, he began to get angry, saying, "Captain Oliva is full of shit for ... putting me on the ERU."

You were asked if it was possible to complete an inmate's advisement without going to the courtroom. You stated that it has been done, although it is very rare, and it requires the judge to go to the inmate's cell. You stated you have never heard of Judge Burd going to an inmate's cell to give an advisement.

You were asked if advisements are ever continued based on an inmate's refusal to go. You stated there are some factors that may allow for that, however, an inmate's behavior does not necessarily warrant a continuance.

You stated you are familiar with inmate Waller, but could not recall if you have ever transported him before the day in question. You further stated inmate Waller is known amongst the deputies. You elaborated that inmate Waller has been a problem for years and that he is assaultive to both deputies and inmates. You stated inmate Waller has also been known to "run stores" in the housing units. You explained that running a store involves an inmate that has access to a lot of commissary and will use it to trade for other items such as paper clips or pens.

You were asked what information you had about inmate Waller when you initially went to his cell. You stated that because you were already in court, you did not have the opportunity to do any research on the computer to get the most recent information regarding inmate Waller. You further explained that inmate Waller was housed in 2D pod, which you described as "the highest security housing area in the facility." You stated that inmate Waller was housed in 2D pod "almost immediately after he is brought into custody," indicating a cause for concern. JMS records indicate inmate Waller was housed in 2D pod directly from the intake area.



You reiterated that you had information inmate Waller had previously refused to go to his court appearance and was "being a ... management issue." You further stated that the floor sergeant was considering assembling a team of deputies to retrieve inmate Waller and bring him to court. You stated you were aware of inmate Waller's behavior during his previous incarceration and cognizant of inmate Waller's general reputation, as it is commonly known amongst the veteran officers.

You stated that once they arrived in the courtroom, inmate Waller was leaning back and flexing his legs and appeared agitated and tense. You further stated you attempted to make eye contact with Deputy Miller to draw his attention to inmate Waller's movements. You stated that inmate Waller's legs were "flexing and rocking" and while at the podium, inmate Waller "sort of sits back and he's leaning up against the podium." You further stated you could see inmate Waller's muscles flexing during this time. You stated that based on inmate Waller's behavior, you thought inmate Waller may be "ready to push the podium over," or "ready to step back into [you]." You further described inmate Waller's stance at the podium as "not a normal stance." The record, viewed in its entirety, however, does not support any of the above claims you made. In fact, inmate Waller's conduct is consistent with how Judge Burd described her interaction with inmate Waller. She described him as polite and respectful. Your description of his physical actions is unreasonable.

You stated that in your experience, inmates are more comfortable and relaxed at a preliminary hearing. You further stated that inmate Waller frequently appears pro se in court and should have been familiar with the proceedings on the day in question.

You stated that you recalled from watching the video that at one point (approximate time index 11:50:58), inmate Waller "makes ... a look back," which you said could be inmate Waller "trying to gauge where people are in the room." You stated this action could signify "some kind of attack or disruption" being contemplated by inmate Waller. A review of the record indicates that this was unreasonable speculation on your part.

You stated that to the best of your recollection, when Judge Burd concluded her advisement, inmate Waller then leaned into the microphone and said, "I object to this your Honor" in "kind of an angry, argumentative tone." In his interview, inmate Waller stated he did not speak to Judge Burd in an angry tone. He described his tone as "normal." In her interview, Judge Burd stated inmate Waller was respectful with her. A review of the record supports what inmate Waller and Judge Burd indicated. Inmate Waller was respectful and not threatening to anyone, including you.

You indicated this type of behavior is not uncommon stating, "Inmates ... have a tendency to want to rant and ramble to the judge." You said that type of behavior is not permitted at the courthouse nor is it permitted during ERU court transports. You stated that some judges will "entertain" inmates speaking after the conclusion of their advisement and some will not. You stated that it "was [your] impression of the judge that she was clearly done with [inmate Waller]" and it was time to proceed over to the court clerk. However, your "impression" is not supported by the record. Moreover, Judge Burd stated in her interview that she did not give any indication to you that she was finished with inmate Waller or to remove inmate Waller from the courtroom. She further explained that she was "looking at Mr. Waller" while answering his question.

You stated that you grabbed inmate Waller's belly chain, pointed over to the clerk's desk, and instructed inmate Waller to move to the clerk's desk. Nothing in the record supports this claim. In fact, the record indicates that for no legitimate reason, you grabbed inmate

Waller and unreasonably slammed him against the wall. You stated it is common ERU practice to escort inmates assigned to the ERU via their belly chain. You stated that inmate Waller then turns around and says something to the effect of, "Hold on, I'm talking to the Judge, you fuck." You described this action as "an aggressive move" and further reiterated that it was already explained to inmate Waller what would happen if he exhibited any resistive or aggressive behavior. You further indicated you interpreted inmate Waller's statement to mean, "I'm not going to do what you just told me to do," and stated that as soon as inmate Waller confronted you, you "[took inmate Waller] in the direction of his turn" in an effort to "get him out the door." You reiterated that you were already thinking there was going to be an issue with inmate Waller, stating "He's tense, he's been angry with us, he said he's not afraid of us, he's a big guy." In his interview, inmate Waller denied saying, "Hold on, I'm talking to the judge, you fuck!" to you. Inmate Waller cannot be heard making this statement on the audio recording. Nothing in the record supports your claim that inmate Waller made any aggressive moves or that he was communicating by his actions that he was going to cause problems for you or other deputies. Your beliefs to the contrary are simply unreasonable. Further, nothing in the record supports your claim that inmate Waller made a hostile comment to you.

The IAB Investigator then began to review the video in greater detail with you. You stated that this use of force situation occurred in a public setting and that part of your job is to protect the decorum of the court.

You pointed out that at approximate time index 11:48:15, the video depicts inmate Waller touching his face. You further stated you realized at that time that inmate Waller can get his hands up to his face. You stated this meant that inmate Waller is experienced in manipulating his restraints where he needs them to be for his comfort and convenience. You also noted that inmate Waller has a range with his hands and arms from his knees to his chest area.

You pointed out that at approximate time index 11:48:35, the video depicts inmate Waller in a "poised" stance. You further described inmate Waller as "big," "out with [his] chest," and "strong." You said this is not inmate Waller's normal stance and that indicated to you that Waller was tense and agitated.

You pointed out that at approximate time index 11:49:19, the video depicts inmate Waller assuming a stance where he is gripping the podium and leaning into it. You said there was a tightness and a flex in inmate Waller's body at that time. You further stated that from the position of leaning on the podium, inmate Waller could have pushed off the podium backwards into you or pushed the podium forward and moved forward toward the judge. You stated in your experience you have seen podiums pushed over and you have seen inmates in belly chains lunge at people.

You pointed out that at approximate time index 11:50:36, inmate Waller leans back into a new position that feels "poised" and "uncomfortable" to you and further said it's "just not right to [you] in [your] experience." You further stated you made a non-verbal, visual communication to Deputy Miller at that time to ensure he was focused on inmate Waller's movements.

You pointed out that at approximate time index 11:51:00, inmate Waller again touches his face, indicating he has "good movement" with his arms and hands.

You pointed out that at approximate time index 11:51:32, inmate Waller has a more relaxed stance, and his "body language has settled down."

You pointed out that at approximate time index 11:51:53, inmate Waller again leans back. You further described this as "a very odd posture for an individual in a belly chain." You elaborated that you are roughly eye level with inmate Waller's shoulder blades. You further stated that you have to look up to see inmate Waller's head, illustrating "how much taller and bigger [inmate Waller] is than [you]."

You pointed out that at approximate time index 11:52:26, you sensed tension and anxiety in inmate Waller's movements. You further stated it felt like "something's going to go off." You stated you were "sort of anticipatory" at that moment and when inmate Waller steps back toward you in the video, you "move ... sort of back out of the way a little bit ... and (are) ready to see what's going to happen next."

You explained that you gave verbal direction to inmate Waller, and pointed over to the clerk's desk (approximate time index 11:52:33 on the video), directing inmate Waller where he needed to go.

You pointed out that at approximate time index 11:52:34, when inmate Waller turned toward you and spoke to you, his head was "bobbing." You further stated you took this to mean that inmate Waller was "angry" and described inmate Waller's attitude as, "I'm going to tell you what I'm doing." You stated that your arm was reaching for inmate Waller's belly chain and that inmate Waller is "almost facing [you] at this point." You stated you were "at a disadvantage" at that point. The record indicates, however, that inmate Waller posed no threat to you or anyone else.

You stated inmate Waller was not following your direction. You further stated that when inmate Waller turned into you and challenged what you asked him to do, you considered inmate Waller's actions "physical" and "intimidating." Nothing in the record supports your claim that inmate Waller challenged you. His actions were not physical and if you found them "threatening," that was unreasonable on your part.

You stated you have worked in the Court Services Unit for approximately 7 to 8 years and had significant interaction with Judge Burd during that time. You were played the audio recording of the end of inmate Waller's advisement where Judge Burd said, "Thank you, Sir" to inmate Waller. You stated when Judge Burd says, "Thank you, Sir" to an inmate, you interpret that to mean, based on your experience, that "she's done with [the inmate] ... it's the end of the session, and she's done."

You were played the portion of the audio segment where inmate Waller voices his objection and inquires about remaining in custody while he is still under investigation. You were also reminded of your JMS report in which you described inmate Waller's objection as being said in a "loud" and "angry" tone. You stated you felt inmate Waller's tone was "angry and...confrontational." The record shows otherwise. Inmate Waller was respectful and turned to you when you touched him for no apparent reason. You elaborated that inmate Waller frequently goes pro se when he appears in court, and as such, is familiar with the purposes of a preliminary advisement. You stated that inmate Waller asked his question to either cause a delay or his question was "the start to a bigger incident." You stated you believed inmate Waller already knew the answer to the question he asked the judge.

You were played the portion of the audio recording where Judge Burd begins to address inmate Waller's question. You stated that until reviewing the video and audio of the incident, you did not recall Judge Burd responding to inmate Waller's inquiry. You explained that when Judge Burd said, "Thank you, Sir" to inmate Waller, she had "dismissed" him. You stated that you then took hold of the belly chain, gave inmate Waller verbal direction, and pointed to the clerk's desk. You further stated inmate Waller then turned back toward you to "tell [you] what he's (Waller) not about to do that [you've] just told him to do." You surmised that you did not hear Judge Burd respond to inmate Waller because you were "engaged with [inmate Waller]" at the time.

You were asked about your perception when inmate Waller turned back toward you. You replied that inmate Waller "[had] become hostile" and had "no intent of following our direction." You further stated you thought inmate Waller was going to "engage [you] directly for not letting him do what he thinks he's allowed to do." You stated that inmate Waller knows "it's not acceptable in any circumstance to try and turn, to try and engage and be confrontational in that manner with an Officer at that distance." None of these claims you make are supported by the record and are, therefore, unreasonable.

You categorized inmate Waller's actions initially as passive resistance then escalating to active resistance. You explained that passive resistance was exhibited when inmate Waller did not move from the podium and active resistance was exhibited when inmate Waller turned back toward you. You further explained that you felt resistance when you attempted to turn inmate Waller toward the door and also considered that active resistance and considered the possibility that it may quickly escalate to active aggression.

You were asked what threat you perceived from inmate Waller at that time, given the amount of restraints that were applied to him. You replied, "I think he's fully capable of causing injury. He can head butt me. I think he's got good range of motion with his hands, pretty much from his knees to his chest. I think that he's experienced in manipulating the belly chain and his iron. I think he can grab a hold of pieces or parts of me ... I think he's very much a threat." The record, however, indicates that he posed no credible threat to you or anyone else.

You were asked about the portion of the video from camera 2 South Court NW View from time index 11:52:34 through 11:52:37, where inmate Waller contacts the wall. You read the portion of your OIC report that addressed that part of the incident. It read as follows:

At this time I felt and observed Waller turn toward me very fast and I heard him say angrily "hold on I'm talking to the judge you fuck." His sentence was cut off as I immediately took control of subject's left shoulder by the shirt and asserted force to turn him toward the door. All of these actions happened very fast and were simultaneous to one another. As I turned him, he pushed back into me and tried to continue to argue and resist. Waller is a large individual and I felt threatened by the force he was using to push back against me. At this time for my safety and the safety of the court; and because we were now on the unsecured side of the DDC, I forced subject to the glass window that separates the courtroom from the holding box ...

You indicated inmate Waller's turn toward you was aggressive and as a result, you were "not in a good position to hold him." The video tape, however, does not support your contention that inmate Waller was aggressive toward you. In fact, the video indicates that

he turned to face you when you apparently touched him on the back. Moreover, although you claim he said, "Hold on, I'm talking to the judge, you fuck," this finds no support in the record. You further explained that you then "grabbed [inmate Waller's] arm to gain control of him and ... turned him to leave out of the courtroom." The video indicates that you did not "turn him to leave out of the courtroom." Instead, it shows that you grabbed his belly chain and slammed him against the wall for no apparent reason. You stated that as you turned inmate Waller, you felt inmate Waller either dropped his weight, or was pushing against you and as a result, you needed more force to get inmate Waller to go in the desired direction. You confirmed that this can be seen at approximate time index 11:52:35 on the video.

You stated your initial intent was to get inmate Waller out of the courtroom, to the secure side of the facility. You further stated that when inmate Waller pushed back, you felt like you no longer had control of him so you then decided to pin inmate Waller up against the glass, where you can hold him and get control of him.

Additional review of the video shows that after inmate Waller is slammed against the wall, he lowers to his knees. You stated you felt inmate Waller was purposely doing that to be resistant. A reasonable inference drawn from a viewing of the video, however, indicates that inmate Waller dropped to his knees from the impact with the wall. You indicated you were cognizant of the fact that the courtroom is considered to be the "public side," or "unsecured side" and as such, your primary goal was to get inmate Waller back to the secure side of the facility.

You stated you repeatedly ordered inmate Waller to get to his feet, which inmate Waller did not do. You further stated you then asked Deputy Miller to "pull the taser." You explained that you did not intend to tase inmate Waller at that point but rather use the taser as a "show of force to gain compliance." You further stated that inmate Waller then got to his feet and walked under his own power without the use of any additional force.

You confirmed that inmate Waller sustained an injury as a result of his contact with the wall. You stated you first became aware of inmate Waller's injury "once [inmate Waller] got to his feet." You stated once you became aware of inmate Waller's injury, your primary goal was to get inmate Waller to the medical unit "to get him immediate medical attention and have him evaluated."

You were played the portion of the audio where you appear to say something to the effect of, "Don't turn on me. I don't give a shit who you are. You're not punking me. You're not turning on me." You explained that you were "in the heat of the moment" and "under the adrenaline" at that time and that you were conveying to inmate Waller that he is "not going to dictate how things operate." The audio/video does not indicate that inmate Waller was engaged in conduct, verbal or physical, that could be reasonably construed to be threatening to you or to anyone else. The language you used was not necessary and was likely used by you in an attempt to justify your inappropriate use of force.

You stated that inmate Waller is a "master manipulator of people" and he uses fear as a tactic to that end. You further stated inmate Waller's behavior during your interaction was designed to "test [you] to see if he's got some kind of control over what he can or can't make [you] do." Nothing in the audio/video supports this claim.

You were asked if it was your intent to inflict the injury inmate Waller sustained. You replied, "No. Absolutely not." The inferences to be drawn from the record, however, indicate that you knowingly slammed inmate Waller against the wall, knowing that that could cause significant injury to him. You were asked if inmate Waller contacted the wall with the amount of force you intended inmate Waller to contact the wall with. You reiterated that your original intent was to turn inmate Waller toward the door and exit the courtroom. You further explained that once you felt the push back from inmate Waller, you then decided to pin inmate Waller against the wall. You stated that when inmate Waller contacted the wall, you "felt like it was harder than [you] intended or thought it would happen." You further stated your intent was only to get inmate Waller to the wall and pin him up against it to stop his resistive behavior and gain control of him. You stated it was not your intent to hurt or injure inmate Waller. As noted above, the record indicates otherwise.

You were asked if you felt your responses were consistent with the training you received from the Department on use of force. You replied, "Yes." You were asked if at any time you thought you used excessive force with inmate Waller. You replied, "No."

You stated that you sustained an injury to your right shoulder as a result of your encounter with inmate Waller.

You stated you remained with inmate Waller until you were relieved at the hospital by other ERU deputies. You further stated there were no other issues or force used with inmate Waller.

You stated that on the way to the 3<sup>rd</sup> floor medical unit, inmate Waller was "laughing and having a good time." You further indicated that once they arrived at the medical unit, inmate Waller presented himself as being in considerable pain. In his interview, inmate Waller was asked if he recalled any conversation he had while being escorted by you to the medical unit. He replied, "I had to laugh about it." Inmate Waller further stated he told you something to the effect of, "You got me."

You stated that the medical personnel initially recommended inmate Waller be transported to the hospital by DSD vehicle and that due to your understanding of the use of force situation, you "advocated for [inmate Waller]," requesting inmate Waller be transported by ambulance. You further stated that inmate Waller was transported by ambulance to the hospital and Deputy Miller rode in the ambulance while you followed in a DSD vehicle.

You stated that while "it's unfortunate that inmate Waller got injured, [you] believe it's a result of [inmate Waller's] behavior and his resistance to what [they] were trying to get done."

**Your previous discipline includes:**

<u>Date / Served</u>	<u>Offense</u>	<u>Type of Discipline</u>
04/06/2009	Improper Procedure (Late reporting to work)	Written Reprimand

A pre-disciplinary meeting was held on Friday, September 13, 2013, at 1430 hours in the Conference Room at the Denver County Jail. The purpose of this meeting was to allow you to correct any errors in the Agency's information or facts, to tell your side of the story and to present any mitigating information as to why possible disciplinary action should not be

taken. You appeared at this meeting with your attorney, Mr. Michael Lowe. Present at this meeting were Director Gary Wilson, Division Chief Elias Diggins, Division Chief Marie Kielar, Division Chief Michael Than, Major Mike Horner, and Sergeant Steve Koch. Present from the Office of the Independent Monitor was Mr. Gregg Crittenden.

You read from a written statement. The statement read as follows:

*I have worked for the Sheriff Department for over 11 years and have been assigned to Court Services for 8 years and have escorted hundreds of inmates to the courtrooms. I have also been a member of the ERU for 8 years and in that time and capacity I have moved over 100 high risk assaultive inmates with very little use of force. In my career I have prided myself with being able to gain voluntary compliance with some of the most difficult inmates the Department has had in custody. Of the times I have had to use force in my career I can say that this is the only one I can remember that ever resulted in injury. It has always been my goal to use the least amount of force necessary to obtain the objective and then de-escalate when appropriate. I have built a reputation with the Supervisors on this Department as an individual they can count on to accomplish difficult tasks and make good decisions, especially in regards to situations where they are wanting to avoid using force if possible. With the court staff I have built a reputation as an officer that can maintain order, protect the decorum and safety of the court and communicate with all types of people from attorneys to defendant's family members. I can tell you, for me, it is not fun to use force nor is it an appealing part of my job. It is however, sometimes a necessary and mandatory part of my job for my safety, the safety of my coworkers, and the safety of the public.*

*Part of my duties includes maintaining order and control. This is a concept that has been instilled in me starting at the academy and every day since. It is reinforced in briefing to stay vigilant and I am regularly reminded that the court houses are our most vulnerable locations for escapes and violent situations that can put the public and court staff at risk. Additionally, I have been taught and constantly reminded that inmates are resourceful and can defeat and manipulate every restraint device our department uses. I have witnessed firsthand these events in my career. I have seen inmates throw tables, assault DA's, and go after judges while in restraints. Some of the most serious officer injuries I have seen have come from inmates in full belly chain restraint similar to the set up I used on Mr. Waller this day. It is my responsibility and duty to be aware of these situations and maintain safety for everyone.*

*On the day in question I want to make comments on a couple of issues. First, my report was written immediately following the incident, which happened very fast and was my perspective of events to my best recollection. Since that time I have been able to review the video and have an interview where some things became clearer to me. I said in my report that there was a second resistance. I also said in my IA interview that it seemed to me that we hit the glass very fast and harder than I anticipated. Upon watching the video I observed that it appeared Mr. Waller tripped up on his leg irons when I turned him to regain control and leave the courtroom, which I now believe was the secondary resistance I felt causing me to turn him toward the wall to gain control. It is also apparent to me that the trip accelerated our momentum toward the glass which is why we got there so fast and appeared harder than I would have anticipated. At the time however, I did not see any trip. I did feel Mr. Waller resisting me and I had a split-second to react. Part of that split-second decision included attempting to keep Mr. Waller from going to the ground because he was belly chained and unable to stop himself from any fall. While inmates can be severely assaultive and disruptive in belly chains and while they can manipulate the restraints to have good use of their hands and arms while they are standing, belly chained inmates*

*cannot protect themselves during a fall. In this situation I knew there was a potential for injury by going to the ground and in my mind going to the wall was the best measure to gain control without causing injury.*

*This entire event was a response to Mr. Waller's deliberate and calculated resistance when I attempted to get him to leave the courtroom. Mr. Waller had made it clear to me by his actions and statements starting at the cell that he was not going to be cooperative and that he would likely be disruptive at some point. It was my goal the entire time to get him through the process with as little disruption as possible. Mr. Waller's initial refusal to go to court, his statement about it being a "bullshit" preliminary hearing and that he wasn't afraid of us were good indicators that we would need to be cautious and aware. The difficulty getting him restrained in his cell, his intimidation toward us and his mannerisms in the courtroom caused me to believe that he was working himself up to cause some type of disruption. In the video you can see several times where I try to motion to my partner to come closer as I am observing Mr. Waller's behavior. Although my partner had stepped up he did not come close enough where I felt he was in a good position to assist me. My report reflects the video as I walked through these mannerisms during my IA interview. You can see in the video how Mr. Waller leans back toward me. You can see how he flexes his calves and braces against the podium, and you can see where I motion my partner to move closer a few times before and he finally does.*

*On this day when the Judge was finished reading the rights and setting the bond I took hold of Mr. Waller's belly chain immediately to move him to the clerk to sign and then get him out of the courtroom as quick as I could so there would be no chance to cause a disruption. Mr. Waller exhibited the signs and mannerisms that in my experience lead to throwing the podium or other disruptive acts. I told Mr. Waller to move to the clerk and gave slight pressure against the belly chain in the direction I wanted him to go at which time he turned and aggressively engaged me. The first thing that ran through my mind was that here is the disruption I anticipated from his behavior throughout the escort. When Mr. Waller turned and engaged me, I felt off-balance and was face to face with a very large, powerful and dangerous inmate. I maintained hold of the belly chain, grabbed Mr. Waller's sleeve and attempted to regain control and face him away from me by turning him to get him out of the courtroom in the direction he had turned to engage me. During my interview with IA while reviewing the video, when Mr. Waller turns toward me it is with good force and you can see he stretches my right arm completely out and pulls me off balance while I maintain hold of the belly chain. It is during my review of the video that I realized how my shoulder injury occurred and amplifies why I felt threatened and perceived that I was losing control. Additionally on the video you can see Mr. Waller's threatening attitude as he faces me. His head is bouncing up and down rapidly as he argues with me, and is a clear display of his anger toward me. I did not have the hindsight of the video when I reacted but I knew that I was being compromised and I did react to bring him back into control.*

*In the split second I had to make a decision it was always my intention to bring Mr. Waller around, regain control and head him out of the courtroom to the secured side of the jail and to minimize any disruption or act of violence that may occur in the courtroom. My force choice was push/pull in response to his aggressive, active resistive behavior by turning on me. As I have stated before, because he was in a belly chain I wanted to keep him on his feet. I believed in my mind that I could accomplish maintaining control and keeping him on his feet and that was the option I chose. I believe other options could have been available to me including taking him to the ground but I chose the lesser that I hoped would result in no injury to him or me. From there I have already described what I perceived as a second resistance and how we ended up in the wall.*



*A final matter I would like to make clearer is that based on the reports it is my understanding that in Judge Burd's interview she indicates that she gave me no sign that she was done with Mr. Waller or asked me to remove him, and that she thought he was respectful. I think this is just a misunderstanding of what I meant by a "sign," and a lack of information to Judge Burd of events that led the ERU to bring Mr. Waller to court.*

*Having worked around this Judge for 8 years I have learned that when she has completed what she needs to complete and is ready to move to the next case she will say "good day" or "thank you." This does not mean she will not allow someone to ask a question or that she wants them immediately removed. It simply means she has completed her portion of the case. In this case it was to advise Mr. Waller of his rights and set a bond and she did that. Judge Burd may not even know consciously that she is giving any signs but in my experience every Judge has some sort of cue when they are finished that deputies acknowledge and act on accordingly. Judges are also generally not made aware of disruptive behavior or potential problems with an inmate prior to bringing them to court, which is what I mean by the Judge having a lack of information. The Deputies just bring the inmate to court and make certain they are prepared for any such problems. Most always the Judge will never know the details of deputy interaction with inmates behind the scenes unless something happens in the courtroom.*

*Typically in the court setting the Judge sets the rules on how they want the courtroom to run. However it is the deputy's job to make sure that department orders and procedures are adhered to such as movement of the inmate, restraints and security. As many Judges have said, "I do the Judging and the Sheriffs do the Sheriffing." On this day when Judge Burd said "thank you, sir," that was my cue based on my experience that Judge Burd had completed what she needed to and I could continue with my objective of getting Mr. Waller out of the courtroom to the secure side of the jail as quickly as possible without disruption. Because I knew that she had completed her portion of the process and because my perception of events based on the totality of the circumstances and because I perceived Mr. Waller angrily stating "I object" to be the start of an argument and a bigger disruption, I made the decision based on department orders and procedures for my safety and security of the courtroom to order Mr. Waller to the clerk to sign and begin the process of moving him back to the secure side of the jail.*

*I have worked in the court setting for 8 years and understand different court proceedings. I have a good feel for when an inmate is being argumentative with a Judge or is simply asking a legitimate question. I also have good perception generally about when a Judge is done with an inmate. On this day there was no doubt in my mind based on all of the circumstances known to me at the time, that Mr. Waller was becoming argumentative and was going to disrupt the courtroom and escalate his aggressive behavior when he began to speak by saying "I object." Additionally, it continues to be my perception that it was an angry tone. However, regardless of my perceived upcoming disruption or whether or not the court was done with him, I gave Mr. Waller a clear order and directed him to move to the clerk based on my concerns for safety and security. Instead of complying, Mr. Waller chose to turn on me, engage me aggressively and pull me off balance me in what I viewed and continue to view as a hostile move leading to greater problems. Mr. Waller has been a behavior and management issue for the Denver Sheriff Department since before my time. I had no doubt that he has a clear understanding of how his movements and behavior will affect a deputy's reaction. Additionally, I made it very clear to him on this day several times that any act of hostility or aggression would not be tolerated.*

*Mr. Waller is a large and dangerous inmate and the command staff around the table will know that he has a long history of assault and disruptive behavior in our jails and much of that history will pre-date my time with the Sheriff Department. On this day an example of his dangerous and disruptive behavior is evidenced in part by a sergeant having to contemplate assembling a team of deputies to remove him from his cell and force him to court. With due respect, Mr. Waller is a professional inmate and is highly experienced in manipulating people through his size and is often physically violent to staff and inmates. He is skilled at intimidating Deputy Sheriffs to step back and give him room to act out. If you ask any command staff, captains or sergeants with more than 15 years with the department I believe you will find that the history I know about Mr. Waller is correct. I also have had three occasions to be part of searches that included Mr. Waller's cell where we discovered he was running a store. Inmates have reported during these searches that Mr. Waller is running the tier. This is another form of manipulation that occurs by intimidating other inmates to work for him through his size and history of violence.*

*To respond to the specific rules violations I have been presented with I would respond to them individually.*

- 1. Neglect of Duty - At no time did I neglect any duty required of me. All of my actions were guided by and consistent with Departmental Regulations and State Law.*
- 2. Carelessness in performance of duties - I was anything but careless. I carefully prepared for the escort of the inmate to court, applied the appropriate restraints, gave good, clear, concise verbal instructions to the inmate throughout and used force only when it became clear in my mind that it was reasonably necessary. The level of force I used was consistent with my training and the totality of circumstances during this incident.*
- 3. Inappropriate Force - My use of force in this incident was appropriate, for the following reasons:*
  - 1. Only departmentally approved techniques were used.*
  - 2. I used sound judgment in selecting the force option I used given the totality of circumstances and I believe my choice was "objectively reasonable."*
  - 3. I relied upon my training and experience when I decided the use of force was necessary.*
  - 4. I used only that force that was necessary to gain control and de-escalated immediately when the inmate became compliant.*

*The injuries to Mr. Waller were unfortunate but were in no way intentional or deliberate.*

*You may certainly, after reviewing all of the information and video, substitute my judgment and perception of events at the time they happened with yours but I ask you not to. They were sound and real to me then and they still are today.*

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The Director clarified with you your experience with Judge Burd. You explained that during your first three years at the courthouse, you spent "a very considerable amount of time" around Judge Burd and after the first three years, you described your time around Judge Burd as "somewhere between slight and moderate." You stated you have not had a

conversation with Judge Burd to identify what type of verbal or non-verbal cues she would use to indicate to you it was time to remove an inmate from the courtroom. You further explained that in your experience, Judge Burd is "consistent" insofar as how she concludes her speaking with someone appearing before her.

The Director asked you if, prior to this incident, you were aware that inmate Waller sometimes represents himself in court. You stated that you were aware that inmate Waller is a "pro se defendant."

The Director asked you if you have ever witnessed inmate Waller being assaultive or using violence against others. You stated you have not witnessed inmate Waller assault anyone. You further explained that you have witnessed inmate Waller use "intimidation tactics" and use "his size and physical prowess to intimidate people."

The Director asked you what other force options you could have used with inmate Waller in the courtroom. You stated you believe the force you used, which you described as "push-pull," was the least amount of force you could have used. You further explained that when inmate Waller turned on you and put you in a compromised position, you could have opted to take him to the ground where you could reestablish control of him. You indicated you thought continuing to use only verbal commands would ultimately not be effective.

The Director asked you if, prior to using force in the courtroom, you thought inmate Waller posed an imminent threat to you or others. You replied, "I believe he did." The Director asked you if inmate Waller posed an imminent threat to you while you and Deputy Miller were in his cell. You replied, "Most definitely."

The Director inquired about your ability to gain compliance from inmate Waller in his cell without the use of force compared to your interaction with inmate Waller in the courtroom. You explained that one of the differences between the two interactions was that inmate Waller did not make a "fast ... sudden move" in his cell, where he did make a "deliberate and fast action" in the courtroom "to pull away from [you]."

The Director asked you if inmate Waller was pulling back or away from you when you were using force to direct inmate Waller toward the door. You stated you felt inmate Waller "pushing back on [you] or resisting [your] efforts to make him walk in the direction [you] want him to walk." You further explained that at that point you decided to secure inmate Waller against the wall where you could enlist the assistance of the other deputies to escort inmate Waller out of the courtroom.

You stated that you were "startled" at the speed with which inmate Waller contacted the wall. You further indicated that after watching the video you believe inmate Waller stumbled forward due to his leg restraints, and it was the momentum from inmate Waller stumbling that accounted for the unexpected speed.

You stated that the incident with inmate Waller "happened very fast" and you "reacted to what [you've] been trained to react to when somebody turns on you and from there, when things happened, [you] did the best that [you] could do to retain control and limit the amount of injury and force."

Your attorney remarked in closing that "unnecessary and excessive force is an intentional act and that's not what [you were] engaged in" during your interaction with inmate Waller.

## Conclusions and Determinations

### **Career Service Rule 16-60 Discipline and Dismissal**

#### **L. Failure to observe written departmental or agency regulations, policies or rules.**

##### **RR-300.19.1 – Disobedience of Rule: Departmental Order 5011.1J—Use of Force**

##### **RR-300.22 – Inappropriate Force**

The preponderance of evidence shows that you violated each of the above rules and regulations. Inmate Waller was polite as Judge Burd explained why he was incarcerated and advised him of his legal rights. Inmate Waller asked Judge Burd a question and, as she was answering it, you came up and touched inmate Waller for no apparent reason. He reacted by turning to you and in a raised voice complained that you had touched him. He stated, "Don't touch me." Immediately, you grabbed inmate Waller, swung him around and slammed him into the wall. The impact with the wall caused him to drop to his knees. He was injured as a result of your actions. Inmate Waller made no verbal threats to you or anyone else and he did not engage in any conduct that could reasonably be construed as threatening. In fact, he posed no credible threat to anyone's safety. Given that inmate Waller engaged in no conduct, verbal or physical, that could reasonably be construed as threatening, your actions were inappropriate and not justified as taken in self defense or defense of another under Colorado law. They also constituted "excessive force" under Colorado law because they were not taken to "effect an arrest or to prevent the escape" of an inmate or, as noted above, for self defense or the defense of another. Your actions were more likely than not engaged in as a form of punishment or retribution for inmate Waller's prior uncooperativeness.

Your actions also violated other provisions of DSD Use of Force Policy. When you grabbed Inmate Waller, swung him around and slammed him into the wall, you "use[d] inappropriate force in ... dealing with a prisoner" in violation of DSD RR-300.22 because inmate Waller was restrained and posed no credible threat to anyone. As noted above, your belief that inmate Waller posed a threat to you or others and was engaged in aggressive behavior was unreasonable. However, even if your belief was reasonable, under DSD's Use of Force Policy, you are required to de-escalate the use of force and "exhaust other reasonable alternatives" before taking actions similar to those you engaged in her. You failed to do so.

A violation of RR-300.19.1 as it pertains to Departmental Order 5011.1J is a Conduct Category A to F and a violation of RR-300.22 is a Conduct Category D to F violation under the DSD Disciplinary Matrix. Your unauthorized and unjustified actions "involve[d] act[i]ons] that result[ed] in serious and adverse impact on public safety" and to the "professionalism of the Department." As such, they constituted Conduct Category E violations. These are your first Conduct Category E violations. Thus, the penalty level is 6 for the rule violations. Pursuant to the Matrix, the mitigated penalty is 18 to 22 days suspended days without pay, the presumptive penalty is 30 suspended days without pay and the aggravated penalty is 38 to 42 suspended days without pay. Your employment history indicates that you have been the recipient of several commendations and have no significant disciplinary history. Nevertheless, a mitigated penalty is not warranted because you caused injury to inmate Waller, your behavior was unprofessional, you have not accepted responsibility for your actions and your misconduct occurred in the presence of court personnel, including a judge who was concerned enough by your actions that she reported the same. You exposed the

City to demonstrable legal or financial risk and jeopardized the DSD's relationship with the courts. However, given the circumstances present, a penalty in the aggravated range is not appropriate. Accordingly, your penalty will be the presumptive penalty of thirty (30) suspended days without pay for each rule violation. The penalties shall run concurrently.

**Career Service Rule 16-60 Discipline and Dismissal**

- A. Neglect of Duty**
- B. Carelessness in performance of duties and responsibilities**
- Z. Conduct prejudicial to the good order and effectiveness of the department or conduct that brings disrepute on or compromises the integrity of the City.**

Your actions violated the DSD's rules and regulations pertaining to Use of Force policies. They also violated the CSA rules set forth above. Your conduct was unprovoked and occurred in a courtroom with many observers. You violated your duty, were careless in the performance of your duties and engaged in conduct prejudicial to the good order and effectiveness of the DSD. Your actions brought disrepute on and compromised the integrity of the Department and the City.

This Department considers your actions to be egregious and unprofessional. Your conduct has breached several of the DSD's Guiding Principles, including Respect, Fairness, Judgment, Sensitivity, Personal Leadership, Integrity, Accountability and Professionalism. Your actions were also conduct prejudicial to the efficiency, good name and reputation of the City and County of Denver; and as such would cause the public and the courts to lose confidence in the DSD and or the Department of Safety. As a Deputy Sheriff you are expected to maintain the highest standards of professionalism and treat people with whom you interact fairly, humanely and with respect and you failed to do so.

You may appeal discipline regarding these determinations in accordance with Career Service Rule 19, Appeals. You may also initiate dispute resolution pursuant to Career Service Rule 18, Dispute Resolution. Please note, however, that pursuit of dispute resolution will not toll the time limitations for filing an appeal.

Please be advised that you are not to take any retaliatory action against anyone as a result of this discipline letter. If any such action is taken, further discipline may be taken, up to and including dismissal.

Sincerely,



Jess Vigil  
Deputy Manager of Safety

cc: Career Service Authority, Records Management Division  
IAB file  
Administration