

INTEROFFICE MEMORANDUM



CITY OF COLORADO SPRINGS

DATE: September 15, 2005
TO: Deputy Chief Felice
FROM: Commander Walker *RSW*
SUBJECT: Administrative Insight IA Case 05-0043

CONFIDENTIAL

FACTS

The facts in this case are clearly outlined in Sgt. Steve Ward's Administrative Insight. Officer Hardy does not deny striking Mr. Faulkner with a flashlight while attempting to take him into custody for what amounts to nothing more than Mr. Faulkner lying about his identity. One particular fact that is in dispute is Officer Hardy's statement to Internal Affairs that Mr. Faulkner continued to physically resist after he was struck by Officer Hardy. According to Officer Jackson Andrews' interview with Sgt. Mandel, Officer Andrews indicated that after Officer Hardy struck Mr. Faulkner in the back of the head, Mr. Faulkner was kind of hunched over, like he was going to the ground. Officer Andrews stated he could distinctly see Officer Hardy's flashlight hitting the back of Mr. Faulkner's head, causing it to be snapped forward. Officer Andrews also told Sgt. Mandel that Mr. Faulkner was not aggressive or combative toward Officer Hardy and that he was just trying to escape.

Officer Hardy also indicated in his supplemental report dated 07/02/05, that he attempted to take Mr. Faulkner to the ground by striking him with his flashlight on his shoulder blade. Officer Hardy indicated that Mr. Faulkner was still pulling away and was struck in the head during the struggle. Officer Hardy writes in his supplement, "Mr. Faulkner was still pulling away and was struck in the head during the struggle. I struck Mr. Faulkner four times." Again, the writings in this supplement contradict the statement Officer Andrews gave to Sgt. Mandel during his Internal Affairs interview. Officer Hardy's statement is also disputed in a supplement from Officer Jackson Andrews, dated 07/03/05, where Officer Andrews indicated immediately after Mr. Faulkner was struck in the head with a full-sized flashlight, he saw Mr. Faulkner stop and both of his feet somewhat stayed planted on the ground. According to Officer Andrews, Mr. Faulkner had surrendered and was not trying to flee. It also appeared to Officer Andrews that, as a result of that first strike, Mr. Faulkner was "dazed." According to Officer Andrews, immediately after that first strike, Officer Hardy stated, "Don't you try fucking running from me."

Officer Andrews also wrote in his supplement that he believed Mr. Faulkner was struck six times with the flashlight, at least three times in the head. Officer Hardy also stated he believed he struck Mr. Faulkner in the head with his flashlight. These statements are corroborated in the medical report completed by Dr. Matthew Murray, which is contained in the criminal investigation. Dr. Murray observed two linear scalp lacerations; one three centimeters and one two centimeters in length, on the top of Mr. Faulkner's head. Additionally, Mr. Faulkner was diagnosed with muscle strain as a result of muscular injury.

ALLEGED POLICY VIOLATIONS

G.O. 1650.56 Treatment of Offenders

G.O. 705 Force, Detention and Arrest Use of Force Continuum

G.O. 710 Force, Detention and Arrest Less-Lethal Force

G.O. 765 Force, Detention and Resisting Arrest

ANALYSIS

I carefully reviewed the contents of this investigation to include the interviews conducted by Internal Affairs, the case report generated on the original incident, and the Administrative Insight offered by Sgt. Steve Ward. I did note the Administrative insight from Lt. Stomer lacked content and did not add to the administrative review process. I believe the facts of this case speak for themselves and Officer Hardy clearly used excessive force while attempting to take Mr. Faulkner into custody. Clearly the level of resistance encountered by Officer Hardy was defensive resistance, which is defined as "...physical actions that attempt to prevent an officer's control but does not attempt to harm the officer." Statements given to Internal Affairs by Officer Andrews, Mr. Faulkner, and Officer Hardy indicate Mr. Faulkner was only trying to flee from Officer Hardy and that no active aggression occurred against the officers. The level of force used by Officer Hardy is not allowed under the Use of Force Continuum in this particular case. Mr. Faulkner was not out of control, was not trying to assault Officer Hardy, but was only attempting to flee. What aggravates this situation is Officer Hardy's lack of communication with Officer Andrews. This entire incident was preventable if Officer Hardy would have properly communicated his intentions to Officer Andrews. While there is no doubt Mr. Faulkner intentionally misidentified himself, this certainly does not rise to the level of probable cause for the felony offense of Criminal Impersonation. It simply means Mr. Faulkner gave False Information to a Police Officer. Officer Hardy had many alternatives at his disposal in this situation but his lack of communication and poor officer safety techniques caused him to over react.

While Officer Hardy has attempted to rationalize the use of his flashlight to bring Mr. Faulkner under control, it is clear from Officer Andrews' interview that one strike would have accomplished that task. While I firmly believe that the initial strike delivered by Officer Hardy was in itself excessive force, there is no question that the additional blows after Mr. Faulkner was rendered dazed, were unnecessary and constitute excessive use of force. Officer Hardy again attempts to rationalize the use of his flashlight by indicating

he was attempting to hit Mr. Faulkner in the shoulder in an effort to take him down. Officer Hardy is a PR-24 instructor and knows the danger of striking any individual above the waist with an impact weapon, let alone attempting to hit someone in the shoulder blade area during an arrest. Again, it is my opinion that Officer Hardy is attempting to rationalize his actions and fails to take responsibility for his actions.

RECOMMENDATION

The facts presented in this case clearly show that Officer Ken Hardy has violated several Department policies. As a result, I recommend a disposition of **sustained** with respect to the following policies: General Order 1650.56-Treatment of Offenders; General Order 705-Force, Detention, and Arrest Use of Force Continuum; General Order 710-Forced Detention and Arrest, Less Lethal Force, and General Order 765-Forced Detention and Resisting Arrest.

I disagree with Lt. Stromer's and Sgt. Ward's recommendation that Officer Hardy be suspended for four days (40 hours). Based on Officer Ken Hardy's actions and the injuries sustained by Mr. Faulkner, I recommend a suspension of 20 days (200 hours). Additionally, I would call for the revocation of Officer Hardy's PR-24 instructor status and would ask the chief of police to consider a fitness for duty evaluation of Officer Hardy before he is reinstated as a police officer.

The conduct that Officer Hardy displayed is the antithesis of our City's core values of Excellence, Respect, Teamwork, Accountability, and Ethics. Officer Hardy's actions have not only needlessly injured a citizen in our community, but has compromised the public trust given to us by our community.

What is most disturbing in this case is Officer Hardy's refusal to take responsibility for his improper actions. Officer Hardy's version of what happened during the arrest of Mr. Faulkner has been carefully constructed after the fact and contains several discrepancies which I have previously outlined. I applaud Officer Andrews for his proper documentation and honest account of the facts. I believe Officer Andrews' account of this incident and give him a great deal of credibility in this case. Officer Andrews was up front from the very beginning of this case and his actions are consistent with our department values. I believe it is important to send a clear message to Officer Hardy and our organization that excessive force will not be tolerated.

EMPLOYEE MEETING

On September 16, 2005, at approximately 1000 hours, I met with Officer Ken Hardy to obtain additional insight into his actions. I specifically asked Officer Hardy if he had any mitigating facts to present me or any additional insights regarding this case. Officer Hardy stated that he had attempted to take Mr. Faulkner under control by using his flashlight and had attempted to strike Mr. Faulkner in the shoulder and take him to the ground. Officer Hardy took no responsibility for his actions, which gave me the impression that he felt his actions were reasonable and necessary.

Officer Hardy also indicated that he had read Officer Jackson Andrews' supplement and that the supplement seemed to be "fluffy." Officer Hardy did not expand on his definition of "fluffy" but I had the impression that he was not in agreement with Officer Andrews' account of the incident. Officer Hardy did not accuse Officer Andrews of lying but seemed concerned about the length and content of Officer Andrews supplement.

I then informed Officer Hardy that I felt each of the allegations against him were true and that each allegation be sustained. Officer Hardy asked that I repeat the allegations and I obliged. Officer Hardy wrote down each of the allegations on a notepad. I told Officer Hardy that his conduct was in outside policy and my recommendation to Deputy Chief Felice was that he be suspended for 20 days (200 hours). Officer Hardy then asked if he could appeal that. I then told Officer Hardy that the 20-day (200-hour) suspension was only my recommendation and that my recommendation would be forwarded to Deputy Chief Felice for his insight and recommendations. The meeting was then terminated.

Nothing further.