

Dep't of Correction v. Smith

OATH Index No. 1001/19 (Apr. 2, 2019)

Correction officer charged with making false and misleading statements in a written report concerning force allegedly used by other officers. Administrative law judge found that evidence was insufficient to establish misconduct and that charge should be dismissed.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
CURTIS SMITH
Respondent

REPORT AND RECOMMENDATION

JOHN B. SPOONER, *Administrative Law Judge*

This disciplinary proceeding was referred to me in accordance with section 75 of the Civil Service Law. Petitioner, the Department of Correction, charged that respondent Curtis Smith, a correction officer, used excessive force and made false and misleading statements in a written report concerning force used by officers in subduing a group of inmates.

A trial on the charges was conducted on February 11, 2019. Petitioner presented the testimony of an investigator and a video of the incident. Respondent testified on his own behalf, denying that his report was false. Following respondent's testimony, counsel for petitioner withdrew a charge alleging that respondent used excessive force.

For the reasons provided below, I find that the evidence was insufficient to establish that respondent submitted a false or misleading report and recommend that the charge be dismissed.

ANALYSIS

The remaining charge concerns an incident which occurred at around 2:50 p.m. on November 25, 2015, in a dormitory housing area at the Anna M. Koss Center ("AMKC") on Riker's Island. The area consisted of a large open room with around 50 beds. On that day, the

inmates became angry at being denied access to the commissary due to a facility lockdown and wrapped bedsheets around the doors to the area to prevent officers from entering. The inmates also poured soapy water around the entry area.

Virtually none of the basic facts of the incident were disputed. According to the report by the investigator (Pet. Ex. 1), at just before 2:00 p.m., an alarm was activated and a de-escalation team reported to the dormitory. Respondent was a member of a team who arrived a few minutes later (Smith: 83-84). After waiting outside for several minutes, some officers forced open a door and sprayed chemical spray into the area, forcing the inmates to retreat to the back. Respondent and about 20 other officers, wearing gas masks, entered and ordered the inmates to get on the floor beside their beds. All of the inmates complied except Mr. Gales and two other inmates.

The evidence as to the force used to subdue Mr. Gales consisted of a video and a subsequent injury report. The video, taken on a handheld camera from inside the control room, shows approximately 40 inmates and 24 officers inside the dormitory area (Pet. Ex. 7). The struggle with Mr. Gales begins at around four minutes from the beginning of the video, when Mr. Gales, staggering from the effects of the chemical spray, goes up against a wall surrounded by five masked officers, at least three of whom have batons. One of the officers uses another burst of spray and Mr. Gales then lunges toward the officers. Another officer loses his footing and falls, then immediately gets up and joins the struggle with Mr. Gales. In the next few seconds, six officers surround Mr. Gales and at least three of them, including the one who fell, seem to be striking him with their fists. The video does not clearly show what occurred, however, because the camera repeatedly pans away from Mr. Gales, such that the officers and Mr. Gales cannot be seen. The officers guide Mr. Gales to his feet and confine him next to the control room, as other officers are seen walking in the back of the area and escorting other inmates out.

The injury-to-inmate report (Pet. Ex. 4) indicates that Mr. Gales was seen at the clinic at 3:50 p.m. and found to have a laceration on the top of his head which had to be “glued together,” a black eye, and bruises on the right side of his forehead. According to photo (Pet. Ex. 5), the forehead injury exhibited six striations which would be consistent with a blow from the grip end of a baton.

Following the incident, some 26 staff members and 24 inmates completed written reports about the incident. Mr. Gales stated that he was “assaulted” by 12 officers. During this assault, he was hit with a baton in his right eye, hit in the head with a spray canister, and punched in his face.

Four of the staff reports mention Mr. Gales by name. Officer Cutler reported that Mr. Gales attempted to punch him, that the officer “fell to the ground,” and that Mr. Gales “continued to struggle” and was eventually “secured.” Officer Shakoor’s report indicated that, after Mr. Gale tried to punch the officers, he was “taken down.” Captain Louis’s report indicated that, after Mr. Gale swung his fists at the officers, “multiple officers utilized upper and lower body control holds and took the Inmate to the ground.” Officer Harris’s report indicated that the officers used “upper body control holds” on Mr. Gales. Two other officers wrote that “upper body control holds” were used upon several unidentified inmates. None of the other staff reports indicated that any use of force was observed.

Respondent testified that, on November 25, 2015, he was one of multiple officers who responded to an alarm in the AMKC group housing area. He and another officer were ordered to collect a trolley and follow the response team to the area (Tr. 84-85). Although respondent brought a baton to the area, he and other officers were ordered to leave the batons outside when they entered the room (Tr. 87). As respondent entered the room, he slipped on the wet floor and fell. Because his mask was not completely sealed, he also became sick from the OC and vomited. He obtained a different mask and then proceeded to escort inmates out of the room (Tr. 85-86). Respondent denied using any force or witnessing any other officer use force on Mr. Gales (Tr. 86-88).

In respondent’s use-of-force report (Pet. Ex. 3), he wrote that he “slipped and fell while trying to place inmates in flex cuffs.” He also stated that he “placed several inmates in cuffs” and escorted them to intake for “decontamination.” He did not mention using or seeing any officer use force on any of the inmates.

The investigator assigned to the incident, Mr. Coleman, testified that he reviewed the staff reports and noted that respondent was the only officer who mentioned falling. He therefore concluded that respondent must have been the officer who is shown falling on the video (Tr. 25). He further concluded that the “striations” visible in the wound on Mr. Gales’s temple were

consistent with the striations on the handle of the Department batons and that either respondent or one of the other officers must have struck Mr. Gales in the head with a baton (Tr. 26, 38-39).

For multiple reasons, the proof here was starkly inadequate to prove the false report charge against respondent. The video, the injury report, and the reports of the four officers who admitted to helping “take down” Mr. Gales established only that force was used on Mr. Gales, causing injuries to his head. The false report charge against respondent rests upon the contention, made in the summation by petitioner’s counsel, that respondent, along with all of the other officers in the dorm area, must have witnessed the force depicted in the video and that his failure to include this fact in his report constituted misconduct.

The conclusion by the investigator that respondent is seen in the video is unsupportable. In fact, none of the officers’ faces are visible because they are masked. Further, Mr. Coleman’s statement that respondent was the only officer who fell on the slippery floor was inaccurate. Officer Cutler, who gave the most detailed description of the interaction with Mr. Gales, wrote that he fell as he reacted to Mr. Gales’s efforts to hit the officers, making it likely that the officer on the video who Mr. Coleman identified as respondent was, in fact, Officer Cutler.

The video confirms that, due to the configuration of the space and the number of people in the room, some of the officers would not have been able to see what was occurring with Mr. Gales. The video shows about half of the officers gathered around the control room window where the incident with Mr. Gales took place, while the other officers are in the back and the middle of the room, cuffing and escorting inmates out of the room. These officers in the rear might have heard shouts and seen moving bodies in the front, but would have been blocked by other inmates and officers from actually seeing whether or what force was being used on Mr. Gales. Notably no evidence was offered to show that respondent was in proximity to Mr. Gales as the force was used.

The Department use-of-force directive requires that officers using or witnessing any use of force on an inmate complete a written report describing the force. Dir. 5006R-C (V)(F)(3). The proof here falls far short of showing that respondent violated this directive. *See Dep’t of Correction v. Lozada*, OATH Index No. 1619/16 at 6 (June 23, 2016) *modified on penalty*, Comm’r Dec. (Sept. 29, 2017) (evidence failed to establish that officer observed blows to inmate such that his failure to mention them in his report violated the Directive).

In sum, the proof offered was inadequate to show that respondent's failure to mention force in his report constituted misconduct and the charge should be dismissed.

John B. Spooner
Administrative Law Judge

April 2, 2019

SUBMITTED TO:

CYNTHIA BRANN
Commissioner

APPEARANCES:

JUAN PUCHA, ESQ.
CHRISTOPHER MUCCIACCIO, ESQ.
Attorneys for Petitioner

KOHLER & ISAACS, LLP
Attorneys for Respondent
BY: ANDREW ROWE, ESQ.