



Internal Affairs Investigation – AUDIT

Case Details	
Inmate Name	[REDACTED]
Case No.	19-IA-1
Type of Investigation	Excessive force
Incident Date	January 11, 2019
Date/Origin of Complaint	January 17, 2019 / IA-initiated investigation
Date IA Sent to IOLERO	March 3, 2021 ¹
Date Audit returned to SO	January 12, 2022

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¹ Due to a clerical error, the investigation was not sent to IOLERO upon completion.



Executive summary

I reviewed the following material:

- Transcripts of interviews with Deps. Morfin, [REDACTED], [REDACTED], and [REDACTED]
- Dep. Morfin's incident report
- Dep. [REDACTED] supplemental report
- Photographs of Mr. [REDACTED] injuries
- The Administrative Admonishment signed by Dep. Morfin prior to his interview
- The investigative narrative (IA Report)

I **agree** with the investigator's conclusion sustaining policy violations by Dep. Morfin for excessive force, inaccurate documentation of use of force, and untruthfulness. However, the investigation was **incomplete** because, [REDACTED]
[REDACTED]

Factual background

On the evening of January 11, 2019, MADF authorities decided to conduct searches of all the cells in D Module after several incidents of inmate misbehavior. ([REDACTED] Interview 3-4.) The procedure for conducting such searches involves instructing inmates to stay back from their cell doors, handcuffing them, removing them from their cells, and moving them to the dayroom while their cells are searched. ([REDACTED] Interview 5; [REDACTED] Interview 5; Morfin Interview 9.)

One of the D module inmates, [REDACTED], was displeased with being told to "cuff up." (Morfin Report.) He expressed his displeasure vociferously enough that a group of deputies went to his cell to subdue him. (*Ibid.*; Morfin Interview 14.) One of the deputies, Dep. Morfin, got into a physical altercation with Mr. [REDACTED] after Mr. [REDACTED] refused to comply. (Morfin Interview 17-18.) According to Dep. Morfin's report, the altercation began when Mr. [REDACTED] "leaned his body back pulling away and raised his left arm with a closed fist," but no other deputy confirmed seeing Mr. [REDACTED] do that. (Morfin Report; Morfin Interview 18, 33.) In the course of the altercation, Dep. Morfin struck Mr. [REDACTED] repeatedly with his fist, and delivered several knee strikes and kicks after Mr. [REDACTED] was on the ground and had stopped resisting. ([REDACTED] Interview 11.) He stopped striking Mr. [REDACTED] only after Dep. [REDACTED] told him "that's enough." ([REDACTED] Interview 10; see [REDACTED] Supp. Report ["I stepped in and relieved Mor[f]in"].)

Discussion and conclusions

Legal principles

Burden of proof

In a disciplinary administrative proceeding, the SCSO, as the employer, has the burden of proving that the allegations are true by a preponderance of the evidence. Under that standard, the burden of proof is met when the evidence convinces the finder of fact that there is a greater than 50% chance that the claim is true. The evidence cannot be based on surmise, conjecture, theoretical conclusions, or suspicion of wrongdoing. (*Johnstone v. Daly City* (1958) 156 Cal.App.2d 506, 515; *Pereyda v. State Personnel Board* (1971) 15 Cal.App.3d 47, 52.)

Excessive force

“It is the policy of this Office that deputies shall use only that force which is objectively reasonable, given the facts and circumstances known at the time of the event to effectively bring an incident under control.” (SCSO Policy Manual § 300.2.) “Reasonable force” is defined to be “[t]he force that an objective, trained and competent employee, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.” (SCSO Policy Manual § 300.3.1, citing 15 Cal. Code Reg. § 3268.) The cited regulation defines “excessive force” as “The use of more force than is objectively reasonable to accomplish a lawful purpose.” (15 Cal. Code Reg. § 3268(a)(3).) A claim of excessive force depends on “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” (*Graham v. Connor* (1989) 490 U.S. 386, 397.)

The investigator’s “sustained” findings were appropriate and correct.

Dep. Morfin used excessive force.

According to Dep. [REDACTED], Mr. [REDACTED] was lying on his bunk “in the fetal position essentially” when he first arrived at the cell. Dep. Morfin “threw a couple knee strikes [when Mr. [REDACTED] was] on the bunk and then once we got on the floor there may have been one or two more knee strikes and then . . . he kicked him a couple times.”² ([REDACTED] Interview 10-11.) At the time Dep. Morfin administered the kicks and knee strikes, Mr. [REDACTED] was on the floor with his “arms underneath him,” but “he wasn’t lashing out. . . . [T]he only resistance that he was displaying was . . . he was clenched up.” ([REDACTED] Interview 26.) Dep. [REDACTED] told the investigator that he was “good up until the kicks were thrown.” ([REDACTED] Interview 25.)

Kicking Mr. [REDACTED] as he lay on the floor, not giving deputies access to his hands but also not actively resisting them, was “more force than [was] objectively reasonable to accomplish a lawful purpose.” We agree with the “Sustained” finding regarding Dep. Morfin’s use of excessive force (policy no. 300). (IA Report 39-41.)

² It is unclear whether Dep. [REDACTED] also said that Dep. Morfin delivered elbow strikes. He initially agreed with the investigator that “some elbow strikes were delivered to his left side? Left shoulder area?” but then said “I didn’t see him use any elbows.” ([REDACTED] Interview 10-11.)

Dep. Morfin failed to provide a safe custodial environment.

The report quotes the following policy:

General Duties of Deputy Sheriffs, Correctional Deputies and Correctional Officers: Protect life, property and environment, maintain law and order, report and investigate unlawful activity, make legal searches, seizures and arrests, apprehend criminals and provide a safe, humane custodial environment, recover and protect personal property and evidence, and testify as required.

(IA Report 41.) It is not clear where this policy comes from; it does not appear, at least in this form, in either the SCSO Policy Manual or the Detention Division Policy Manual. It may have appeared in the version of the policy manual that was in force in 2019. In any event, it is an excellent policy. If it is not an official policy of the department, it should be.

Whatever its source, we **agree** that Dep. Morfin violated it. The investigator's comment that "CD Morfin should never have entered the cell, used force, or verbalized his superiority over Inmate [REDACTED]" is a concise and accurate summary of this unfortunate incident. (IA Report 41.)

Dep. Morfin did not report accurately on his use of force.

In his report filed the day after the incident, Dep. Morfin stated that he had used force against Mr. [REDACTED] in the following ways:

- "I utilized approximately five closed fist strikes with my right hand striking him on the right side of his face and temple area."
- After Mr. [REDACTED] was on the ground, "I utilized approximately five closed fist strikes and two elbow strikes . . . striking [REDACTED] on his face and forehead."

(Morfin Report.) He then reports that "Upon seeing [REDACTED] was no longer attempting to strike me, I stopped my use of force . . ." (*Ibid.*)

As the IA Report points out, this is distinctly at odds with Dep. [REDACTED] account of the knee strikes and kicks Dep. Morfin administered to Mr. [REDACTED] after he was on the ground. (IA Report 42.) Accordingly, we **agree** with the "Sustained" finding regarding Dep. Morfin's inaccurate reporting of this use-of-force incident (policy no. 300.5). (IA Report 41-42.)

Dep. Morfin responded untruthfully to questions about the incident.

Before his interview, Dep. Morfin signed an Administrative Admonishment which noted that the interviewer was the designee of the Sheriff, and directly ordered Dep. Morfin "to answer all questions and to answer them truthfully." The admonishment contained the following quotation from the department's general orders:

Truthfulness: Members shall truthfully answer all questions that are specifically directed to them by other members and that are narrowly related to the scope of employment and operations of the Sheriff's Office.

This was quoted in the IA Report. (IA Report 42.)

The investigator concluded that Dep. Morfin was untruthful when, among other things, he denied "deliver[ing] knee strikes and/or kicks towards Inmate [REDACTED] shoulder/head area." (IA Report 43; see Morfin Interview 33-34.) We **agree** that this violated the direct order to answer questions truthfully.

The investigation did not address [REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The investigation was **incomplete** because [REDACTED]

[REDACTED]

We assume that Nurse [REDACTED]'s notes are absent from AIM because the investigator never requested Mr. [REDACTED]'s medical records. That is, we assume that if the investigator had examined the medical records and determined that Nurse [REDACTED] did not make any notes about her consultation with Mr. [REDACTED] on January 11, the records would nevertheless appear in AIM. In our view, the severity of an inmate's injury is invariably relevant to any investigation of an in-custody injury; if nothing else, any evidence that the injury was not all that serious is likely to be highly relevant to any tort claim or lawsuit resulting from the incident.³ Accordingly, we recommend that a review of the inmate's medical records be regarded as an indispensable component of all investigations of incidents in which an inmate was injured while in custody.

Investigative reports should cite the policy sections they discuss.

This may be more of a plaintive request than a recommendation, but we would appreciate it if investigative reports that discuss particular policies could identify the sources and sections numbers of those policies. This report does not: the discussion of Dep. Morfin's policy violations quotes the relevant policies but does not mention their section numbers or indicate whether they are from the departmental policy manual, the Correctional Division one, SCSO's general orders, or somewhere else. It would be very helpful, not just to IOLERO but to anyone else who reads these reports – particularly to anyone who reads them years after they are completed, when new policy manuals have replaced the ones in effect at the time – if the reports could specify where, exactly, the relevant policies can be found.

Date: January 12, 2022
Respectfully Submitted
Jonathan Berger
Attorney

[REDACTED]

³ [REDACTED]