

**HEARING OFFICER, CAREER SERVICE BOARD  
CITY AND COUNTY OF DENVER, COLORADO  
Appeal No. 16-15**

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**DECISION REVERSING 10-DAY SUSPENSION**

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**EDWARD HYLAND**, Appellant,

**vs.**

**DEPARTMENT OF SAFETY, DENVER SHERIFF'S DEPARTMENT,**  
and the City and County of Denver, a municipal corporation, Agency.

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**I. INTRODUCTION**

The Appellant appeals his ten-day suspension, assessed on March 19, 2015 by his employer for alleged violations of specified Career Service Rules. A hearing concerning this appeal was conducted by Bruce A. Plotkin, Hearing Officer, on January 25, 2016. The Agency was represented by Jessica Allen, Assistant City Attorney, while the Appellant was represented by Don Sisson Esq., and Zach Wagner Esq., of the law firm Elkus Sisson and Rosenstein LLC. Agency exhibits 1 – 21 were admitted, as was Appellant's exhibit A. Deputy Loren Parks and Civilian Review Administrator Shannon Elwell testified for the Agency. The Appellant testified on his own behalf during his case-in-chief, and presented the testimony of Deputy Ronald Stevens, Deputy Gerald Roybal, and Deputy Ricky Arellano.

**II. ISSUES**

The issue to resolve in this appeal is whether the Appellant failed to render aid to another deputy in violation of an Agency Rule, during an incident at the Denver County Jail on March 14, 2014. To that end, the following legal questions were presented for appeal:

- A. Did the Appellant violate Career Service Rule: 16-60 A. or 16-60 L., via Denver Sheriff Departmental Rule 200.17.1?
- B. If the Appellant violated either Career Service Rule, did the Agency's decision to suspend him for 10 days conform to the purposes of discipline under CSR 16-20?

**III. FINDINGS**

These facts were not significantly disputed. The Appellant, Deputy Edward Hyland, has been a member of the Denver Sheriff's Department (Agency) for nine years. In that

capacity, his principal duties are the care and custody of inmates in the City's jails. He had never been disciplined until this case. His work performance reviews have exceeded expectations in six out of his eight years on the job. Hyland is experienced in the Agency's use of force policy and has assisted other deputies to subdue inmates who have resisted lawful orders.

On March 14, 2014, Jefferson County Deputy Loren Parks arrived at the Denver County Jail to take custody of inmate CK, based on a Jefferson County warrant. Deputy Parks is a strongly-built, six-foot, 220 pound male. CK is female, between 5'2" and 5'4," and about half of Parks' weight. CK repeatedly yelled refusals to cooperate and repeatedly pulled her arms and legs away from Parks as he attempted to handcuff her, but she did not attack Parks, and Parks was never concerned for his own safety. Parks used force to restrain CK after she repeatedly refused his order that she had to go with him to Jefferson County. He did not ask for any assistance from two nearby Denver deputies at any point. Hyland and Deputy Stevens were in the same area as Parks and CK when CK began yelling that she refused to go to Jefferson County.

The remainder of the facts that determine the outcome of this case were in dispute. For reasons specified below in the "Analysis" section, I conclude the following events occurred by a preponderance of the evidence.

At the same time CK began arguing with Parks, Hyland went around the corner to get coffee, then sat at his desk to read e-mails. He was unable to see CK and Parks from his desk, but could hear them.

When Stevens heard CK yelling her refusal to cooperate, he took away and secured two other inmates in order to avoid any potential escalation. After securing the inmates next door, Stevens returned less than 20 seconds later. He told Hyland he would call a sergeant to seek advice how to handle the situation. At that point, CK was still resisting Parks, Hyland was still behind his desk, and Stevens, also out of view of the struggle, was calling on the phone for a sergeant.

Hyland left his desk and approached the caged area where Parks was engaged with CK. As Parks and CK first came into his view, Hyland saw CK latch onto a countertop to evade being handcuffed. Hyland reached through a 12" gap in the cage and moved a set of leg shackles away from CK's hand to prevent her from accidentally grabbing them from the counter and using them as a weapon. He saw Parks and CK fall to the floor. Hyland went a few steps farther to the entrance of the caged area, arriving at the same time as Deputy Roybal.

They saw CK face-down on the floor with Parks on top of her, and CK's hands handcuffed behind her back. CK was still kicking her legs like a swimmer's flutter kick. Hyland and Roybal stood by and ordered her to stop resisting, while Parks shackled her legs a few seconds later. Deputy Arrellano arrived shortly after Hyland and Roybal and saw CK fully restrained and seated against a wall.

None of the Denver deputies physically assisted Parks to gain control of CK. Both deputies who were present during the last part of the struggle – Hyland and Roybal - felt

Parks had CK under control from the time they arrived. The duration of the incident, from when CK first began yelling until Parks had her hands and legs in restraints, was less than one minute.

The Agency served Hyland with a notice in contemplation of discipline on January 23, 2015. A pre-disciplinary meeting was held March 4, 2015. Hyland attended with his attorney-at-law. The Agency served its notice of discipline on Hyland March 19, 2015. Hyland filed this appeal 11 days later.

#### IV. ANALYSIS

##### A. Jurisdiction and Review

Jurisdiction is proper under CSR 19-10 A.1.b., as the direct appeal of a suspension. I am required to conduct a de novo review, meaning to consider all the evidence as though no previous action had been taken. Turner v. Rossmiller, 532 P.2d 751 (Colo. App. 1975).

##### B. Burden and Standard of Proof

The Agency retains the burden of persuasion, throughout the case, to prove Hyland violated one or both cited sections of the Career Service Rules, and to prove its decision to suspend Hyland was reasonable under CSR 16-20. The standard by which the Agency must prove its claims is by a preponderance of the evidence.

##### C. Career Service Rule Violations<sup>1</sup>

###### 1. CSR 16-60 A. Neglect of duties.

To sustain a violation under CSR 16-60 A, the Agency must establish that Hyland failed to perform a known duty. In re Gomez, CSA 02-12 (5/14/12) citing In re Abbey, CSA 99-09, 6 (8/9/10). The Agency claimed Hyland breached this rule without specifying how. After citing the rule, the Agency's only "evidence" for it was the circular statement "in unreasonably failing to assist Deputy Parks with the restraint and control of inmate [CK], Deputy Hyland unreasonably failed to assist and protect Deputy Parks." Aside from citing other Agency rules elsewhere in its notice of discipline,<sup>2</sup> the Agency failed to cite any particular duty which Hyland failed to perform.

###### 2. CSR 16-60 L. Failure to observe written departmental or agency regulations, policies or rules. The Agency claimed the Appellant violated the following written policies.

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<sup>1</sup> Since this appeal was filed, the Career Service Rules have been revised. Because the previous version of the rules were in effect at the time discipline was assessed, the earlier version controls here.

<sup>2</sup> It is well-established that simply citing another rule violation does not establish a separate violation under CSR 16-60 A. In re Leyba, 59-14 (7/7/15).

## **Denver Sheriff Departmental Rules and Regulations [RR]**

### **RR 200.17.1 Failure to Aid and Protect Fellow Deputies – Unreasonable**

This allegation was the cornerstone of the Agency's case. No prior decision has addressed this Agency rule, and the Agency had not invoked it before this case.<sup>3</sup> Both sides agreed the term "fellow deputies" under this rule includes deputies from other jurisdictions and therefore included Parks.

The evolving confrontation between Parks and CK, beginning with argument, progressing to CK's yelling/cursing/refusal to cooperate, and ending with a physical scuffle, created an evolving application of this rule: whether, at any point, the rule required intervention by Hyland and, if so, to what degree. Neither side specified a bright line under this rule when a deputy must intervene in a confrontation or to what degree. The word "unreasonable" in the rule suggests a test I adopt here: whether, under the circumstances, it was unreasonable for Hyland not to intervene in Parks' scuffle with CK. To that end, any application of "unreasonableness" under this Agency rule must begin with Agency descriptions of the level of inmate resistance at the time, along with responsive levels of force.

As an initial matter, it seems this, or some other rule, may well have been implicated when Hyland walked away from Parks and CK. He sat down and remained out of their view to have coffee and read emails, instead of standing by in case Parks needed assistance, a real possibility, as CK was escalating her yelling, cursing, and refusal to cooperate.<sup>4</sup> However, the Agency did not connect those actions with any rule violation in its notice of discipline or at hearing, and so I decline to do so here. Instead, the Agency alleged a violation of this rule occurred only when CK physically resisted Parks and Hyland elected not to intervene physically. The first point at which the Agency alleged Hyland violated this rule was when Hyland reached through the 12" gap in the cage. According to Elwell, Hyland should have restrained CK's hand instead of moving the leg shackles away from her grasp. [See Elwell testimony]. Therefore, my analysis moves from that point forward.

Neither side presented a comprehensive view of the Agency's designation of levels of resistance; however all witnesses, including Hyland, agreed CK began with verbal resistance and progressed to active resistance by the time Hyland shackles away from CK's hand and she and Parks fell to the floor. Hyland acknowledged CK may "possibly" not have been under control at that moment. [Hyland cross-exam], but believed Parks still had overall "control of the situation." [Hyland testimony]. In either event, Hyland could not have substantially intervened physically until he entered the caged area. Elwell's objection that he should have restrained CK's hand, while reaching through a 12" gap in the cage, would not have done substantially more than what he already did – prevent CK from grabbing a potential weapon. By the time

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<sup>3</sup> Civilian Review Administrator Shannon Elwell stated to her knowledge, the Agency has never sustained a violation of 200.17.1. [Elwell cross-exam].

<sup>4</sup> Hyland claimed he did not hear CK yelling and cursing from his position, around a corner from them until late in the incident. His own drawing, those of other witnesses, and testimony that two other deputies could hear the commotion through a closed door in the adjoining hallway, farther away, belie Hyland's claim.

Hyland and Roybal arrived in the cage it appears Parks had substantial control of CK's hands and was securing one leg.

Stevens credibly testified he applies only the degree of force necessary to achieve compliance and enters into a scuffle accordingly, while considering such factors as the respective size, sex and strength of the parties. Stevens' view of "reasonableness" under this rule is consistent with the Agency's established standards. Prior cases involving the use of force have definitively established the Agency requires its deputies to use only the amount of force necessary to accomplish compliance, and no more. See, e.g., In re St. Germain, 24-14, 4 (11/7/14). While gang-tackling or piling on a resistant inmate is a reasonable option in some instances, in others, such practice can run the risk of unnecessarily injuring the inmate or other deputies, or result in an excessive use of force.

The decision-maker in this case, Civilian Review Administrator Shannon Elwell testified without rebuttal that the level of inmate resistance determines the level of force; however she did not address the Agency's classification of levels of resistance, and it did not appear elsewhere in the evidence. Without comparing Hyland's level of response to CK's level of resistance pursuant to the Agency's designations,<sup>5</sup> Elwell's assessment that Hyland's response was inappropriate was subjective.

With regard to the degree of force appropriate to that undefined resistance, Elwell testified the first level of force is command presence, which does not include not touching. The second level of force is verbal commands, which also does not involve touching. The third level of force is compliance or control holds, which is physical touching. The highest level of force is the use of deadly force. [Elwell testimony].

Elwell acknowledged Hyland responded to the incident, that he used his command presence in accordance with the first level of use of force, and issued verbal commands to the inmate, in accordance with the second level of the use of force. She acknowledged those responses by Hyland could be considered rendering aid and assistance under this RR 200.17.1. [Elwell cross-exam].

Parks was the only witness to testify Hyland should have jumped in to help. He stated Hyland should have helped him as a reasonable person observing a struggle, regardless of any particular rule. Parks acknowledged he did not ask for assistance but explained, unpersuasively, that he did not ask because he was occupied with trying to control CK.<sup>6</sup> He estimated he scuffled with CK for 2-3 minutes (in her notice of discipline, Elwell wrote the interaction lasted 3-5 minutes), that she was difficult to control, and that every scuffle is potentially dangerous. Parks believes every hands-on scuffle should cause other deputies to jump in to assist. He said he does not consider such factors as size, weight or gender, but jumps in any time another deputy "goes hands on"

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<sup>5</sup> While the Agency has described levels of resistance in previous cases, In re St. Germain, 24-14 (11/7/14); In re Valerio, 22-14 (9/2/14), that information was not evidence in this case, and it would be inappropriate to have taken administrative notice of that information since it is unknown if such designation is the current standard.

<sup>6</sup> Parks stated he never felt threatened, yet had difficulty controlling CK, despite the testimony of the three Denver deputies, and provided no convincing reason why he was unable to utter "how about some help?" or "grab a leg" while Hyland was standing next to him.

regardless of such factors, so he was "shocked and surprised" Hyland did not assist him. [Parks testimony]. He stated it required a substantial and sustained effort to control CK. The three Denver deputies who observed some or all of that scuffle disagreed with Parks. Hyland and Roybal stated Parks did not use a lot of effort to control CK.

Three Denver deputies – Hyland, Roybal, and Arrellano felt Parks was sufficiently in control of CK that he did not need help. The two independent witnesses, Roybal and Arrellano, estimated Parks struggled with CK for less than one minute and did not need their assistance. However, they arrived only after Parks had at least partially secured CK.

Parks is literally twice CK's weight, strongly built, and at least 8" taller than CK who is a small woman. Parks did not ask for assistance, and never felt in danger. The entire struggle with CK lasted 45 seconds to one minute. Parks acknowledged he was unfamiliar with the rules and regulations of the Denver Sheriff's Department pertaining to assistance of other deputies, but believed, contrary to Agency policy, that other deputies should always jump in to any physical scuffle, regardless of circumstances.

Stevens was not present for the physical struggle between Parks and CK as he had escorted two inmates out; however I credit his opinion, having been involved in 30-40 use or potential use of force cases with inmates, that over-reacting to a struggle by involving more deputies than necessary can be as harmful as failing to react. [Stevens testimony]. That testimony was consistent with Hyland's view that his intervention was unnecessary under the circumstances. Stevens credibly testified deputies are taught to assist if another officer is in danger or if there is a fight. He also inferred, consistent with Hyland's claim, that Parks should not have engaged CK physically without another officer. "You don't jump in alone." [Stevens testimony]. Stevens believed that, because of their evident disparate size and strength, Parks should have been able to handle CK without assistance. He stated it is not necessary for another deputy to assist if the inmate is under control, which, to him, includes mild resistance. [Id].

In contrast to Parks' claim that Hyland should have jumped in, Hyland stated Parks' going "hands-on" was an over-reaction to the level of threat posed by CK. Hyland testified physical force was unnecessary at the point Parks used it, so that if he intervened he could have been assisting in excessive use of force. Hyland also stated he would have continued to try to convince CK to cooperate instead of manhandling her. [Stevens testimony]. Parks' credibility was no more persuasive than that of Hyland.

Roybal, Hyland and Arrellano entered the cage when Parks already had substantial physical control of CK. Roybal stated if a deputy is in an "altercation" with an inmate, an observing deputy should always become involved physically. Roybal did not define "altercation," but from Stevens' testimony, "altercation" to an Agency deputy appears to mean a physical fight, rather than the common meaning of an argument. To the extent CK was resisting but not fighting with Parks, they were not in an "altercation," thus I take Roybal's comment as a hypothetical rather than a criticism of Hyland's inaction. Moreover, Roybal described Parks and CK as "a very large man on a small framed woman." He said that when he arrived, he took a position toward CK's head while Hyland took a position toward CK's feet, and they both issued commands

for CK to stop resisting. He believed that there was no need to intervene physically at that point because she was under control, and intervention would have been excessive force. Ironically, Roybal stated that a physically-resistant inmate is not under control unless she is fully handcuffed - and CK was not fully handcuffed, and still turning, which he explained was resisting - while he stood by with Hyland while Parks finished handcuffing CK. I take this last statement akin to "substantial compliance" with bringing an inmate under control.

Arellano has used force over 15 times. In instances when another deputy was engaged in the use of force with an inmate, he has intervened physically and not at other times, depending on the situation. He said deputies are trained that use of force is left to the deputy's discretion. For him, the key is "whether the deputy has the situation under control." When Arellano first saw Parks through the window of the next room, he had one handcuff on CK and was placing the second on her other hand. When he arrived, 6-9 seconds later, she was fully hand and leg-cuffed, sitting against a wall. He stated for some deputies, having control of an inmate is having them on the ground, while for others control is not obtained until both wrist and leg restraints are applied. Arellano testified deputies are taught to assist another deputy if an inmate is resisting arrest, but it depends on the situation. He believed CK was actively resisting when he saw her through the window next door. Arellano, a 25-year veteran of the Agency, testified credibly that there is no rule when to "jump in." Rather each situation determines the degree of intervention. [Arellano testimony].

In the absence of an Agency directive which removes officers' discretion by requiring hands-on assistance in every instance of inmate resistance, this rule requires physical intervention to aid another deputy when a reasonable deputy would do so under the circumstances. Parks' alleged need for assistance, despite not asking for any, was not more persuasive than the three Denver deputies who found Parks had CK under control at all times they observed them.

Hyland intervened to the extent of removing CK's hand from a potential weapon, using command presence, and issuing commands for her to stop resisting. His testimony at hearing, that Parks had sufficient control of CK not to need assistance, was consistent with his previous statements to Internal Affairs.

Elwell's perception that Hyland should have gone "hands on" was necessarily based on her acceptance of Parks' statements and rejection of those of Hyland, whereas I find neither more credible than the other. Her statements also infer only Hyland, Parks and CK were in the cage while Parks struggled mightily with CK and Hyland stood by, idle. However, the preponderant evidence establishes Roybal arrived in the cage at the same time as Hyland and both ordered CK to stop resisting, as Parks, who already had handcuffs on CK, finished restraining her legs. There was no evidence Roybal was disciplined for his inaction. Under these particular circumstances, Hyland did not unreasonably fail to assist another deputy in violation of RR 200.17.1, and therefore I find the Agency failed to prove Hyland violated CSR 16-60 L. by a preponderance of the evidence.

## V. DEGREE OF DISCIPLINE

Where the evidence fails to establish any rule violation, any discipline is clearly excessive. In re Rolando, 40-15 (1/26/16).

## VI. ORDER

The Agency's 10-day suspension of Deputy Hyland, assessed on March 19, 2015, is REVERSED. The Agency is ordered to remove any reference to the originally-imposed discipline from Appellant's personnel file, and is ordered to pay the appropriate back pay and other benefits under the Career Service Rules no later than two pay periods after the date of this Decision.

DONE March 10, 2016.



Bruce A. Plotkin  
Career Service Board Hearing Officer

### NOTICE OF RIGHT TO FILE PETITION FOR REVIEW

You may petition the Career Service Board for review of this decision, in accordance with the requirements of CSR § 19-60 et seq., within fifteen calendar days after the date of mailing of the Hearing Officer's decision, as stated in the decision's certificate of delivery. The Career Service Rules are available as a link at [www.denvergov.org/csa](http://www.denvergov.org/csa).

All petitions for review must be filed with the:

Career Service Board  
c/o OHR Executive Director's Office  
201 W. Colfax Avenue, Dept. 412, 4<sup>th</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5720  
EMAIL: [CareerServiceBoardAppeals@denvergov.org](mailto:CareerServiceBoardAppeals@denvergov.org)

AND

Career Service Hearing Office  
201 W. Colfax, 1<sup>st</sup> Floor  
Denver, CO 80202  
FAX: 720-913-5995  
EMAIL: [CSAHearings@denvergov.org](mailto:CSAHearings@denvergov.org).

AND

Opposing parties or their representatives, if any.