



POLICE DEPARTMENT

January 22, 2024

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Veronica Martino :

Tax Registry No. 960894 :

70 Precinct :

Case No.

2022-25565

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Fredy Kaplan, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

Stuart London, Esq.
Worth, London & Martinez, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Veronica Martino, on or about June 2, 2020, at approximately 2040 hours, while assigned to the 70 Precinct and on duty, in the vicinity of East 95th Street and Madison Avenue, New York County, wrongfully used force, in that she struck [REDACTED] with a baton without police necessity.

P.G. 221-02, Page 2, Paragraph 11

USE OF FORCE

2. Police Officer Veronica Martino, on or about June 2, 2020, at approximately 2040 hours, while assigned to the 70 Precinct and on duty, in the vicinity of East 95th Street and Madison Avenue, New York County, abused her authority as a member of the New York City Police Department, in that she threatened to arrest Edward Brady without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

3. Police Officer Veronica Martino, on or about June 2, 2020, at approximately 2040 hours, while assigned to the 70 Precinct and on duty, in the vicinity of East 95th Street and Madison Avenue, New York County, abused her authority as a member of the New York City Police Department, in that she interfered with Edward Brady's use of a recording device without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 21, 2023. Respondent, through her counsel, entered a plea of Not Guilty to the charges. The CCRB called Edward Brady as a witness, and introduced into evidence video footage of the incident; a second individual, who was arrested, did not appear to testify. Respondent testified on her own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Not Guilty.

ANALYSIS

On the evening of June 2, 2020, Respondent, who was assigned to the 70 Precinct, was deployed to Manhattan in connection with the George Floyd protests that were occurring throughout the city. This case involves Respondent's interactions with two separate individuals in the vicinity of East 95th Street and Madison Avenue. These encounters occurred at approximately 2040 hours, while the city's curfew was in effect.

The first matter concerns an allegation that Respondent wrongfully used force, in that she struck an individual ("the arrestee") with a baton without police necessity. Respondent concedes that she struck the arrestee with her baton, but, as will be discussed below, denies that it was excessive force under the circumstances. The second set of charges arose from what occurred in the immediate aftermath of that encounter. As other police officers were involved in taking the arrestee into custody, a resident from the block, Edward Brady, stepped outside his home and began recording the arrest, as well as other police activity in the area. It is alleged that Respondent wrongfully interfered with Mr. Brady's use of his phone to record what was transpiring, and that she wrongfully threatened to arrest him as well.

With respect to the wrongful use of force charge, the arrestee did not appear to testify, but video footage from a building's surveillance camera captured his interaction with Respondent. (CCRB Ex. 1) In that video, which does not have sound, the arrestee can be seen walking on the sidewalk and gesturing toward Respondent and a second uniformed police officer, who have just moved another individual off the block. Several additional officers rush toward the arrestee from behind, and a uniformed sergeant uses his baton to drive the arrestee to the ground. That sergeant and the other officers then walk away, leaving the arrestee with Respondent and Police Officer Adnan Hussain. (CCRB Ex. 1 at 0:50-0:57)

The arrestee then stands up and interacts primarily with Officer Hussain, who is trying to gain control of the arrestee by grabbing him with his right hand. Both officers can be seen on the video swinging their batons at the arrestee during the ensuing struggle. Respondent appears to strike the arrestee several times in his left arm, as Officer Hussain grabs the arrestee with one hand and swings him around toward a parked car, trying to bring the arrestee to the ground. (CCRB Ex. 1 at 0:58-1:09) Other officers rush over, and after an additional struggle during which the arrestee continues to resist, he is brought to the ground and taken into custody by multiple officers. (CCRB Ex. 1 at 1:09-1:40)

Respondent testified that she was dispersing the crowd when she observed the arrestee struggling with Officer Hussain, who was trying to place him under arrest for violating the curfew. The arrestee was "resisting" and "yelling back" at the officer, and stiffening his body as well. Otherwise, Respondent did not observe the arrestee committing any crimes or in possession of any weapons. Respondent admitted that in the course of providing assistance to Officer Hussain, she did use her baton to strike the arrestee approximately six times, in his left arm/shoulder area. As she did so, she could feel that the arrestee was wearing a protective vest. According to Respondent, her baton strikes "were not hard at all," and the arrestee did not even flinch or appear to be affected by them. Additional officers rushed over to assist in the apprehension, and Respondent had no further contact with the arrestee. (Tr. 52-55, 59-60, 63-68, 71-73)

Regarding the allegation that Respondent interfered with a recording, Edward Brady testified that he has lived in a co-op on East 95th Street for 25 years. From inside his apartment he heard screaming, and came downstairs to investigate. Mr. Brady was concerned with the well-being of the co-op's residents, as well as the property itself. He observed police officers

subduing an individual in front of the building. Mr. Brady came outside and began to record the interaction with his phone. He shouted to the individual that he should not resist. Mr. Brady described the demonstrators as "boisterous," and he observed that objects, including bottles, were being thrown at police officers. The scene was "chaotic" and "fraught with tension." (Tr. 23-27, 32, 38, 44-45)

At one point while he was outside recording, Mr. Brady was approached by a male and female officer and instructed to go inside his home; the parties agree that the female officer was Respondent. Respondent asked Mr. Brady if he wanted to be arrested, and she repeated that he should go home. Mr. Brady answered that he *was* home. Mr. Brady testified that based on research he had done as president of his co-op's board, his understanding was that his property line extended to the area in front of his building, and so he believed he was on his property, even when standing outside. Respondent and the male officer walked away and had no further interaction with Mr. Brady. Mr. Brady acknowledged that at no point did they tell him to stop recording, and in fact he continued to record. He did not witness Respondent striking any of the protesters with her baton. (Tr. 27-28, 31-35, 38-39, 42-43, 47-48)

Video footage recorded by Mr. Brady captures his verbal exchange with Respondent (CCRB Ex. 2). Mr. Brady, who is on the sidewalk recording what is occurring in the street, can be heard repeatedly shouting, "Don't resist." After a male officer instructs Mr. Brady to step back, and tells him he needs to be inside, Mr. Brady responds that he is fine. Respondent asks Mr. Brady, "You want to get arrested too?" The male officer tells Mr. Brady that he is outside after the curfew, and Respondent adds, "It's past 8:00, go home." Mr. Brady answers, "I'm in home, dear. I'm home." (CCRB Ex. 2 at 2:40-3:05) This interaction was also captured by the building's surveillance video, which shows the male officer moving Mr. Brady toward the

entrance of his building, as Respondent walks over and appears to speak to Mr. Brady as well. (CCRB Ex. 1 at 4:22-4:42) The officers walk away, and within seconds, Mr. Brady is back on the sidewalk, continuing to record with his phone.

Respondent testified that she observed Mr. Brady standing on the sidewalk in front of his building. He was not protesting or interfering with police work. Since it was after the curfew, she instructed Mr. Brady to go inside unless he wanted to be arrested. She did not ask for his phone, tell him to stop recording, or interfere with his recording in any way. Despite her instruction, Mr. Brady did not go inside, and continued to record. Respondent walked away and had no further interaction with Mr. Brady. Later in her tour, Respondent injured her knee when a protester pushed her to the ground. (Tr. 60-62, 69-72)

Specification 1 charges Respondent with wrongfully using force, by striking the arrestee with a baton without police necessity. Section 221-02 (11) of the Patrol Guide states that members of the service should apply no more than the reasonable force necessary to gain control of a subject, while Section 221-01 notes that any application of the use of force must be reasonable under the circumstances.

In assessing whether her use of force was reasonable, it is important to take into account the overall context of what was occurring on the block at the time, as well as the arrestee's specific interaction with the police. There was a large crowd gathered in the area, particularly at the intersection of East 95th Street and Madison Avenue, as captured in Mr. Brady's video. (CCRB Ex. 2) According to Mr. Brady, the protest had become violent, with bottles and other objects being thrown at police officers, creating an extremely dangerous environment. Mr. Brady described the situation as a "ruckus."

At the time Respondent and Officer Hussain engaged with the arrestee, he was out in public in violation of the curfew. On the one hand, counsel for the CCRB correctly notes that Respondent did not observe any weapons in the possession of the arrestee at the time she struck him with her baton. However, Respondent credibly described how the arrestee was "yelling and screaming" at Officer Hussain, and resisting Officer Hussain's efforts to place him under arrest. The video footage (CCRB Ex. 1) shows the arrestee actively pulling away and struggling with Officer Hussain, to the point where multiple officers had to rush back to the scene in order to overcome the arrestee's resistance.

It was in the midst of this struggle that Respondent used her baton to strike the arrestee several times in the area of his left arm/shoulder. Respondent readily acknowledged her actions, explaining that she did so in an effort to assist Officer Hussain. She credibly testified that she did not strike the arrestee hard with her baton. Since the arrestee did not appear to testify, the parties were unable to explore with him the impact of the baton strikes. However, the video footage supports Respondent's description, as the arrestee does not visibly react to being hit by Respondent's baton. Although the force with which she swung her baton is not dispositive on the issue of whether Respondent committed misconduct, it is an additional factor to consider in evaluating whether the force she used was excessive under the circumstances.

Under the totality of these circumstances, Respondent's efforts to assist Officer Hussain with the arrest were reasonable. Respondent's use of force was not excessive; rather, she used her baton in a measured manner, calculated to gain compliance from an actively resisting subject. The record has failed to establish that Respondent's use of force constituted misconduct. Accordingly, I find Respondent Not Guilty of Specification 1.

Specification 2 charges Respondent with threatening to arrest Mr. Brady without sufficient legal authority, while Specification 3 alleges that she wrongfully interfered with his use of his phone to record what was occurring on the block. Section 203-29 of the Patrol Guide states that individuals have a right to lawfully observe and record police activity, though the right can be limited in the interest of safety. An officer must not intentionally block or obstruct recording devices when there is no legitimate law enforcement purpose for doing so.

Here, the parties are in essential agreement regarding what transpired: Mr. Brady provided straightforward, credible testimony about his interaction with Respondent, and his video recording captured the words that were exchanged. In the midst of what Mr. Brady described as a "chaotic" situation "fraught with tension," during which bottles were being thrown at police officers, Respondent and a male officer each told Mr. Brady, who was standing outside his building, to go back inside. Respondent asked him if he wanted to be arrested, and emphasized that it was past 8:00 p.m. and he should go home.


In the context of the violent protest that was occurring, and considering that it was past the curfew (Resp. Ex. A), Respondent's statements to Mr. Brady were prudent and lawful, and did not constitute a wrongful threat of arrest. Rather, her words were designed to obviate the need for more intrusive measures. Furthermore, at no point did Respondent tell Mr. Brady to stop recording, nor did she attempt to take away his phone. Indeed, Mr. Brady continued to record for several minutes after his interaction with Respondent. Under these circumstances, Respondent's actions were reasonable, and I find her Not Guilty of Specifications 2 and 3.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAR 15 2024

EDWARD A. CABAN
POLICE COMMISSIONER