



POLICE DEPARTMENT CITY OF NEW YORK

September 29, 2016

MEMORANDUM FOR: Police Commissioner

Re: Detective Willie Artiles  
Tax Registry No. 936149  
Narcotics Borough Manhattan North  
Disciplinary Case No. 2015-14052

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**Charges and Specifications:**

1. Detective Willie Artiles, on or about December 10, 2014, at approximately 1700 hours, while assigned to Narcotics Boro Manhattan North and on duty, in the vicinity of West 101<sup>st</sup> Street and Manhattan Avenue, wrongfully used force, in that without police necessity, he stepped on the back of Person A. *(As amended)*  
P.G. 203-11 - USE OF FORCE
2. Detective Willie Artiles, on or about December 10, 2014, at approximately 1700 hours, while assigned to Narcotics Boro Manhattan North and on duty, in the vicinity of West 101<sup>st</sup> Street and Manhattan Avenue, wrongfully arrested Person A, in that he arrested Person A without sufficient legal authority. *(As amended)*  
P.G. 208-01 - LAW OF ARREST

**Appearances:**

For CCRB-APU: Heather Cook, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> floor  
New York, NY 10007

For the Respondent: James Moschella, Esq.  
Karasyk & Moschella, LLP  
233 Broadway-Suite 2340  
New York, NY 10279

**Hearing Date:**

August 9, 2016

**Decision:**

Specifications 1 and 2: Not Guilty

**Trial Commissioner:**  
ADCT Jeff S. Adler

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 9, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent not guilty of both specifications.

## FINDINGS AND ANALYSIS

This case involves an allegation that Respondent wrongfully arrested Person A, and used excessive force against him, during a street encounter on December 10, 2014 in the area of West 101st Street and Manhattan Avenue in Manhattan. Person A, who did not appear to testify, stated that he was coming from the store and was stopped and beaten by police for no reason. Respondent testified that he observed Person A in what appeared to be a hand to hand sale of narcotics, and detained him accordingly, without using any unreasonable force. Video footage (CCRB Ex. 3) from two building cameras showed segments of the encounter. For the reasons set forth below, this tribunal credits Respondent's account and finds him not guilty of both specifications.

A recording of two CCRB interviews of Person A (CCRB Ex. 1A), and the accompanying transcripts (CCRB Ex's. 1B and 1C), were admitted into evidence. The first interview was by telephone on December 26, 2014, while the second was an in-person interview on January 2, 2015. On March 16, 2016, Person A verified both statements. Additionally, Person A initiated a



civil lawsuit, and a transcript from his 50-H hearing was admitted (Resp. Ex. A). It was stipulated that in the past 10 years, Person A has convictions for criminal sale of marijuana in the fourth degree and disorderly conduct.

Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1<sup>st</sup> Dept. 1991); *In the Matter of 125 Bar Corp v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statements of Person A and reviewed the accompanying transcripts, including the one for the 50 H hearing.

In his initial telephone statement, where the questioning was less-detailed, Person A stated that he and his girlfriend were coming from the store when two officers kicked, punched, and stomped him while he was on the ground. The officers alleged that he had "passed something to somebody", and then threw something on the ground, which Person A denied. Person A was handcuffed and searched, then released at the scene. (CCRB Ex. 1B at 3-4) His girlfriend, Person B, came on the phone and stated that they were coming from the store when some guys started chasing Person A. According to Person B, they snatched Person A up, threw him against the wall, and kicked him. They beat him up while he was on the ground, and then they searched him. Person B stated that she watched some of the incident, then continued walking home. (CCRB Ex. 1A at 11-12)

On January 2, 2015, CCRB conducted a more in depth interview with Person A. Person A stated that he and Person B were coming from a deli on 100<sup>th</sup> Street and Manhattan Avenue at



about 1700 hours with a friend named Person C. who was walking in front of them. Two guys started running toward Person A, so he ran across the street. The two officers grabbed Person A, threw him to the ground, and proceeded to kick and punch him in the face and stomp him. Person B stood across the street for part of the incident before walking off. According to Person A, they kicked him in his stomach, back, and head, with the beating lasting for "about 15, 20 minutes." The officers asked him what he threw on the ground, but he told them he didn't know what they were talking about. Person A stated that as a result of this incident, he suffered a big lump behind his left ear, a bruise on his stomach, and swelling in his legs. (CCRB Ex. 1C at 3-4, 21, 48) [REDACTED]

[REDACTED]

At the 50-H hearing, Person A repeated the same basic story of how the officers grabbed him and threw him to the ground. He again stated that the beating lasted "almost half an hour." (Resp. Ex. A at 11, 15)

Respondent, who spent almost nine years with Manhattan North Narcotics, testified that on the day of the incident, he was designated to be the arresting officer as part of a buy-and-bust operation around the [REDACTED] housing development. It was a high-crime area, with numerous narcotics arrests. As he sat in a vehicle on the west side of Manhattan Avenue, Respondent observed Person A interact with the unit's undercover officer and engage in a conversation. No exchange occurred, but Respondent watched as Person A then crossed to the east side of Manhattan Avenue and approached another individual, later learned to be named Person D. Person A and Person D had a brief conversation, and then Respondent, from a distance of about 20 feet, observed what he believed to be a hand-to-hand narcotics transaction between the two men. Specifically, Respondent saw Person D hand something to Person A, and then Person A, with a



clenched hand, passed something back to Person D. Respondent acknowledged that he could not see the object passed by Person A, nor could he see any currency. (Tr. 39-46, 78-80)

After the exchange, the two men immediately separated, as Person A walked south on Manhattan Avenue. Respondent testified that he briefly lost sight of Person A, who soon reappeared on the west side of the street walking back north as Respondent walked south. A female was trailing a little bit behind Person A. As Respondent and Person A drew closer they looked at each other, Respondent identified himself as police and extended his hand toward Person A. Respondent testified that he recognized Person A from having previously executed search warrants at his apartment, and from Person A's having been arrested on a buy-and-bust marijuana sale. Person A ran across the street. As Respondent pursued Person A, the detective believed he saw the suspect discard something in the street. From experience, Respondent believed the object to be narcotics "stash", even though he couldn't specifically see what it was being thrown. (Tr. 38, 46-50, 81-84, 103)

Respondent testified that he caught up to Person A on the opposite sidewalk, grabbed the suspect's shoulders in a bear hug, and brought him to the ground. The detective saw Person A, who was facedown, immediately place his hands underneath his body, and was concerned that he might be reaching for a weapon. Respondent, wearing sneakers, stepped one time on Person A back to prevent him from pivoting his body and getting up, and told him to show his hands, after which Person A extended his arms. Respondent and his partner, Detective Alvarez, each grabbed one of Person A's arms and lifted him from the ground, placing him against a vehicle. (Tr. 57-58, 65-67, 92-95) According to Respondent, he then looked in the street to see if he could find an object discarded by Person A, but was unsuccessful. No narcotics were recovered from Person A.



or Person D and Person A was uncuffed at the scene and released. Back at the precinct.

Respondent voided Person A's arrest. (Tr. 61-63, 70, 96, 101)

Specification 2 alleges that Respondent arrested Person A without legal authority. Even though Person A was released at the scene, Respondent acknowledged that he initially took Person A into custody for a drug sale, and later voided the arrest. Counsel for CCRB correctly points out that Respondent could not specifically see narcotics pass, or money exchanged. Citing *People v. Loper*, 115 AD3d 875 (2<sup>nd</sup> Dept. 2014), a case where the observing officer could see neither drugs nor currency exchanged, counsel argues that there was no probable cause for the arrest of Person A.

However, courts have recognized that in a probable cause analysis, the emphasis should not be narrowly focused on any single factor, such as whether the observing officer specifically observes drugs or drug packaging. Indeed, the furtive manner of exchange could, itself, be indicative of criminal conduct. Instead, there should be an evaluation of the totality of the circumstances to determine whether there are indicia of a drug transaction. See, e.g., *People v. Jones*, 90 NY2d 835 (1997).

Here, Person A, who did not appear to testify and was not subject to cross examination, disputed the notion that he was engaged in selling drugs, claiming that he was merely coming from a grocery store with Person B. He stated that a friend named Person C walked ahead of them, but no such person can be seen on the video footage. Person A also described the two officers running toward him, while the video shows that the running only began after Person A fled to the street. Person A, himself, confirmed that Respondent immediately accused him of having "passed something to somebody", so this is not a situation where a basis for a stop was invented after-the-fact.



Respondent, meanwhile, appeared professional and respectful on the stand as he testified how he observed Person A in what he believed to be a hand-to-hand narcotics transaction. Respondent initially observed Person A interact with an undercover officer in a high-crime area where there had been numerous narcotics arrests. Although Respondent did not see any transaction between Person A and the undercover, Respondent did observe Person A walk away from the undercover and engage another individual. Specifically, Respondent saw the other individual hand something to Person A, and Person A then passed something back to the individual with a clenched hand before walking off. Based on his training and observations, Respondent believed that he had just witnessed a hand-to-hand exchange of narcotics for money. Moreover, even though he didn't initially recognize either party to the transaction, Respondent did recognize Person A at the point they were approaching each other, which was *before* Respondent gave chase. Respondent looked in Person A's face and recognized him as a subject of prior drug-related police activity.

Respondent chased Person A across the street, apprehended him, and with the assistance of his partner placed Person A in handcuffs. The video footage confirms that Respondent then walked back to the area of flight to search for whatever object may have been discarded by Person A. No such object was found, no drugs were recovered, and Person A was released at the scene.

Under the totality of these circumstances, this tribunal finds that Respondent acted reasonably. Taking into account Respondent's extensive narcotics experience, the high-crime-area where this encounter occurred, the numerous narcotics arrests in the area of the Douglass housing development, Person A's interactions with the undercover officer, Person A's furtive hand exchange with Person D followed by an immediate separation of the parties, and Respondent's



recognition of Person A from previous drug activity before Person A ran and was eventually apprehended. Respondent had probable cause to conclude that Person A had just engaged in a drug transaction. The record has not established, by a preponderance of the credible evidence, that Respondent arrested Person A without sufficient legal authority, and I find him not guilty of Specification 2.

Specification 1 alleges that Respondent wrongfully used force against Person A. Patrol Guide section 203-11 requires members of the service to use the minimum amount of force necessary to subdue a suspect. The guide explicitly states that "excessive force will not be tolerated."

Counsel for CCRB argues that Respondent used excessive force against Person A by stomping on his back while Person A already was on the ground. This tribunal recognizes that in certain contexts, a foot-strike to a suspect's back could, indeed, constitute a wrongful use of force. However, under the circumstances of this particular case, the force used was not excessive. This was not a situation where a suspect was already under control and an officer gratuitously stomped on him for no legitimate purpose. Rather, the force used here was part of the effort to subdue an actively resisting subject.

Respondent reasonably explained his concern that Person A's hands were not visible, and wanted to prevent Person A from pivoting his body in a way that may have presented a danger to him and his partner. Fearing he might have a weapon, and wanting to get him in handcuffs without incident, Respondent instructed Person A to show his hands, and stepped one time on Person A's back in order to gain compliance and to prevent Person A from maneuvering. Indeed, immediately after the single foot strike, Respondent's partner, Detective Alvarez, was able to secure Person A's left arm and place him in handcuffs.



The video footage corroborates Respondent's account. As can be seen on the video, after chasing him across the street, Respondent catches up to Person A on the opposite sidewalk. Respondent throws Person A to the ground and delivers a single, measured foot-strike to his back in order to gain control of the suspect, who appears to have tucked his arms underneath his body and is not yet subdued. Within a few seconds after the foot strike, Person A's left arm emerges, followed by his right, and he is lifted to his feet under police control. This tribunal is mindful that even a single foot-strike could amount to excessive force depending on the circumstances. However, under the totality of circumstances presented here, the single foot-strike used by Respondent did not constitute misconduct.

Person A's claim that he was beaten for nearly half an hour was completely erroneous. This encounter was extremely brief, focused, and reasonably designed to gain control of an actively resisting subject. Under the totality of the circumstances, the credible evidence has not established that the force used by Respondent was wrongful, and I find him not guilty of Specification 1.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**

OCT 14 2016  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER