



POLICE DEPARTMENT

June 29, 2023

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In the Matter of the Charges and Specifications :

- against - :

Detective Devin Baker :

Tax Registry No. 952439 :

105 Precinct :

Case No.

2021-23961

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Dwayne Bentley, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

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

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Detective Devin Baker, on or about September 2, 2019, at approximately 1845, while assigned to the 067 PCT and on duty, in the vicinity of 45 Rockaway Parkway, Kings County, wrongfully used force, in that he slammed Desmond Coryatt against a wall, without police necessity.

PG 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Detective Devin Baker, on or about September 2, 2019, at approximately 1845, while assigned to the 067 PCT and on duty, in the vicinity of 45 Rockaway Parkway, Kings County, wrongfully used force, in that he slammed Desmond Coryatt against the ground without police necessity.

PG 221-02, Page 2, Prohibition 11

USE OF FORCE

3. Detective Devin Baker, on or about September 2, 2019, at approximately 1845, while assigned to the 067 PCT and on duty, in the vicinity of 45 Rockaway Parkway, Kings County, wrongfully used force, in that he used his body weight to apply pressure to Mr. Desmond Coryatt's torso, resulting in restricting Mr. Desmond Coryatt's breathing, without police necessity.

PG 221-02, Page 2, Prohibition 11

USE OF FORCE

4. Detective Devin Baker, on or about September 2, 2019, at approximately 1845, while assigned to the 067 PCT and on duty, in the vicinity of 45 Rockaway Parkway, Kings County, wrongfully used force, in that he punched Mr. Desmond Coryatt in the head multiple times, without police necessity.

PG 221-02, Page 2, Prohibition 11

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 8, 2023.

Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB called two witnesses, Magdalene Pascall and complainant, Desmond Coryatt.

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. Having evaluated all of the

evidence presented at the hearing and assessed the credibility of the witnesses, the Tribunal finds Respondent: Not Guilty of Specifications No. 1, 2 and 3; Guilty of Specification 4; and recommends forfeiture of 10 vacation days as the appropriate penalty.

FACTUAL BACKGROUND

The following facts are not in dispute. On September 2, 2019 at approximately 18:45, Desmond Coryatt (hereinafter “Coryatt”), a retired steamfitter, was in the driveway of his Brooklyn home celebrating “J’ouvert,” a traditional West Indian festival. On the date of the incident, Coryatt had a disc jockey (hereinafter “DJ”) playing music in his driveway for his family, friends and neighbors – a tradition that he has enjoyed for many years. At some point around 18:45, Sergeant Carl Scogmanillo approached the DJ and told him that the music was “obscenely loud” and the volume needed to be lowered or the music turned off. Coryatt overheard the conversation between the DJ and Sergeant Scogmanillo and intervened. (Tr. 55-56) Coryatt was protesting the noise complaint and objecting to the use of the word “obscene.” At this point the DJ was no longer playing the music. Sergeant Scogmanillo then requested Coryatt’s identification and he refused to provide it stating, “We are going to turn it off, but I’m not giving you anything.” (Tr. 58) Upon his refusal to comply, Sergeant Scogmanillo ordered that a police officer handcuff him. CCRB Ex. 1 (PO Elvis Collado’s Body Worn Camera) shows Coryatt becoming audibly upset and resisting the attempt by the officer to place handcuffs on him.

Lieutenant Kevon Sample intervened and instructed the officer remove the handcuffs off of Coryatt (CCRB Ex. 1). Lieutenant Sample took Coryatt to the side to talk. CCRB Ex. 1 shows Coryatt hand his identification to Lieutenant Sample at the conclusion of their conversation. A few minutes later, Respondent arrived on scene with Inspector Elliot Colon. In CCRB Ex. 3, it

appears that there was a conferral between Lieutenant Sample and Inspector Colon on the street. Soon thereafter, Sergeant Scogmanillo issued a second order to place Coryatt under arrest.¹ Respondent proceeded to assist in the apprehension.

CCRB's Ex. 3 (PO Colon's Body Worn Camera footage) and CCRB's Ex. 4 (Civilian Cell Phone Video) show two different angles of the police interaction with Coryatt. It is uncontested that, in an attempt to arrest Coryatt, Respondent pushed him against a wall, took him down to the ground and punched him in the face. In CCRB's Ex. 4 at 2:40, Respondent can be seen straddling Coryatt, who is lying face down on the ground with his hands tucked underneath him, while one officer is holding his legs and two other officers are attempting to grab Coryatt's arms. In CCRB Ex. 3 at 00:40, officers can be heard directing Coryatt to give them his hands, several times. After he is directed to give his hands and does not comply, Respondent punched Coryatt twice in the face. Eventually, Coryatt is handcuffed.

ANALYSIS

Patrol Guide Section 221-01 delineates the parameters for the use of force by uniformed members of service. To that effect, the Patrol Guide states as follows:

The primary duty of all members of the service (MOS) is to protect human life, including the lives of individuals being placed in police custody. Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances...MOS will use only the reasonable force necessary to gain control of custody of a subject.

¹ Sergeant Scogmanillo was charged with "conducting a retaliatory arrest without sufficient legal authority" against Coryatt. On April 6, 2023, he entered into a settlement with CCRB for a Schedule B Command Discipline with a forfeiture of ten vacation days. A final determination in this matter (Disciplinary Case No. 2021-23960) is pending as of the date of this decision.

Here, as in any excessive force case, the threshold question is whether there was cause for force to be used. If there was not, any force used was unjustified. If there was cause, then the inquiry focuses on whether the amount of force exercised by Respondent was reasonable. The use of force is excessive only if it is not objectively reasonable under the particular circumstances presented to the uniformed member of service at that time. The reasonableness of the officer's actions must be viewed from the perspective of a similarly situated member of service.

Respondent is charged with four specifications all alleging excessive force: that he slammed Coryatt against a wall; took him to the ground; obstructed his breathing; and punched him multiple times in the face. For the reasons set forth below, I find that Respondent's act of bringing Coryatt to the wall and to the ground constituted a reasonable use of force and that the credible evidence in the record did not establish obstruction of breathing. I find, however, that the punches constituted sanctionable misconduct under the Patrol Guide.

Specifications 1 and 2: Excessive Force: Pushed Against Wall and Taken to Ground

According to Coryatt's testimony, he was offended by the Sergeant's comments about the music being "obscene." (Tr. 55-56) Coryatt acknowledged that he refused to provide his identification as requested. In CCRB Ex. 1 at 01:49, Coryatt asks Sergeant Scogmanillo whether he is being asked to turn the music down. Sergeant Scogmanillo responds: "No, I'm asking you to turn it off and I need your identification because you are getting a summons for the noise." At 01:53 in the same video, Coryatt states "We are going to turn it off, but I'm not giving you anything." Sergeant Scogmanillo then directed another officer on scene to arrest Coryatt. Coryatt testified that he was "surprised" by the officer's actions and became increasingly upset.

(Tr. 58) When Lieutenant Sample arrived on scene, he attempted to deescalate the situation and instructed the officer to remove the handcuffs. After a discussion, Coryatt provided his identification to Lieutenant Sample, whom he observed handed it to Sergeant Scogmanillo. At that point he assumed the matter was "settled." (Tr. 59)

Coryatt estimated that there were approximately 15-20 uniformed police officers present at the time and that several civilians also began to congregate around his home including his neighbor, Ms. Pascall. He further testified that although he was upset and using profanities to "express himself" at no time did he threaten or curse at any particular officer on scene. (Tr. 66-67) Coryatt decided he wanted to go into his house, so he walked away from the officers but "all of a sudden" he felt himself slammed against the wall and taken to the ground. (Tr. 66) According to Coryatt's testimony, he was not trying to resist arrest, but was "surprised, helpless and attacked" when the officers slammed him against the wall. (Tr. 69)

Ms. Magdalene Pascall (hereinafter "Pascall") testified that she and Coryatt have been neighbors and friends for many years. She corroborated Coryatt's testimony that he had played music for the neighbors on his block for the past several years on Labor Day Weekend and there have never been any complaints. She stated that on the day of the above-mentioned incident, she heard Coryatt arguing with the police officers about the music and she attempted to pacify the situation. (Tr. 18) She testified that while she was holding on to Coryatt, an officer told her to let him go and when she did, two officers slammed him to the wall. (Tr. 22) Pascall testified that the officers also brought Coryatt down to the ground, handcuffed him and took him away.

Respondent testified that on the date of the above-mentioned incident he was driving the Commanding Officer of the 67 precinct (Inspector Elliot Colon) when they received a request over the radio from Sergeant Scogmanillo asking the CO to respond to Coryatt's home address.

(Tr. 115) Upon arriving at that location, Respondent observed that there were several other uniformed officers (he estimated between 10-15) on scene, that there was a commotion and that there was one "very irate individual" (later identified as Coryatt) who stood out to him. (Tr. 116) Respondent testified that he approached Coryatt in an attempt to calm him down, but he continued cursing and yelling. Soon after Respondent's arrival, Sergeant Scogmanillo issued a second directive to arrest Coryatt, and used the phrase "he's under" to communicate that order. (Tr. 117-18)

According to Respondent, as the officers approached to effectuate the arrest, Coryatt began walking away from them toward the house. While it is unclear whether Coryatt heard or understood the directive given by the Sergeant, what is evident from the video is that once the officers approached him, Coryatt walked away from the officers. Sergeant Scogmanillo went around Respondent to prevent Coryatt from walking further down the driveway. When Sergeant tried to grab Coryatt's hands, Respondent observed that he immediately "became stiff" and he pulled his hands away from Sergeant. (Tr. 119) In response, Respondent grabbed Coryatt, at which point he "became stiff" with him too. Respondent then pushed Coryatt up against the wall and used what he characterized as a "seatbelt maneuver" to take him down to the ground. (Tr. 119)

Having closely scrutinized the videos in evidence, and credited Respondent's testimony, I find that Coryatt's actions in pulling his arms away from the Sergeant, coupled with him stiffening his body, constituted *active resisting* as described in Patrol Guide Procedure No. 221-02: "physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing or verbally signaling an intention to avoid or prevent being taken into or retained in custody." Once Coryatt actively resisted arrest, the Patrol Guide

authorizes the use of the reasonable force necessary to overcome resistance and effect the arrest. The tactics Respondent employed were based upon training that he received on tactics that can be used to gain compliance of a subject who is actively resisting arrest. Moreover, he testified that he took him down because he was concerned “for the safety of everyone, it could be a floodgate of individuals, a floodgate of situations at this point.” (Tr. 121)

Under these circumstances, Coryatt’s noncompliance, active resistance and irate demeanor justified the tactics employed by Respondent. He is therefore not guilty of Specifications 1 and 2 as charged.

Specification 3: Excessive Force: Restriction of Breathing

Respondent testified that once Coryatt was on the ground, he had his arms tucked underneath his body, making them inaccessible to the officers who were trying to place handcuffs on him. In CCRB’s Ex. 4 at 2:40, Respondent can be seen straddling Coryatt who is lying face down on the ground with his hands tucked underneath him, while one officer is holding his legs and two other officers are attempting to grab Coryatt’s arms.

Although the alleged misconduct is not charged as a chokehold, the complainant alludes to actions which would constitute one. Coryatt testified that while he was on the ground he felt pressure around his neck and his breathing was restricted. His recollection was that Respondent had his arms around his throat and was choking him. (Tr. 73) This account, however, was not corroborated by the CCRB videos in evidence which captured this interaction from various angles. In fact, even his neighbor, Pascall, who was proffered as an eyewitness by CCRB, did not state that Coryatt was placed in a chokehold. Accordingly Coryatt’s testimony on this point was not credited.

Coryatt also testified that when he was on the ground he felt officers “forcing his arms back and it was hurting because Officer Baker was laying on me so heavy.” (Tr. 73) When asked how he felt when Officer Baker was on his back, Coryatt testified: “I was having a little difficulty breathing with him on my back. Because I have a heart condition. I had medical treatment for it. And with the condition, I would often take deep breaths. And with him on my back it was even difficult. I could feel pressure. Plus the pain. It was pressure and pain at the same time.” (Tr. 73-74)

In 2019, Patrol Guide Section 221-02, page 2, paragraph 11 set forth as follows: “Apply no more than the reasonable force necessary to gain control. Avoid actions which may result in chest compression, such as sitting, kneeling, or standing on a subject’s chest or back, thereby reducing the subject’s ability to breathe.”² CCRB’s Ex. 3 shows Respondent’s chest momentarily lying on Coryatt’s back. CCRB’s Ex. 4, depicts Respondent straddling the lower half of Coryatt’s body and then using his right hand to hold his own body weight indicating that limited pressure, if any, was being exerted on Coryatt’s back or chest. As soon as he was cuffed, Respondent ceased straddling him. Coryatt was brought to his feet within seconds of being placed in handcuffs as required by the Patrol Guide 221-02.

In sum, there is insufficient evidence that Respondent’s body weight applied pressure to Coryatt’s torso which restricted his breathing. Therefore, Respondent is not guilty of Specification 3.

Specification 4: Excessive Force: Punching Coryatt in the Face

Respondent testified that when Coryatt fell to the ground he tucked his hands underneath him making it difficult for the others to place handcuffs on him. Respondent then struck Coryatt

² Subsequent to this incident, in 2022, Patrol Guide Section 221-02 was amended to prohibit additional methods of restraint.

twice in the face to “gain compliance” after which the officers were able to place handcuffs on him. (Tr. 120) While I credit Respondent’s version of events on this point, as they are corroborated by CCRB’s Ex. 4 at 02:43, I do not find that Respondent striking Coryatt’s face was reasonable under the circumstances. I therefore find this action constitutes an excessive use of force.

Respondent acknowledged that after he had pushed Coryatt against the wall and brought him to the ground, he repeatedly ordered Coryatt to give him his hands. CCRB Ex. 4 at 2:40 shows one officer holding down Coryatt’s legs, two officers on each side of Coryatt attempting to grab his arms and Respondent straddling Coryatt while he’s face down on the ground. At the time that Respondent struck Coryatt in the face, he was not actively resisting, it was unlikely that Coryatt could escape, and no imminent threat to the officers’ safety was articulated. In fact, it was quite plausible that, as Coryatt testified, his hands were pinned underneath him and he was unable to immediately free his arms. (Tr. 74-75) Even if Coryatt did not immediately volunteer his hands as directed to do so the gravity of his transgressions did not warrant the degree of force used.

The evidence presented here is similar to the evidence presented in *Disciplinary Case No. 2015-13090* (Oct. 25, 2016) where an officer was found guilty of having used excessive force by punching a suspect once in the head. In that case, as here, a video recording of the encounter showed that at the point when the officer punched the suspect in the head the suspect was not actively resisting and his arms were limp.

In conclusion, since Coryatt was not actively resisting Respondent's effort to place handcuffs on him, I find that Respondent used excessive force against Coryatt when he punched him twice in the face. Accordingly, I find Respondent Guilty of Specification No. 4.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent was appointed to the Department on July 11, 2012 and has no formal disciplinary history. This tribunal recognizes that in almost eleven years of service, he has received extremely high performance evaluations and been awarded numerous Departmental medals, including one Commendation. Moreover, it is important to note that he has not been the subject of any formal disciplinary action since this incident occurred nearly four years ago in 2019.

CCRB recommended the forfeiture of 35 vacation days as the penalty for the four charged specifications. Having found him guilty of only one of the four specifications, I find a significantly lesser penalty is warranted.

Pursuant to the Department's Disciplinary Penalty Guidelines, the presumptive penalty for Non-Deadly Force Against Another Resulting in No Injury is ten (10) penalty days. It is worth noting here that even though Coryatt testified that he was punched in the face twice by Respondent, there was insufficient evidence to support a finding that Coryatt sustained injuries as a result of this specific action. Specifically, when Coryatt was asked to describe his injuries he stated: "My left wrist, my bone on my left knee, my hand was swollen. I had bruises on my face when *they slammed me against the wall*. [emphasis added] They were swollen. My knee, I had a

big abrasion on my knee that was – it was down to the skin, the flesh. You can see the white of my knee. My chest, I had pains in my chest” (Tr. 78) In short, Coryatt did not attribute any facial bruising to the punches. In this regard it is also important to note that CCRB Ex. 3 depicts the right side of Coryatt’s face making contact with the wall when he was pushed up against it. Coryatt, however, was punched on the left side of his face. Also, there is no visible injury to the left side of his face when he is picked up off the ground after being handcuffed. In addition, no photographs of facial injuries or medical records reflecting such injuries were admitted into evidence.

This recommended penalty is consistent with precedent imposing the loss of 10 vacation days in cases where uniformed members of service have been found guilty of using excessive force by punching a suspect in the face. In *Disciplinary Case No. 2014-12821* (Feb. 18, 2016) an 18-year sergeant who had no formal disciplinary record forfeited ten vacation days for wrongfully punching an individual in the face; and in *Disciplinary Case No. 2015-14727* (June 22, 2016), a seven-year officer with no disciplinary record negotiated a forfeiture of ten vacation days for punching a handcuffed prisoner in the face without police necessity.

This tribunal opines that ten (10) vacation days strikes a balance between Respondent’s employment record, the misconduct he engaged in and the Department’s interest in ensuring that unwarranted uses of force will not be repeated.

Respectfully submitted,

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

JAN 05 2024

EDWARD A. CABRAL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE DEVIN BAKER
TAX REGISTRY NO. 952439
DISCIPLINARY CASE NO. 2021-23961

Respondent was appointed to the Department on July 11, 2012. On his three most recent annual performance evaluations, he was rated “Exceptional” for 2020, 2021 and 2022. He has been awarded one Commendation, 21 medals for Meritorious Police Duty, and 18 medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials