



POLICE DEPARTMENT CITY OF NEW YORK

July 27, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Stephen Loschiavo
Tax Registry No. 949225
103 Precinct
Disciplinary Case No. 2015-13885

Charges and Specifications:

1. Said Police Officer Stephen Loschiavo, on or about May 31st, 2014, at approximately 0644 hours, while assigned to the 103rd Precinct and on duty, in the vicinity of 104-01 177th St, Queens County, did wrongfully use force against Ricardo Narainsingh, in that he slapped Ricardo Narainsingh in the back of the head, without police necessity.

P.G. 203-11 – USE OF FORCE

Appearances:

For the Department: Cindy L. Horowitz, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: John P. Tynan, Esq.
Worth, Longworth & London LLP
111 John Street, Suite 640
New York, NY 10038

Hearing Date:

April 25, 2016

Decision:

Guilty

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on April 25, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Ricardo Narainsingh as a witness and 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, the Court finds Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that Respondent and Police Officer Joseph Aniano, assigned to the 103 Precinct, arrested the complainant in this case, Ricardo Narainsingh, after Narainsingh drove away from a motor vehicle accident. What is in dispute is whether Respondent slapped Narainsingh in the back of the head while the complainant was face down on the ground and handcuffed, as the CCRB alleged, or whether Respondent merely slapped the ground next to Narainsingh's head to get his attention, as Respondent testified.

Narainsingh testified that he had been an airman in the United States Air National Guard for about six years as of May 31, 2014. At that time, he also was employed as a clerk at the Board of Elections. At the time of trial, Narainsingh was studying for licenses and certifications that would advance him in the military (Tr. 14, 31-34).

Narainsingh testified that on May 31, 2014, around 0630 hours, he was driving home from Dunkin' Donuts when he got into a car accident. Narainsingh told the other driver that his insurance card was expired but his new card was only five minutes away at his apartment. He claimed that the driver told him "the police wouldn't be there for another hour" and allowed him

to go and get the insurance card. He asserted that the other driver only had a minor neck injury and that he drove away within the speed limit. He conceded that his airbag deployed, the front bumper fell off, and the front end was pushed in (Tr. 15-17, 56).

Narainsingh testified that as soon as he arrived at home to retrieve the card, the police arrived. There were two officers, Respondent and Police Officer Joseph Aniano. Narainsingh testified that the officers had their guns out as soon as they exited their vehicle. He also testified that when they approached him as he was still inside his car, the officers repeatedly hit him in the head with their weapons. Narainsingh then was removed from his vehicle and placed face down on the ground. While he was face down, Respondent was on top of his upper body and Aniano was on top of his legs. He asserted that he did not resist arrest (Tr. 18-22).

Narainsingh testified that once he was handcuffed, Respondent slapped the top of his head, causing a headache. He then was picked up and thrown against the trunk of his car while Respondent searched him. Narainsingh testified that Aniano came from behind him and pulled his leg backwards, causing him to lose balance and fall on the trunk of his car. Narainsingh was led to the squad car, where he claimed that Respondent stuck his upper body into the back seat, punched him in the stomach, and spat in his face. He refused a breathalyzer test because, he contended, he did not trust the officers (Tr. 20-22, 77).

CCRB Exhibit 2 was a photograph of a small abrasion on the right side of Narainsingh's chin. CCRB Exhibit 3 was a photograph of an abrasion on Narainsingh's left knee accompanied by a blue substance on his skin, like chalk or paint (Tr. 62-63, 70-72).

The charges on Narainsingh's arrest were driving while intoxicated, leaving the scene of an accident, and reckless driving. All charges were dropped except leaving the scene, which resulted in a fine of \$250. Narainsingh also was sued civilly by the driver for the injuries she allegedly sustained during the accident. Narainsingh admitted that he previously had been

arrested on December 19, 2013, and pleaded guilty to driving while ability impaired. [REDACTED]

[REDACTED] (Tr. 22-23, 34-35, 50).

Evidence from a surveillance camera was submitted as CCRB Exhibit 1. The surveillance camera was located on the building diagonally across from Narainsingh's residence, which was located above a church. A utility pole blocked the view of certain parts of the arrest (Tr. 44-45, CCRB Exhibit 1).

In the video, at 6:44:09, Narainsingh's vehicle is seen driving toward the camera with significant front-end damage. At 6:44:16, Narainsingh makes a U-turn and stops his car. Simultaneously, the frame shows a marked police vehicle quickly approaching the scene with its turret lights on. At 6:44:30, Respondent and Aniano exit the vehicle with their firearms drawn. The officers speak to Narainsingh through the driver side window and pull him out of the car and onto the ground at 6:44:52. From 6:44:56 to 6:45:09, the video shows Respondent and Aniano struggling to get the handcuffs onto Narainsingh. At 6:45:09, the frame shows the arm motion made by Respondent that is in dispute. The motion is seen as a hard and quick strike of either Narainsingh's head or the ground.

The video continues to show Respondent handcuffing Narainsingh. Narainsingh is then lifted from the ground and frisked against the trunk of his vehicle at 6:46:26. This ends at 6:46:40. At 6:46:51, the video shows Respondent and Aniano putting Narainsingh inside the car. At 06:46:54, Respondent leans inside the car, and at 6:47:17 he slams the door shut. The rest of the video is footage of various officers looking at Narainsingh's vehicle as well as investigating the surrounding scene, while Narainsingh sits in the back seat of Respondent's vehicle.

Respondent testified on his own behalf. According to Respondent, at 0630 hours on May 31, 2014, he and Aniano were parked at the northwest corner of [REDACTED] [REDACTED] which was the intersection where the car accident occurred. Respondent was the operator of their vehicle and Aniano was the recorder. Respondent testified that they were located about 75 to 100 feet away from the accident and were close enough to hear the accident and see Narainsingh leave the scene (Tr. 80-81).

After the accident, Respondent testified, he approached the other driver. She said that she had some pain in her body and Respondent assured her that officers were on their way to assist her. Respondent then turned on his turret lights and sirens and followed Narainsingh eastbound on [REDACTED]. Respondent testified that after following Narainsingh for about two to three minutes, Narainsingh made a U-turn into a parking spot. This allowed the officers to park and approach Narainsingh's vehicle. Respondent drew his gun as he exited the vehicle because he was unaware of why Narainsingh fled the accident (Tr. 82-84).

Respondent testified that when he and Aniano approached Narainsingh, the driver was unable to form complete sentences. They identified him as intoxicated. The officers then commanded Narainsingh to park his car and after multiple commands he eventually cooperated. Respondent testified that he instructed Narainsingh to exit the vehicle but he was unable to do so due to his condition. The officers then opened the driver side door and took off Narainsingh's seatbelt. Respondent testified that he and Aniano grabbed Narainsingh by his shirt and his left arm, and put him face down on the ground in order to handcuff him (Tr. 85-86).

Respondent testified that during the arrest, Narainsingh resisted by arching his back and attempting to roll over. Once the handcuffs were on Narainsingh, Respondent frisked him in order to check for any weapons or contraband on his rear belt. Narainsingh began to resist more. Respondent testified that in an effort to make Narainsingh cooperate, he gave him verbal

commands to lie down. Respondent testified that Narainsingh still was not responding to the verbal commands, so he gave a "cue" (taken down in the transcript as "queue") that consisted of slapping the ground next to Narainsingh's head. The officers completed their frisk and stood Narainsingh up against his vehicle in order to do a more reliable body search. Respondent testified that after the search was completed, the officers escorted Narainsingh to their police car. After placing him in the backseat of the car, Respondent testified, he leaned in to ask for Narainsingh's license and registration (Tr. 86-89).

The issue to be determined in this case is whether Respondent wrongfully used force by slapping Narainsingh in the back of the head, without police necessity. The tribunal finds that the CCRB proved by a preponderance of the credible evidence that Respondent engaged in the alleged misconduct.

Resolution of this matter rests in large part on a determination of witness credibility. In analyzing credibility, this tribunal may consider such factors as consistency of testimony, supporting or corroborating evidence, motivation, bias or prejudice, and the degree to which an account comports with common sense and human experience.

The tribunal finds that the video, in conjunction with Respondent's inconsistent testimony, demonstrated that Respondent used excessive force against the complainant. Respondent testified that he used a visual cue to tell Narainsingh to lie down on the ground in order to complete a frisk. But when Respondent was asked to reenact this cue during his testimony, it did not reflect the motion in the video. The speed and intensity of the motion at 6:45:09 is much harsher than a "sweeping of the ground," which was Respondent's reenactment. The Court finds that so quick a motion, as documented by the video, was not a sweep, but rather a slap or strike (Tr. 87, 108).

Moreover, it is unclear what slapping or sweeping the ground was supposed to cue Narainsingh to do. At the moment of the strike, Narainsingh was laying on the ground, essentially motionless. While he was not completely still or cooperative during other parts of the video, he was not resisting at the time of the strike. Respondent's testimony that he swept the ground to induce the complainant's cooperation with the frisk therefore is not credible.

One of the most notable proofs of the case consisted of the CCRB interview. Respondent admitted at trial that he expressed uncertainty during the interview concerning what he was doing when he indisputably slapped or swept something with his hand. While the video was playing during the interview, he was asked the question, "Do you recall what you are doing there?" He responded, "No, I do not recall what I am doing there." On the other hand, during his trial testimony he stated that he "slapped the ground as a visual [cue]." Later on in his testimony, Respondent changed it from a "slap on the ground" to a "graze of his fingers on the concrete." The court finds that Respondent's inconsistency shows that his testimony is not reliable (Tr. 87, 99, 101, 107).

In sum, Respondent's inconsistent statements and the evidence from the surveillance camera causes the tribunal to find that the CCRB proved by a preponderance of the evidence that he wrongfully used excessive force against Narainsingh by slapping him in the back of the head. Accordingly, he is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2010. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB recommended a penalty consisting a forfeiture of 5 vacation days. This is supported by precedent. In *Case No. 2012-8631* (July 30, 2013), an eight-year officer forfeited 12 vacation days after punching a handcuffed suspect in the face with a closed fist. Most recently, in *Case No. 2013-9972* (Mar. 27, 2015), an officer forfeited 5 vacation days for wrongfully using force against an arrestee by slapping him once across the head with an open-handed slap. Similarly, here Respondent hit Narainsingh on the back of the head, once, with an open-handed slap. The tribunal also has taken into consideration Respondent's excellent disciplinary history, his evaluations and Department recognitions, and his impressive sick record.

Accordingly, the Court recommends that Respondent's penalty be the forfeiture of 5 vacation days.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

OCT 14 2016



JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER STEPHEN LOSCHIAVO
TAX REGISTRY NO. 949225
DISCIPLINARY CASE NO. 2015-13885

On his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent." He has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED] He has no prior disciplinary history.

David S. Weisel
Assistant Deputy Commissioner Trials