



POLICE DEPARTMENT CITY OF NEW YORK

May 30, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Castaldo
Tax Registry No. 950173
Patrol Borough Staten Island
Disciplinary Case No. 2015-15931

Charges and Specifications:

1. Police Officer Daniel Castaldo, on or about October 27, 2015, at approximately 1435 hours, while assigned to PBSI and on duty, in the vicinity of Staten Island Ferry Terminal, Richmond County, wrongfully used force, in that he used physical force against Spencer Taylor, Jr. without police necessity.

P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Simone Manigo Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

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

Hearing Date:

March 20, 2017

Decision:

Not Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 20, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. CCRB called Spencer Taylor, Jr. as a witness. 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 the charged misconduct.

FINDINGS AND ANALYSIS

The following facts are not in dispute in this case. On October 27, 2015, at approximately 1435 hours, Respondent was assigned to patrol duties inside the Staten Island Ferry Terminal at St. George, Richmond County (T. 76). At about that time, Spencer Taylor, Jr. disembarked from a ferry which had just arrived in Staten Island (T. 19). As Taylor walked through the terminal, he saw Respondent standing to his right, accompanied by two other uniformed police officers (T. 20). Taylor said something to Respondent and continued walking through the terminal (T. 35, 78). Taylor walked until he reached the exit doors, then turned to his right to face Respondent, who had walked in the same direction as Taylor but maintained a distance of approximately 30 feet.

Taylor began walking rapidly toward Respondent while gesturing with his left hand and holding a plastic bag in his right hand (T. 83). When Taylor closed the distance between himself and Respondent to about five feet, Respondent stepped toward Taylor and forcibly knocked him to the ground, where Respondent handcuffed him (T. 83-84). Taylor was detained for

approximately 15 minutes, then was released after being issued a summons for Disorderly Conduct (T. 87-88, 96).

The following is a summary of the facts which are in dispute. At issue is whether Respondent's use of force against Taylor was without police necessity. The incident involving Taylor and Respondent was captured in a video recording, entered into evidence as CCRB Exhibit 1. Since the video recording does not have an audio portion, my findings of fact regarding the nature of the confrontation follow my credibility findings. As set forth below, I find Respondent's testimony regarding the nature of his interaction with Taylor to be credible.

Respondent testified that he was leaning against a pole watching the passengers from the ferry disembark when he observed Taylor, who addressed him saying, "You're a--holes and p--ssy f-ggots. You can't do anything to me" (T. 77-78; CCRB Ex. 1, #3, 0:14-0:19). Respondent recognized Taylor as someone he had observed during a previous interaction Taylor had with another police officer (T. 77, 91). Respondent did not respond to Taylor but kept observing him until he was approximately 20 feet away (T. 92, 102). At that point, Taylor turned toward Respondent and began gesturing with one hand while directing profanities toward him (T. 83, 93; CCRB Ex. 1, #1, 0:13-0:17). Taylor then began walking toward Respondent until he was directly in front of him (T. 79-81, 94, 95-96, 102). Respondent testified that based upon Taylor's demeanor and the manner in which he approached him, he thought Taylor was either going to hit him or otherwise escalate the confrontation (T. 102, 103). Respondent pushed Taylor away from him, but Taylor continued to shout at Respondent and he "took him to the ground" (T. 83-84; CCRB Ex. 1, #1, 0:17-0:32). Three other police officers joined Respondent as they subdued Taylor and placed handcuffs around his wrists (T. 84). Respondent estimated the amount of time which elapsed from the point that he pushed Taylor to the point where he had him handcuffed as

approximately seven seconds (*Id.*). Respondent then called for an ambulance, believing that Taylor was emotionally disturbed (T. 85). Respondent took Taylor to a satellite precinct facility where, after approximately 15 minutes, Taylor's demeanor became more placid (T. 87, 88). Taylor was eventually released before the arrival of the ambulance (T. 88).

Taylor testified that when he saw Respondent, he recognized him as a police officer who had called him a "raghead" on a previous occasion (T. 21, 55). Taylor looked at Respondent and asked him, "Why are you looking at me?" Taylor then said, "You look at me like I owe you money" (T. 21, 35). Taylor claims Respondent said something back to him, which he did not hear; Taylor then called Respondent an a--hole (T. 22, 37). Taylor motioned toward Respondent, using his hand, which led to Respondent calling out to Taylor to "Come here" (T. 22, 25, 71-72). Taylor walked over to Respondent until he was about three to five feet away from him when Respondent grabbed Taylor's arm and swung him into a metal column (T. 22-23, 26, 39-40, 68, 101). Respondent then threw Taylor to the ground, after which he and three other police officers jumped on him (T. 23). According to Taylor, Respondent twisted his left arm behind his back as Respondent straddled him (T. 29, 41, 68). While the police officers, including Respondent, struggled with Taylor, he said, "I didn't do anything" (T. 30).

Respondent brought Taylor outside the terminal after he was handcuffed and put him to sit on a bench (T. 43). Respondent issued Taylor a summons for disorderly conduct (T. 44, 96).

I credit Respondent's testimony as measured, forthright and logical. Although he is an interested witness, the factual assertions he made in his testimony were largely corroborated by the most compelling piece of evidence in the case, CCRB Exhibit 4.

I do not credit Taylor's testimony, as it was self-serving, illogical and exaggerated. His admissions under oath to directing belligerent speech at Respondent without any provocation evince a state of mind which places his interests ahead of those of society. In addition, Taylor implied in his testimony that Respondent, assuming that he had been staring at Taylor, behaved improperly. This assertion is absurd on its face.

Among the basic duties of a police officer are the responsibility to "[b]e aware of, and inspect, post or sector for conditions requiring police attention," "[f]amiliarize self with the everyday routine of people residing, doing business or frequenting post or sector," and "[i]nvestigate suspicious conditions and circumstances on the post" (P.G. 202-21 [5], [9], [10]).

Taylor's utterances could be seen objectively as belligerent. While directing provocative speech toward a police officer is not, in and of itself, a violation of the Penal Law, such utterances, made in a public place may well violate the Disorderly Conduct statute. In this case, it would be reasonable for Respondent to begin paying closer attention to Taylor, who, for reasons known only to him, chose to confront Respondent verbally. Given his utterances, it would be reasonable to monitor Taylor's behavior while he was within Respondent's area of responsibility, or, at the very least, his field of vision, to ascertain whether his behavior would escalate beyond verbal aggression.

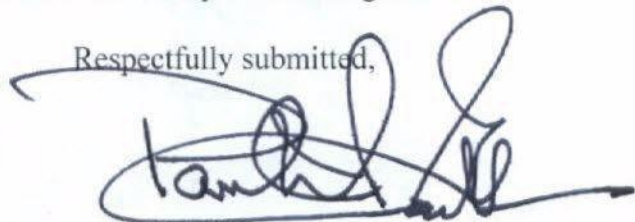
As clearly depicted on CCRB Exhibit 4, Taylor began walking toward Respondent, and two to three other police officers, with his hand extended, making some gesture. Taylor was holding a plastic bag in his hand and closing the distance between him and Respondent in what I find to be a purposeful manner. I credit Respondent's testimony that he had no idea what Taylor's state of mind was at that time but that it appeared Taylor was about to assault him. While CCRB Exhibit 4 does show that Respondent and the police officers took physical control

of Taylor and brought him to the ground by force, the Exhibit does not show Respondent "slamming" Taylor into a column or "slamming" him to the ground, as Taylor asserted in his testimony. Accordingly, based upon the credible evidence in the record, Respondent's testimony is the more plausible version of the encounter.

The force Respondent testified to using was measured, and tailored to meet the level of apparent physical threat posed by Taylor. While Taylor maintained in his testimony that he had done nothing wrong, it was reasonable under the circumstances for Respondent to suspect that Taylor's verbal belligerence, combined with the manner he walked toward Respondent, signaled an escalation to physical aggression. The acts of shoving Taylor backward, then taking hold of Taylor's arm, pushing him to the ground and pulling his arms behind his back were limited to the purpose of immobilizing him until Respondent could ascertain what his intentions were without subjecting himself to an unknown risk of harm.

Based upon the foregoing, I find Respondent Not Guilty of the charged misconduct.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

OCT 25 2017

JAMES P. O'NEILL
POLICE COMMISSIONER