



POLICE DEPARTMENT CITY OF NEW YORK

February 26, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Daniel Sitruk
Tax Registry No. 940742
75 Precinct
Disciplinary Case No. 2015-13187

Charge and Specification:

1. Said Police Officer Daniel Sitruk, on or about January 28, 2014, at approximately 0900 hours, while assigned to the 75th Precinct and on duty, [REDACTED] did wrongfully use force against Person A in that Officer Sitruk used a chokehold against Person A.
P.G. 203-11 – USE OF FORCE

Appearances:

For CCRB-APU: Simone Manigo, Esq.

For Respondent: Craig Hayes, Esq.

Dates of Hearing:

September 28 and 29, 2015

Decision:

Not Guilty

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 28 and 29, 2015. Respondent, through his counsel, entered a plea of not guilty to the subject charge. The CCRB Administrative Prosecutor called Person A and Miriam Gaither as witnesses and offered a video recording into evidence. 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 charge cites to Patrol Guide Procedure No. 203-11 "Use of Force" which establishes the standards uniformed members of service (UMOS) must follow when the use of force is necessary in taking legitimate police action. It specifically requires that members of service "at the scene of an incident" use the "minimum force" needed and that they "employ non-lethal alternatives, as appropriate." "Deadly physical force" may only be used "as a last resort and consistent with Department policy and the law" and "excessive force will not be tolerated." This procedure specifically proscribes the use of chokeholds by officers as a use-of-force option. Patrol Guide Procedure No. 203-11 states in pertinent part: "Members of the New York City Police Department will NOT use chokeholds. A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air."

Since most of the facts regarding this incident are not in dispute, and since the video recording in evidence [CCRB Exhibit (CCRBX) 1] depicts Respondent's physical encounter with Person A during which it is alleged that Respondent used a chokehold against Person A, the testimony presented at this trial can be briefly summarized.

On January 28, 2014, Respondent was on duty, in uniform, assigned to the 75 Precinct, partnered with Police Officer Steven Giannitelli, when, at about 0900 hours, they drove to [REDACTED] residential group home for young women ("the home") located at [REDACTED] in response to a radio transmission of an assault in progress at the home which had been called in to 911 by a staff member at the home, Miriam Gaither, because a resident, Person B, had attacked another staff member.

Person A, who is a 17-year-old resident at the home and a friend of Person B, testified that when Respondent and Giannitelli arrived at the home they spoke to a staff member and then grabbed Person B and threw her against a wall. Person A felt that the officers were using excessive force. Person A and other residents yelled to the officers that Person B was pregnant. The officers told Person A, "Shut up bitch." Because she felt that what the officers were doing to Person B was wrong, Person A yelled at the officers to get off of Person B. As she was yelling she raised her hands to her waist-level. A staff member named Person C grabbed and held Person A's right arm. When Person A "pushed Person C off of me," her hand hit Respondent's on his waist. Respondent grabbed Person A by her hair "and choked me by my neck." She testified that she felt like Respondent "was trying to strangle" her and that she "couldn't breathe."

Both of the officers brought Person A down to the floor and Respondent dragged her by her hair across the floor. She was placed under arrest. Person A asserted that her back was swollen and sore and her leg and head also hurt. On January 30, 2014, she sought medical treatment. Her medical records show that she complained of pain and stiffness in her neck, upper back, and left jaw and that her doctor prescribed Ibuprofen. (CCRBX 2).

Person A's trial testimony that she felt that Respondent was trying to strangle her because he was squeezing his hand so tightly on her windpipe that she could not breathe, must be

examined in light of the statements she made at her July, 2014 CCRB interview. Although Person A stated at this interview that Respondent had grabbed and pulled her hair and had dragged, kicked, and punched her, she did not assert that Respondent had choked her. Moreover, although she told her CCRB interviewer that she had suffered back and head pain as a result of Respondent's use of force against her, she made no mention of any neck pain.

When Person A was asked on cross-examination at this trial why she had not mentioned at her CCRB interview that she had been choked, she answered, "I don't know, because I was scared." When Person A was then asked, "Scared of what?" she answered, "I don't know. I was scared." When Person A was then asked if she was scared of "CCRB," she answered, "No." Person A asserted that, "I didn't want to tell that part that I was choked. I didn't like telling that part to anyone." When Person A was asked if she was scared to tell her CCRB interviewer that her neck hurt, she answered, "Yes."

I find that the record establishes that Person A did not report to CCRB that Respondent had choked her because she did not believe that she had been choked by Respondent. It seems highly unlikely that she would have omitted telling CCRB that Respondent had choked her neck, that she felt like Respondent was trying to strangle her, and that she "couldn't breathe" if choking had actually taken place. Since she told CCRB that Respondent had grabbed her hair, dragged her by her hair, kicked her, and punched her, her claim at this trial that she was not afraid to tell her CCRB interviewer about these actions by Respondent but that she was afraid to say that she had also been choked is simply not credible. In conclusion, her failure to tell her CCRB interviewer that she was choked is more likely an indication that Respondent did not choke her.

Gaither, who worked at the residential home, testified that when Person B threw coffee at a staff member, it landed on one of the police officers. The officers informed Person B that

she was going to be arrested for assault. Person A and other residents started screaming that Person B was pregnant. There was so much screaming that Gaither could not hear what was being said. At one point she stepped back and noticed that Respondent was grabbing Person A by the hair. He then dragged her on the floor to the exit door at the end of the hallway. Gaither did not assert that she had seen Respondent choking Person A's neck.

Respondent testified that while Giannitelli was interviewing the complainant in the kitchen, Respondent heard cursing in the hallway. Person B then approached and threw the liquid at him, causing his eyes to burn. Respondent placed Person B against the wall to apprehend her for assaulting a police officer. The other residents were screaming at Respondent, and he described the environment as hostile. He heard Person A behind him screaming, "Get off of her before I kick the shit out of both you and your partner." Giannitelli instructed Person A to stay back, but she did not comply.

Respondent felt a sharp pain in the left side of his back. He turned around and told Person A to stay back. Person A replied, "Fuck you," and Respondent decided to arrest her for obstructing governmental administration. With his left hand he grabbed Person A's right shoulder, wanting to pull her toward him. Meanwhile, Person C told Respondent to leave Person A alone and stepped between Respondent and Person A in order to prevent the arrest. Person A was flailing her hands, and Respondent used his right hand to grab her hair. Person C, who had his arm by Person A's neck area, was pulling Person A away from Respondent. Respondent was able to handcuff Person A only after she was on the ground and backup officers arrived to provide assistance. Respondent testified that other than grabbing Person A's shoulders and hair, he did not grab any other part of her body. He never struck, kicked, or used a chokehold against her. On

cross-examination, Respondent testified that it was his intent to use the minimal force necessary to arrest Person A and he had no recollection of having grabbed her neck.

The video recording (CCRBX 1) produced by a security camera focused on the hallway ("the video"), constitutes the most reliable evidence regarding what took place before and during Respondent's physical encounter with Person A. The video shows that while Respondent was speaking with an SCO staff member, Person B who was holding a cup, threw liquid that was inside the cup at an SCO staff member. Some of the liquid hit Respondent. Respondent and his partner grabbed Person B and put her against a wall. As Respondent is seen attempting to handcuff Person B, Person A, who was behind Respondent, is seen moving toward Respondent and her right arm appears to make contact with Respondent's waist area. As Person C is seen placing his arm between Person A's body and Respondent's body, Respondent is seen turning his body sideways toward his left and putting his left hand on Person A's neck area. Person A's head is seen moving backwards indicating that Respondent was pushing her head with his hand. Most significantly, the video establishes that Respondent's left hand was in contact with Person A's neck area for less than one second before he released this hand contact with her neck.

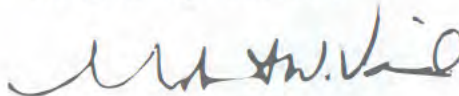
The freeze frame photograph offered in evidence which was lifted from the video (CCRBX 3) only depicts the precise moment when Respondent's left hand was in contact with Person A's neck area. However, this photo corroborates Respondent's testimony that even as he turned toward Person A because she had just hit him he was still focused on getting control of Person B, because the photo shows Respondent is using his right hand to hold onto Person B's right arm.

In sum, although the video shows that Respondent placed his left hand on Person A's neck area, this contact occurred as he reached out with his left hand as he was turning to his left to

face Person A, who was behind him, after her hand had struck his rear waist area, and his left hand was in contact with her neck for less than one second. Moreover, based on Person A's failure to tell CCRB that Respondent had put his hand on her neck, I find that whatever pressure Respondent's hand may have very briefly exerted was insufficient to fall within the scope of the Patrol Guide's definition of a chokehold. Specifically, the video inadequately proves that Respondent exerted pressure with his hand which may prevent or hinder breathing or reduce intake of air. Accordingly, I find that the video does not prove that Respondent engaged in the charged misconduct.


Based on the above, I find that the CCRB Administrative Prosecutor did not meet her burden of proving that Respondent wrongfully used force against Person A by using a chokehold against Person A.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

MAY 23 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER