



POLICE DEPARTMENT CITY OF NEW YORK

September 13, 2016

MEMORANDUM FOR: Police Commissioner

Detective Mathew Reich
Tax Registry No. 933211
Narcotics Borough Staten Island
Disciplinary Case No. 2015-14616

Sergeant Nikolaos Stefopoulos
Tax Registry No. 944294
123 Precinct
Disciplinary Case No. 2015-14617

Charges and Specifications:

Disciplinary Case No. 2015-14616

1. Said Detective Mathew Reich, on or about August 22, 2014, at approximately 2118 hours, while assigned to the Narcotics Borough Staten Island and on duty, in the vicinity [REDACTED], wrongfully used force, in that without police necessity, he repeatedly struck Person A.
P.G. 203-11 - USE OF FORCE

Disciplinary Case No. 2015-14617

1. Said Detective Nikolaos Stefopoulos, on or about August 22, 2014, at approximately 2118 hours, while assigned to the Narcotics Borough Staten Island and on duty, in the vicinity of [REDACTED] engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he threatened Person A with the use of force without sufficient legal authority in that he stated in sum and substance, "OPEN YOUR FUCKING HAND BEFORE I CRUSH YOU."
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT - PROHIBITED CONDUCT
2. Said Detective Nikolaos Stefopoulos, on or about August 22, 2014, at approximately 2118 hours, while assigned to the Narcotics Borough Staten Island and on duty, in the vicinity [REDACTED] was discourteous to Person A in that he stated in sum and substance, "SHUT THE FUCK UP DUDE, YOU'RE AN IDIOT; FUCKING IDIOT; WHY ARE YOU FIGHTING THE FUCKING COPS, YOU IDIOT?"
P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT- GENERAL

3. Said Detective Nikolaos Stefopoulos, on or about August 22, 2014, at approximately 2118 hours, while assigned to the Narcotics Borough Staten Island and on duty, in the vicinity [REDACTED], wrongfully used force, in that without police necessity, he slammed Person A against the ground

P.G. 203-11 USE OF FORCE

Appearances:

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

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

John D'Alessandro, Esq.
The Quinn Law Firm
Crosswest Office Center
399 Knollwood Road-Suite 220
White Plains, NY 10603

Hearing Dates:

June 7, 2016

Decision:

Not Guilty.

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on June 7, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. CCRB called CCRB investigator Alexander Opoku-Agyemang as a witness. Respondents called Captain John Menoni as a witness and each testified on their 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 Respondents Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The following is a summary of the facts that are not in dispute. On August 22, 2014, Respondent Mathew Reich and Respondent Nikolaos Stefopoulos,¹ both assigned to Staten Island Narcotics, were part of a plainclothes buy and bust team of seven Members of Service investigating the sale and possession of narcotics (T. 115, 169).

At approximately 2100 hours, Person A, a sixteen-year-old minor, was approached by an undercover police officer attempting to buy [REDACTED] the vicinity of [REDACTED] [REDACTED] The undercover officer gave Person A a \$20 bill and Person A walked away. Person A returned to the undercover officer shortly thereafter and handed him two bags containing [REDACTED] before walking into a convenience store located [REDACTED] [REDACTED]

The investigators on Respondents' back-up team were notified that the undercover officer had made a "positive buy" and Person A's description was transmitted over the radio (T. 116-117, 169). The back-up team entered the convenience store in order to place Person A under arrest. One of the investigators, Respondent Stefopoulos,

¹ Respondent Stefopoulos has since been promoted to the rank of Sergeant.

attempted to effect Person A's arrest and a struggle ensued which was captured by surveillance cameras inside the convenience store.

The following is a summary of the relevant portions of the video footage. The incident was captured by three cameras, each with a different angle. The initial physical contact between the investigators and Person A was captured on one camera angle with audio, but the camera angle which depicts an unobstructed view of the attempt to arrest Person A was captured by another camera which does not have audio. Viewed in conjunction, the three camera angles provide a relatively full depiction of Person A's arrest, the pertinent portions of which are described below:

- 0:44 Person A walks into the convenience store.
- 1:09 – Respondent Stefopoulos (wearing a black t-shirt with "USA" lettering) and Detective Shery enter the convenience store, and immediately walk toward Person A. Respondent Stefopoulos grabs Person A.
- 1:15 – Person A falls to the ground with Respondent Stefopolous and Detective Shery on top of him.
- 1:16 – Detectives Meigs and Marshall enter the convenience store, followed by Respondent Reich (wearing a black hat with white lettering).
- 1:22 Respondent Stefopolous states, "Open your fucking hand before I crush you."
- 1:57 – Six detectives are piled on top of Person A.
- 2:49 – Person A is lifted off of the floor by four of the detectives, and brought down to the floor quickly three times in rapid succession.
- 3:28 – Respondent Stefopoulos states, "pick him up, turn him over and slam him."

- 4:19 – Person A is handcuffed and brought to his feet by Respondent Stefopoulos.
- 4:50 Respondent Stefopoulos states, “Shut the fuck up, dude. You’re an idiot.”

It is important to note that due to the number of officers assisting in Person A’s arrest, quite a bit of the physicality that occurred on the floor is obstructed by the bodies of the officers trying to handcuff him. What is apparent, however, is that a violent struggle lasting approximately three minutes preceded Person A’s being handcuffed.

Shortly after his arrest, Person A was taken to [REDACTED] where he was treated for a laceration to his cheek below his left eye and lacerations to his upper and lower lips (CCRB Ex 3). He refused to speak to Internal Affairs investigators at the hospital (T. 97, CCRB Ex. 2A, p. 42). He was subsequently brought to the 121st Precinct and charged with [REDACTED]. As a result of the incident, Person A filed a Notice of Claim against the City of New York (T. 65).

At issue in this case is whether Respondent Reich, in an attempt to place Person A under arrest, used unlawful force against him by repeatedly striking him. Also at issue is whether Respondent Stefopoulos: (1) did not have the legal authority to threaten Person A with the use of force; (2) was discourteous to Person A by directing profane language toward him; and (3) wrongfully used force without police necessity by slamming Person A on the ground.

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find that Respondent Reich did not use unlawful force during Person A’s arrest. I further find that Respondent Stefopoulos did not threaten the use

of unlawful force, nor did he speak discourteously to Person A. Finally, I find that Respondent Stefopoulos did not use force against Person A without police necessity. The following is a summary of the facts which are in dispute.

Captain John Menoni was the assigned Staten Island Duty Captain on August 22, 2014. After being notified that a prisoner was injured while the Staten Island Narcotics Unit was effecting an arrest, he conducted an investigation into the incident (T. 70). Captain Menoni testified that the injury he was investigating was "a minor cut to the lip" suffered by Person A. According to Captain Menoni, he first responded to the 121st Precinct and conferred with Internal Affairs and Staten Island Investigations Unit investigators, both of whom were already conducting their own investigation into the incident (T. 71). He also conducted interviews of Sergeant John Ryan,² who was the field team supervisor, and of Respondent Reich (T. 80).

After viewing the surveillance footage obtained from the convenience store, Captain Menoni determined that no change in duty status was necessary for any of the officers involved in the arrest. This determination was based on his assessment that the officers used a minimal amount of force necessary to effect the arrest (T. 71). Following his interviews of Sergeant Ryan and Respondent Reich and his viewing of the surveillance footage, no further investigative steps were taken by Captain Menoni relative to the incident (T. 83). He did, however, submit a report of his findings to the Chief of Internal Affairs on August 23, 2014 (T. 84).³

² Ryan has since been promoted to the rank of Lieutenant.

³ Respondents sought to enter Captain Menoni's memorandum to the Chief of Internal Affairs into evidence over the objection of CCRB. Counsel for Respondents argued that the Police Commissioner should be permitted to consider the bases for Captain Menoni's recommendation against changing the duty status of any of the officers involved in Mr. Person A's arrest. This tribunal sustained the objection and excluded the evidence on the grounds that the admission of Captain Menoni's bases for his recommendation would effectively permit him to testify as an expert witness. He was neither offered as such, nor was any request made to consider him an expert. Ultimately, had such a request been made, the

Respondent Stefopoulos testified at trial that when he walked into the convenience store he placed his hand on Person A's shoulder, identified himself as a police officer, and tried to get control of him. However, Person A "suddenly jerked around and turned and tightened up his body" (T. 169-170). As he tried to link Person A's wrists together behind his back, Person A "swung his arms back and forth," striking Respondent Stefopoulos in the face once (T. 170). During the course of the struggle, Person A was "flailing his arms, kicking his legs, refusing to be handcuffed, squirming, [and] kind of moving his body towards the front door trying to jump forward" (T. 171)

Despite the efforts of Respondent Stefopoulos and his fellow officers, Person A "repeatedly refused to be put in a face-down position which made it next to impossible to handcuff [him]" (T. 171). Respondent Stefopoulos "hammer fisted him twice by his shoulder blade to get him to turn down and over" and "knead him in the stomach once or twice to get him to turn" to no avail (T. 173). Respondent Stefopoulos testified that a "hammer fist" technique uses the soft part of the hand, rather than the knuckles. He used this technique because he did not want to hurt Person A, but "wanted him to feel some type of pain so he would comply" (T. 211). He testified that at that point, he could have used his mace or expandable baton, but wanted to continue trying to gain compliance using physical tactics (Id.).

After the first several unsuccessful attempts to handcuff, Respondent Stefopoulos attempted to gain Person A's compliance through the use of more forceful language, including profanity to convey the seriousness of the situation (T. 172-173).

3 cont. tribunal would likely have denied it, as he possesses no expertise which this tribunal would find helpful on an issue which is beyond the ken of the average jurist. In the interest of due process, Captain Menoni's memorandum is attached as a Court Exhibit in the event that the Police Commissioner wishes to conduct a *de novo* review of the tribunal's evidentiary ruling.

Respondent Stefopoulos admitted that he made the following statements to A during the course of the struggle to handcuff him: "Open your fucking hand before I crush you," "put your hands behind your fucking back," and "get up, you fucking idiot" (T. 173).

In an effort to get Person A onto his stomach, Respondent Stefopoulos stated to his fellow officers, "pick him up, turn him over and slam him" (T. 178). In saying that, he did not mean for the team to slam Person A on the ground. Instead, it was a directive intended to bring , "down [to the ground] a little faster, a little harder to briefly stun him " (T. 179). He testified that both the language he used and physical tactics he employed were in response to the repeated unsuccessful attempts by the officers to pick Person A up and turn him over. Person A continued to turn and purposefully fall on his side, preventing the officers from being able to handcuff him (T. 178).

Once the officers were able to handcuff Person A, he went limp and would not stand up and at that point, Respondent Stefopoulos said to him, "get up you fucking idiot" (T. 172-173). Once in custody, he observed small lacerations to Person A 's lip and cheek (T. 174-175).

Respondent Reich testified that when he and Detectives Marshall and Meigs entered the convenience store, Person A was on his back struggling on the floor with Respondent Stefopoulos and Detective Shery (T. 118-119, 162). Respondent Reich testified that despite their directives to stop resisting, Person A resisted violently by "swinging his hands, kicking, at points trying to hold his arms stiff," and would not allow the officers to handcuff him (T. 119-120). According to Respondent Reich, during the course of the struggle he was positioned near Person A's head and attempted to gain control of one of his hands so that it could be handcuffed (T. 120 121). He denied intentionally punching, kicking, or striking Person A at any point during the course of the struggle and

testified that based on his positioning near Person A's head, if he had struck Person A, he would have "severely hurt him" and he "wasn't looking to hurt him, [he] was looking to arrest him" (T. 121, 163). Once Person A was handcuffed, Respondent Reich noticed blood on Person A's face, but was not aware of the injuries sustained by him (T. 130, 157).

Person A did not appear to testify before this tribunal, but a transcript and audio recording of his CCRB interview conducted on October 21, 2014, was entered into evidence (CCRB Ex. 2A-2B). During the interview, Person A told a CCRB investigator that he was walking to the store to get a beverage for his uncle and saw [REDACTED] on the ground, but walked past it [REDACTED]. He was then approached by a man who asked him, "[REDACTED]?" Person A replied by telling the man that he did not have any, but remembered the [REDACTED] he had seen on the ground and told the man he could get some for him (CCRB Ex. 2A, p. 4, 9). The man then gave Person A a \$20 bill and he walked back to the area where he had seen the [REDACTED] on the ground. He "started panicking" because he thought that the man may be an undercover police officer and threw the \$20 bill on the ground (CCRB Ex. 2A, p. 4). Person A did, however, walk back to where the man had been standing to give him two bags containing [REDACTED]. Person A asserted that at that point, he no longer had the \$20 bill the man had given him (CCRB Ex. 2A, p. 10).

He then walked into a deli to get a beverage and as he placed the beverage on the counter, five to six plainclothes police officers entered, and "started beating up on [him]" (CCRB Ex. 2A, p. 12-15). According to Person A, one of the officers walked in and started giving him his Miranda warnings, prompting him to put his hands up (CCRB Ex. 2A, p. 16). Person A then told the officer, "Okay, can you at least notify my mom?" (Id.). Person A

asserted that the officers told him that he was being arrested for rape, and at that point that he began resisting and screaming for help (CCRB Ex. 2A, p. 20-21, 39).

When asked more pointed questions by the CCRB investigator, A stated that the officer, later identified as Respondent Stefopoulos, entered the store, began giving him his Miranda warnings, and immediately tried to grab him. Person A then backed up, ~~and~~ "tried to throw [his] hands" (CCRB Ex. 2A, p. 22). Respondent Stefopoulos then punched him on the left side of his face two to three times before he fell to the floor (CCRB Ex. 2A, p. 22-23). Person A was then pulled down to the ground, landing on the right side of his face (CCRB Ex. 2A, p. 25). While on the floor, Person A asserted that he was punched in the mouth approximately six to seven times, kicked approximately four to five times about his body, and choked (CCRB Ex. 2A, p. 26, 29, 31). He stated further that during the struggle he was moving his body, but denied kicking his legs, tensing up, or flailing his arms (CCRB Ex. 2A, p. 30, 45). Once handcuffed, the officers brought him outside the deli and rinsed the blood from his face with water before placing him in a van (CCRB Ex. 2A, p. 37-38).

I do not credit Person A's hearsay statement for the following reasons: (1) his descriptions of his actions during the arrest are directly contradicted by the video recordings; (2) the actions he attributed to Respondents are not supported by the video recordings; (3) the description of his actions preceding the arrest are self-serving and dubious; (4) his references to negative general characterizations of police officers evince an anti-police bias; (5) he has a motive to taint testimony given his pending lawsuit against the City of New York; (6) his refusal to be interviewed by investigators from the Internal Affairs Bureau shortly after the arrest evinces a conscious selectivity regarding the provision of factual information he would, under the circumstances, expected to be

forthcoming with; and (7) the inability of the tribunal to assess his demeanor in real time as his trial testimony was subjected to the crucible of cross-examination.

I credit the respective testimonies of Respondents Reich and Stefopoulos for the following reasons: (1) the inherent reasonableness of their actions as described in their testimony; (2) the corroboration of their testimony by the video recordings; (3) Respondent Stefopoulos' willingness to accept responsibility for the use of crude language and physically coercive measures during the arrest; and (4) their actions in addressing Person A's injuries immediately after the arrest. While the tribunal is mindful that Respondents are both interested witnesses, any legitimate skepticism regarding their veracity was dispelled by the recorded depictions of the arrest contained in CCRB Exhibit 1.

This case dramatically illustrates the reality that the arrest powers granted to police under the New York Penal Law are inherently coercive; that is, they authorize police to compel citizens to perform actions, or to submit to actions by police officers, which they would otherwise choose not to, such as placing their hands behind their back in order to be handcuffed. Before a police officer may impose such measures upon a citizen, the law requires that he possess probable cause to believe that the person has committed a crime. Implicit in the Patrol Guide provisions authorizing the use of reasonable physical force to effect an arrest is the requirement that police officers use that force judiciously and only in circumstances where it is truly necessary.

In this case, the credible evidence in the record establishes that Respondents attempted to place Person A under arrest for [REDACTED] [REDACTED] after he engaged in a hand-to-hand transaction with an undercover police officer of two bags containing [REDACTED] for

\$20.00. The description of the suspect the undercover police officer relayed to his back-up team, as well as the location of the suspect, matched Person A, as borne out by the video recordings. There is no serious question regarding whether Respondents' testimony is credible on this point, notwithstanding Person A's nonsensical explanation of how he came to hand [REDACTED] he had found on the ground to a man he did not know⁴. Thus, Respondents had the authority, under New York law, to arrest Person A summarily (C.P.L. § 140.05; P.G. 208-01[3][a]).

Similarly, there can be no doubt that Person A resisted the arrest that Respondent Stefopoulos set in motion once he entered the convenience store and placed his hand on him. The testimonies of both Respondents, the video evidence and even an admission by Person A all support this conclusion. The video evidence in this case also establishes that Person A's resistance was not a response to unprofessional behavior initiated by either Respondent. Thus, his resistance, which he could not have reasonably believed would have caused Respondents to change their minds about arresting him, was obstinate.

Disciplinary Case No. 2015-14616

Wrongful Use of Force

I find that CCRB has failed to meet its burden of proof by a preponderance of the evidence that Respondent Reich used unlawful force against Person A by repeatedly striking him. The only evidence of unlawful use of force by this Respondent is Person A's hearsay statement. In addition to the other infirmities of his statement, set forth above, the acts he complained of, namely two to three punches in the face before he went down to the

⁴ This explanation seems clearly crafted to attempt to avoid being charged with the Class "A" misdemeanor of [REDACTED], which prohibits the sale of [REDACTED] in exchange for money, and the Class "B" misdemeanor of [REDACTED], which prohibits the sale of [REDACTED] for no consideration, so long as the weight sold is less than two grams.

ground, are not depicted on the video recording of the incident. Having reviewed all three perspectives of the arrest, the tribunal is satisfied that the arrest in its entirety was captured on videotape. Accordingly, if those blows had been struck as Person A asserted, they would have been captured on film.

Moreover, Person A has a strong incentive to embellish the actual facts in order to enhance the likelihood of recovery in his civil suit against the City. In his statement, Person A volunteered a fabulous account of an unrelated arrest in which he was allegedly punched in the face five times before being handcuffed, then punched several more times in the face and beaten on the back of his ankles with a baton. This anecdote was accompanied by gratuitous assertions of "That's what they do," referring to police officers as a group.

Finally, Person A refused to be interviewed by investigators from the Internal Affairs Bureau who were dispatched to the hospital after his injuries became known to the chain of command. That Person A chose to forgo this opportunity to go on the record about the allegedly wrongful treatment he suffered at the hands of Respondents invites the conclusion that he perceived some benefit to himself in selecting the forum in which he would make his allegations public.

Based upon the foregoing, I find Person A to be an incredible witness. Accordingly, I find Respondent Reich Not Guilty of the charged misconduct.

Disciplinary Case No. 2015-14617

Threatening Use of Force Without Sufficient Legal Authority

Based upon Respondent Stefopoulos' admission under oath, as well as the video recordings entered into evidence as CCRB Exhibit 1, I find that he did threaten Person A with the use of force by saying "Open your fucking hand before I crush you."

Respondent Stefopoulos' position at trial was that the use of this threat was calculated to intimidate Person A into ceasing his resistance to being handcuffed. I find under all the circumstances presented, that his use of this threat was objectively reasonable and was not prejudicial to good order, efficiency or discipline.

Patrol Guide 203-11 (August 1, 2013) makes clear that only that amount of force necessary to overcome resistance will be used to effect an arrest. In this case, the credible evidence in the record supports a finding that Person A, a 16-year-old, 130-pound teenager, struggled with four large, armed police officers for approximately four minutes. As depicted in CCRB Exhibit 1, Person A repeatedly pulled his hands away, flailed his arms, kicked his legs, flipped into his stomach and hid his hands underneath his body and struggled to avoid being handcuffed. It must be noted that Person A had no legal right to resist a lawful arrest; accordingly, Respondent was under no obligation to accede to Person A's request that his mother be notified before being handcuffed. Under these circumstances, it was objectively reasonable for Respondent Stefopoulos to conclude that Person A would not allow himself to be handcuffed willingly. It was further reasonable for Respondent Stefopoulos to begin to employ increasingly aggressive language as a form of force to persuade Person A to cease struggling against the police. It is noteworthy that the initial escalation of force was in language and tone, rather than physical acts. The language Respondent Stefopoulos chose was concededly harsh but not so opprobrious as to shock the conscience.

Based upon the foregoing, I find Respondent Stefopoulos Not Guilty of
Specification 1

Discourtesy

Based upon Respondent Stefopoulos' admissions under oath that he directed the words, "Shut the fuck up, dude; you're an idiot," "Fucking idiot; why are you fighting the fucking cops, you idiot," toward Person A, I find that such words were uttered during his struggle. Such admissions were against his penal interest and, in the view of the tribunal, are credible. Respondent Stefopoulos took the position at trial that such language was calculated to intensify the harshness of his tone in an attempt to persuade Person A to cease his opposition to being handcuffed. In addition to being credible, his testimony in this regard is plausible.

This tribunal has held that the use of vulgar language by police officers which would otherwise inappropriate for an ordinary police-citizen encounter is viewed differently during a heated physical engagement. Respondent candidly admitted that the coarseness of his language was intended to convey the seriousness of the police action and to coerce acquiescence to the arrest process. Respondent Stefopoulos volunteered that, in addition to the increasingly harsh rhetoric, he employed physical strikes he called "hammer blows" to Person A's shoulder blades, as well as a knee to his stomach. Respondent was not charged with the use of unlawful force with respect to these blows but his volunteering of this information lends credence to his assertion that he sought to convince Person A to cease his opposition to arrest without inflicting serious injury upon him.

When Person A was finally handcuffed, he went limp. Respondent Stefopoulos' statement, "Get up you fucking idiot," could not under those circumstances be viewed as a verbal tool to obtain his Person A's compliance: it was more likely the result of frustration at a prolonged struggle viewed with justification as unnecessary and avoidable.

A disinterested observer of this incident would have concluded that the likelihood of Person A prevailing against the collective efforts of the investigators to arrest him was virtually nonexistent. His decision to struggle against Respondent Stefopoulos and the members of his team for as long as he did was irrational, immature and potentially dangerous. Under these circumstances, Respondent Stefopoulos' statement can be viewed as made while operating under the excitement of the struggle which had just concluded and is forgivable.

For all the foregoing reasons, I find Respondent Stefopoulos Not Guilty of Specification 2

Wrongful Use of Force

Respondent Stefopoulos testified credibly that after employing increasingly aggressive language, several "hammer fist" blows to Person A's shoulder blades and several knee strikes to his stomach, Person A still would not allow himself to be handcuffed. After struggling unsuccessfully with Person A for approximately one minute and forty seconds, assisted by five other police officers, Respondent Stefopoulos elected to further escalate his use of force to greater coercive measures. As clearly depicted on CCRB Exhibit 1 in evidence, Respondent Stefopoulos and three other police officers picked Person A up by his arms and legs and brought him down to the ground quickly three times. Person A continued to twist his body, land on his side and fight against being put on his stomach. Respondent Stefopoulos then directed his team to "pick him up, turn him over and slam him." Respondent Stefopoulos testified that this direction was not intended to be taken literally but to convey an attempt to stun Person A temporarily and incapacitate him.

It is not necessary to parse the definition of "slam" in this scenario because whatever the action is called, it was clearly designed to inflict a degree of discomfort or

pain upon Person A in order to overcome his resistance. The sole issue before the tribunal is whether this escalation was objectively reasonable under the circumstances. Based upon the credible evidence in the record, I find that it was.

Common sense suggests that after struggling on a hard floor inside a store, surrounded by shelves and glass cases, for almost two minutes, someone, whether Person A or one of the police officers, was likely to sustain an injury. There was absolutely no point to Person A's struggle and he would inevitably been handcuffed. The police officers attempting to arrest Person A enjoyed an insurmountable advantage in number, size and armament. The only force measures left which had not been attempted up to that point were measures which would have called for the deliberate infliction of pain severe enough to either compel Person A to cease fighting or to render him unconscious. In view of his "primary duty . . . to preserve human life," Respondent Stefopoulos made an objectively reasonable decision to avoid the more efficient, but morally distasteful, measures he could have employed such as a strike from an asp or even punching Person A. While the sight of adult law enforcement officials bringing such force to bear against an obdurate sixteen-year-old is not pleasant, their measures fell short of excessive force.

Accordingly, I find Respondent Stefopoulos Not Guilty of Specification 3.

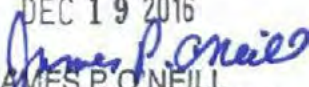
Respectfully submitted,



Paul M. Gamble

Assistant Deputy Commissioner Trials

APPROVED

DEC 19 2016

JAMES P. O'NEILL
POLICE COMMISSIONER