



POLICE DEPARTMENT

April 30, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-27009
Police Officer Amado Vargas	:	
Tax Registry No. 955621	:	
48 Precinct	:	

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

To:
HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Amado Vargas, on or about December 17, 2019, while assigned to the 48 Precinct and on duty in the vicinity of Wings Academy High School, Bronx County, intentionally used force and attempted to cause injury, in that he struck Truth Serrano's face with his fist, without police necessity, causing Truth Serrano's mouth to bleed and suffer the loss of a tooth.

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

Penal Law § 110/120.00

ATTEMPTED ASSAULT IN THE
THIRD DEGREE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 6, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board ("CCRB") called Truth Serrano, Michael Salvatore, and Dr. Salvador Contes (who testified remotely) as witnesses. 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 in this matter, I find Respondent Not Guilty.

ANALYSIS

This case involves an allegation that Respondent attempted to assault a student at Wings Academy High School in the Bronx on December 17, 2019. On that day, the school's fire alarm had twice been pulled even though there was no fire, and school personnel were having difficulty with the students re-entering the building. The weather outside was cold and rainy, and some of the students, in their eagerness to get back inside, were bypassing the metal detector at the entrance. Police were summoned to the scene to provide assistance.

Respondent was one of the responding officers. It is undisputed that at approximately 1245 hours, he punched a student, Truth Serrano, one time in the face, causing injury to

Serrano's mouth. There is, however, disagreement as to the surrounding circumstances leading up to the punch.

Truth Serrano, who was 17 years old at the time of the incident, testified that students were pushing to get back inside the building, and some did not go through the metal detectors. Police were present in the school, and the officers and students were making comments to each other: some officers were telling students they could go to jail if they did not follow instructions, and students said things back to the officers, some of them cursing. Despite being directed by school personnel to clear the area and go inside the cafeteria, Serrano was standing by a wall outside the cafeteria. He observed police officers chasing another student. (Tr. 27-28, 44-51)

According to Serrano, when the officers lost sight of the student, they came toward the area where Serrano and others were standing. Serrano testified that someone from behind pushed him toward one of the officers. Serrano lost his balance, and one or both of his hands made contact with the officer's chest area;¹ he claimed that he did not grab or choke the officer, or strike him. Serrano testified that he told the officer to "chill," but the officer, who looked angry, punched him one time in the face with a closed fist. The punch struck Serrano near his left upper lip, dislodging a tooth, and he fell to the floor. Police officers jumped on top of him, and then brought Serrano back to his feet. The officers told him he would be tased if he did not cooperate, and he was placed in handcuffs. (Tr. 29-34, 55-56, 59-63, 65-67)

Serrano testified that he was brought to St. Barnabas Hospital by the police, where he received stitches to close the laceration on his lip, his tooth was re-attached, and he was given painkillers and antibiotics. (See CCRB 3, Medical Records) The next day, Serrano took photographs of his injured mouth. (CCRB Ex. 2) Police issued Serrano a summons for

¹ The parties stipulated that during his interview with the CCRB on March 6, 2020, Serrano had denied making any physical contact with the police officer. (Tr. 60-61)

disorderly conduct (which was later dismissed), and he was released from the hospital. Serrano subsequently filed a lawsuit against the Department, which is pending. (Tr. 26, 35-39)

Michael Salvatore, the dean of Wings Academy, testified that as students were pushing to re-enter the school after the fire alarms, one male student was placed in handcuffs by a school safety agent, and brought to the "parent coordinator's" office. The area near the school entrance was chaotic, and a female student also was placed in handcuffs and brought to the office, causing other students to become visibly upset. School safety agents called for back-up, and 20-30 police officers arrived, who positioned themselves to guard the office where the handcuffed students were being detained. The students in the hallway were told to go inside the cafeteria, but many did not listen, including Serrano who was approximately 30 feet from Salvatore, standing against the wall by himself outside the cafeteria. (Tr. 71-73, 80-81, 84, 88, 91-93)

As Salvatore walked toward Serrano, his attention was drawn when two police officers grabbed Serrano's upper arms near his shoulders, even though Serrano was just standing there. Salvatore testified that from approximately five-to-six feet away, he observed a third police officer punch Serrano in the face with a closed fist. He also saw the police officer punch Serrano a second time, but the second one was "not as severe." Serrano fell to the floor along with the officers, and was brought back to his feet in handcuffs. Salvatore saw two of Serrano's front teeth dangling, and his mouth was bleeding. Salvatore testified that prior to the punch, he did not see Serrano place his hands on the police officer's chest or neck area, and he did not hear any words exchanged before the punch. He also claimed that he did not see anyone push Serrano into the officer prior to the punch, nor was there anyone within arm's length of Serrano that could have pushed him. However, when shown a copy of an "Occurrence Report" prepared within 24 hours of the incident, based on the information he provided, Salvatore, after a long

pause, acknowledged that the report states, "Truth Serrano was pushed into the line of police by the crowd behind him. Truth was taken to the ground, put under, and punched in the mouth."

(Tr. 74-77, 91-94, 98-113)

Dr. Salvador Contes, who was the principal at Wings Academy on the date of the incident, confirmed that the situation was chaotic inside the school. As students were trying to get back inside the building, some of them pushed the metal detector out of the way. One school safety agent was knocked down and injured as he was chasing a student who wrongfully brought a phone inside the school that another student had tossed to him. Dr. Contes testified that after at least two students were brought to the parent coordinator's office in handcuffs, other students became angry and moved toward the front of the office. It appeared that the students were going after the officers, who were guarding the room and telling the students to back away. The students were screaming, cursing and spitting at the officers, and throwing objects at the officers as well. (Tr. 118-20, 127-45)

According to Dr. Contes, Serrano was one of the students in front of the office who was cursing and screaming at the officers. Dr. Contes testified that he observed Serrano falling forward into a police officer, possibly from being pushed. As he did so, Serrano's hands made contact with the officer's chest area; Dr. Contes did not see Serrano grab the officer's neck. The officer then punched Serrano in the face with a closed fist, causing him to fall to the floor. Several officers surrounded Serrano, who was brought back to his feet, and the officer who punched him walked away from the area. (Tr. 120-25, 145-51)

Respondent acknowledged that he was the police officer who punched Serrano; he learned Serrano's name at the precinct afterward. He testified that he went to the school in response to a 10-85 call from a fellow officer who was screaming for assistance. When he

arrived the school was in disarray, with students running, screaming, cursing, and throwing things at the police officers. Respondent stood with the other 20-30 officers who were present, guarding the office door, with approximately 100 students in the area. The students ignored the commands to move back, and started coming toward the officers. People were bunched up together in what Respondent described as a “big melee.” (Tr. 157-63, 166, 172, 177)

According to Respondent, without warning Serrano suddenly grabbed the front of Respondent’s throat with an open hand and squeezed; there had been no contact between the two of them before that. Respondent testified that he was startled, and believed he was in physical danger; he was concerned that he might lose consciousness and that his firearm could be taken from him. In response to the hand on his throat, Respondent immediately punched Serrano one time in his mouth, and Serrano released his grip. Respondent then moved back away from Serrano in order to gather himself. Some other students grabbed Respondent and pulled him backward, injuring Respondent’s shoulder. He did not observe what happened to Serrano on the floor, nor did he see Serrano placed in handcuffs. Other than the one punch, Respondent did not use any additional force against Serrano. (Tr. 161-65, 171, 174-81)

Respondent testified that his Body-Worn-Camera fell during the incident with Serrano, and did not depict what transpired. That video does, however, capture Respondent telling another officer at the scene, “Some dude put his hand around my neck,” so this was not a claim fabricated by Respondent for trial. (Resp. Ex. A, at approximately 13:08:10) The school surveillance video (Resp. Ex. B, beginning at approximately 1245 hours) shows the general mayhem inside the school as described by the witnesses, including students getting escorted into the office, but it does not capture the encounter between Respondent and Serrano. In the injury paperwork he prepared after the incident (CCRB Exs. 4 & 5), Respondent described being pulled

by the shoulder, since that was the moment he was injured, and not when Serrano placed his hand on his throat. He did, however, note that he was grabbed by the neck in his activity log (CCRB Ex. 9) and in the “Interaction” section of the TRI Report (CCRB Ex. 4). According to Respondent, the Department investigated his use of force in this matter, and exonerated Respondent of any wrongdoing. (Tr. 167-71, 182-90, 193-95, 198)

Respondent faces one specification, charging him with Attempted Assault in the Third Degree for punching Truth Serrano in the face. Inasmuch as the CCRB did not serve the charges and specifications within the relevant statute of limitations, it had to rely on the “criminal exception” to the statute in order to proceed with this matter. *See* N.Y. Civ. Serv. Law § 75(4).

As such, this is not a case where the prosecution need only prove that Respondent violated the Patrol Guide. The issue here is not whether Respondent used impermissible force when he punched Serrano in the mouth. Rather, since the statute of limitations was not met, the CCRB has the burden of proving, by a preponderance of the credible evidence, each of the elements of Attempted Assault.

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he or she engages in conduct which tends to effect the commission of such crime. (N.Y. Penal Law § 110.00) The crime of Assault in the Third Degree is defined as intentionally causing physical injury to another person. (N.Y. Penal Law § 120.00(1)) As such, the burden is on the prosecution to prove that Respondent, with the intent to cause physical injury to Serrano, attempted to cause such injury.

It is undisputed that Respondent did punch Serrano in the face during their encounter inside the school. Serrano testified regarding the punch, as did two eyewitnesses, and Respondent acknowledged it as well. There was some variation in the details of what preceded

the punch, which was not surprising since this was a crowded, tumultuous scene being viewed by individuals from different perspectives. Significantly, though, there was a consensus that Serrano made physical contact with Respondent immediately before the punch. Respondent testified that Serrano grabbed the front of his throat with an open hand and squeezed. Although none of the other witnesses testified to specifically seeing Serrano grab Respondent's throat, both Serrano and Dr. Contes testified that Serrano's hands made contact with Respondent's chest area. Salvatore testified he did not see any contact, but his occurrence report indicated that Serrano was pushed into a line of police before he was punched.

As such, this was not a situation where Respondent approached Serrano and gratuitously punched him for no reason. Rather, he punched Serrano only after Serrano came toward him and placed his hands on Respondent. The question, then, is whether under these circumstances, Respondent's actions rose to the level of Attempted Assault in the Third Degree.

The pivotal issue here is one of intent: in order for the CCRB to meet its burden, it must prove that Respondent's "conscious objective or purpose" was to cause physical injury to Serrano. Based on the credible evidence, I am not persuaded that Respondent acted with criminal intent. By all accounts, the situation inside the school was chaotic, with a large number of students massed into a small area as they re-entered the school following a false fire alarm. During the initial re-entry, several students dangerously bypassed the metal detector, which compromised the security of all those inside. Out of a concern for safety, school personnel actually sounded the alarm a second time, so that students would have to exit the building again and return through the scanner. Tensions between the students and police inside the building were high, and a school safety agent was injured during an encounter with a student. After at

least two students were escorted, in handcuffs, into an office, students responded by advancing toward the officers who were guarding the room, cursing and throwing things at them.

The credible evidence has established that Serrano was part of this hostile group of students. Just as he had downplayed his interaction with Respondent at his CCRB interview, by falsely claiming there was no physical contact between him and Respondent prior to the punch, Serrano again tried to minimize his actions at trial, testifying that he was just standing against a wall outside the cafeteria when Respondent approached him. I find Serrano's account on this point to be incredible, based on the contrary testimony of Dr. Contes, the principal, who clarified that Serrano was, in fact, one of the students cursing and screaming at the officers as he moved toward them. That is not to say that Serrano was punched merely because he was part of this group. Rather, it provides relevant context to the circumstances leading up to the punch.


Respondent was detailed and consistent in his testimony, and I credit his account of what transpired between him and Serrano. When he felt Serrano's hand in the area of his neck, Respondent reacted by punching Serrano one time, in order to remove the threat to his safety. As a result of the punch, he was freed from Serrano's grasp, and Respondent used no additional force against Serrano. Under these circumstances, the evidence did not establish that Respondent's intent was to injure Serrano. Rather, his intention was to stop Serrano from harming him. As such, the prosecution did not prove each of the elements of Attempted Assault in the Third Degree as alleged, and I find Respondent Not Guilty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAY 10 2024

EDWARD A. CABAN
POLICE COMMISSIONER