



POLICE DEPARTMENT CITY OF NEW YORK

April 20, 2017

MEMORANDUM FOR: Police Commissioner

Re: Detective Christopher Cruzado
Tax Registry No. 945630
113th Detective Squad
Disciplinary Case No. 2016-15355

Charges and Specifications:

1. Detective Christopher Cruzado, on or about September 1, 2015, at approximately 0600 hours, while assigned to Queens Gang Squad and on duty, in the vicinity of [REDACTED] Queens County, wrongfully used force in that he struck Damon Crichlow about his body without police necessity. (*As Amended*)
P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Raasheja Page, Esq and Caleb Fleurant, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

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

Hearing Date:

January 18, 2017

Decision:

Not Guilty

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 18, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. CCRB called Damon Crichlow and Shelia Green as witnesses. Respondent called Detective Michael O'Brien and Detective Brett Topping 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.

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 is a summary of the undisputed facts in this case. On September 1, 2015, at 0600 hours, officers entered the living room of [REDACTED] located on the second floor of this multi-story dwelling in Queens County. Damon Crichlow, [REDACTED] and [REDACTED], Sheila Green, were sleeping in that room at that time (T. 24, 37-39, 68-70, 77, 103-104, 107, 202-203). Approximately sixteen officers of the Queens Gang Squad entered the premises executing a "no-knock" search warrant (T. 15, 105). The officers wore tactical gear and carried Kevlar shields, while Crichlow and Green slept nude (T. 24-26, 79-80, 106, 108, 203).

Detectives Brett Topping and Jack Barrett were assigned as "breachers," whose responsibilities were to open the second-floor door of [REDACTED] by force, if necessary. Detective Michael O'Brien and Respondent were assigned as "bunkers," assigned to enter the apartment with ballistic shields to secure the premises (T. 106-108, 118-119, 125-126, 167-169, 171-175). Almost immediately after their entry, Respondent and several other

members of the Warrant Squad team engaged in a physical altercation with Crichlow, the facts of which are in dispute (T. 27-31, 46-56, 70-90, 109-114, 119-125, 170-174).

The physical altercation ended when Respondent and other officers handcuffed Crichlow (T. 113-114, 172-174). Crichlow was then placed on the couch, while a female officer attended to Green (T. 174). During the altercation, Crichlow sustained several injuries, [REDACTED] [REDACTED] (CCRB Exhibit 1; T. 32-35, 75-76). Crichlow declined first aid treatment from Respondent's team but later received a [REDACTED] at [REDACTED] (CCRB Exhibit 1; T. 34-35, 56-58). After Crichlow was offered medical attention, various officers, including Respondent, Detective O'Brien, Detective Topping, and Detective Barrett, left [REDACTED] to execute a second search warrant (T. 114-115, 174). Crichlow was neither arrested nor issued a summons as a result of his actions during the warrant execution.

At issue is whether Respondent struck Crichlow about his body, without police necessity, during the execution of the search warrant.

The following is a summary of the disputed facts in this case:

Respondent testified that O'Brien was the first to enter the apartment with his ballistic shield; Respondent, as the second shield, followed closely behind O'Brien and was guided by him (T. 133-135, 159-160). Respondent's vision was somewhat obstructed because Detective O'Brien's gear and shield were in front of him (T. 159-160). Respondent asserted that announcements and commands of police presence were given by the team because it was the team's practice "to scream over and over in a loud, boisterous voice, 'Police, don't move,' or 'Police, get down' or 'Police. Give me your hands'" (T. 136). He stated the team's ballistic shields and vests were marked with "NYPD" or "Police" so that they would be easily identifiable

if inhabitants did not hear their announcements (T. 157). Respondent did not recall whether he had his firearm out during the entry but believed that O'Brien did (T. 132-133, 136).

Shortly after entering, Respondent noticed a man inside the apartment who was naked (T. 156). Respondent stated that the man, later identified as Crichlow, grabbed onto O'Brien's shield a few seconds after they entered (T. 135-137, 159-160). Respondent described Crichlow as being "very combative" and "trying to pull the shield" (T. 136-137, 151-152). Respondent testified that he was certain that Crichlow had two feet on the ground and both hands on Detective O'Brien's shield (T. 139). Respondent stated that he then moved in front of Detective O'Brien to get Crichlow's hands off the shield (T. 137).

Respondent stated that he wrapped his arms around Crichlow's arm and bicep area in an attempt to immobilize him; his intention was to remove Crichlow from the shield and place handcuffs on him; he stood towards the side of Crichlow's body, rather than behind him (T. 137-138, 146-148). Although Crichlow was screaming during this attempt to restrain him, Respondent stated that he could not understand what he was saying (T. 157).

Respondent testified that he and Crichlow had an "inadvertent fall to the ground" and "tripped and fell to the ground"; Respondent denied forcibly bringing Crichlow to the ground (T. 137-139, 148). Respondent elaborated that this likely occurred because there was "no real leverage at that point if we are both standing and you have to squeeze on him" (T. 138). Respondent later clarified that Crichlow tried to pull his arms away from Respondent's grip, causing the two to fall to the floor together (T. 160). Respondent further testified that before their fall, he was not certain whether Crichlow was standing "completely erect or a little hunched over" or if Crichlow was "pulling him down or trying to stand up" (T. 139).

Respondent testified that approximately one minute passed between his entry into the home and Crichlow being handcuffed (T. 140, 145, 143, 161). Respondent stated that despite his proximity to Crichlow, he could not make out anything that Crichlow was screaming (T. 140). As Respondent gripped Crichlow, he issued commands in "a loud, boisterous tone of voice," to stop resisting and to give officers his hands so that they could handcuff him (T. 140, 160-161).

Respondent testified that after they both had fallen to the floor, he did not punch, strike, kick, or use any other force whatsoever on Crichlow's body; both were "scurrying around on the floor" (T. 138-139, 142, 145). Respondent stated that the entire time they were on the ground, he held one of Crichlow's arms and tried to pull it behind his back (T. 140-141). Despite his effort to exert some force or pressure on Crichlow to get his arms behind his back, Respondent was unable to do so by himself (T. 141-142). Respondent described the force or pressure he used to try to handcuff Crichlow as, "the force of two of my hands around his arm, pulling . . . was a lot of my strength, trying to get his arms behind his back" (T. 142).

Respondent stated that approximately three other Queens Gang Squad officers moved in quickly to join Respondent on the ground to get the situation under control, and assisted with placing Crichlow in handcuffs (T. 140-142). Respondent denied that other officers punched or struck Crichlow while they were on the ground assisting Respondent (T. 142). The officers were simply trying to pull Crichlow's arms behind his back to handcuff him (T. 142). Throughout this struggle, O'Brien was a few feet away from Respondent and Crichlow (T. 143).

Respondent does not recall who successfully handcuffed Crichlow – whether it was himself or another officer – but the task was completed within approximately one minute (T. 140, 142-143, 161). Respondent and O'Brien then cleared the rest of the house and removed their bunker gear, while Crichlow sat on the living room couch in handcuffs (T. 143).

Respondent waited in the front of [REDACTED] and had a cigarette before moving on to execute a second search warrant with his team (T. 143-144, 161). Respondent testified that the total time he was present at [REDACTED] was approximately a half an hour (T. 145).

Sheila Green testified that at the time of Respondent's entry into the living room of [REDACTED] on September 1, 2015, she, Crichlow, [REDACTED] were asleep (T. 68-69). Green described Crichlow as sleeping so heavily that he was "knocked out" or "out cold" and did not wake up until approximately ten seconds after officers had first banged on the doors and windows of the house (T. 69-70, 77-80). According to Green, six to seven police officers wearing tactical gear entered the apartment; Green could hear what she surmised were additional officers downstairs (T. 69, 78-81). Green testified that Respondent and the officers accompanying him yelled, "Police, police" and "Get down" as they forcibly entered the apartment (T. 80-81). After being ordered to stay down, Crichlow began to push himself up slightly from the floor (T. 70, 76, 81-82, 93-94, 96). Green described him as having his hands under his chest in a "push-up style" position and being a few inches off the ground (T. 70, 81-82, 90, 93-94, 96).

Three officers then jumped on top of him, including an older officer (T. 70, 81-82, 90, 93-94, 96). Green could not see the older officer's face clearly, given the absence of light; she described him, however, as being a stocky, Caucasian officer, approximately 5'10" tall, weighing 200 pounds, clean-shaven with gray hair (T. 70-72, 74, 82, 97). Green stated that the gray-haired officer she described was not Respondent (T. 83). Green heard officers making statements during the struggle with Crichlow, such as "Stop Resisting," "Relax," and "[REDACTED] Why are you doing this?" (T. 73, 83, 85-86, 93). While she denied observing Crichlow doing anything which might have prevented the officers from placing him in handcuffs, Green

admitted that in a prior statement to CCRB, she asserted that she also told Crichlow to relax because he was refusing to put his hands behind his back (T. 85-86).

Green stated she was approximately three feet from Crichlow in the living room during the physical altercation that next ensued (T. 74, 91). The entire altercation occurred in less than one minute, or approximately thirty seconds (T. 74-75, 87-88). Green stated that the older officer was punching Crichlow in his face, head, and neck (T. 70, 82, 97). The first punch was straight to Crichlow's forehead and the second was on the left side of his head in the cheek area (T. 97). Green estimated that this officer punched Crichlow approximately six times in the face, arm, shoulders, hip, and torso (T. 71-72, 74, 91-92). Green also stated that two of these six punches were especially forceful and landed on Crichlow's shoulders and arm area (T. 71-72, 74). Green testified that the older, gray-haired officer also slammed Crichlow's face to the ground and hit him, while the other two officers pinned Crichlow's lower body down (T. 98).

Green stated that Crichlow eventually rolled to his right side and lay face-down on the ground (T. 87, 95-96). The officers stopped hitting him and were able to put his left arm behind his back and handcuff him (T. 74, 87, 95-96). They then picked Crichlow up off the ground and put him on the couch; they did not use any force against him, such as striking or kicking, at this time (T. 73, 88, 93). The officers then turned on the lights and found pants for Crichlow (T. 75). Green observed that Crichlow had a small gash on his head and a swollen cheek (T. 75). Later in the day, she observed bruises that appeared on Crichlow's inner thigh, inner arm, and shoulder (T. 76).

On September 1, 2015, Detective O'Brien executed two search warrants in Queens County with Respondent, the first located at [REDACTED] (T. 102-103, 117). Approximately 16 Queens Gang Squad members were involved in the execution of the warrant

at Crichlow's apartment (T. 105-106). The officers wore tactical gear, with "NYPD" patches on each arm and either "Police" or "NYPD" written on the back (T. 103-104, 106, 108, 118-119, 125-126). Detectives Topping and Barrett breached the apartment's door (T. 108, 167-169, 174-175). O'Brien entered the apartment first with his shield in front of him; Respondent followed closely behind him (T. 106-108, 123). O'Brien believed that the shield bore the markings of either "Police" or "NYPD" (T. 126).

O'Brien observed a naked black male on the floor, who "immediately popped up" and faced him (T. 108-110, 119-120, 124-125). In response, O'Brien and Respondent screamed, "Search warrant," "Police," and "Get down" multiple times (T. 108, 111, 124-125). O'Brien did not recall whether the individual, later identified as Crichlow, said anything in response (T. 126). As O'Brien walked towards Crichlow yelling commands, Crichlow grabbed the top of his shield, which caused O'Brien to stumble (T. 109-110, 119-120). Respondent then came around O'Brien from behind, grabbed Crichlow's arm, and brought Crichlow down to the ground (T. 112, 120).

O'Brien stated that he "got turned around a little bit" and proceeded to walk past Respondent and Crichlow on the ground to make sure that no one else was in the house coming towards him (T. 113, 121). O'Brien estimated that it took about 30 to 45 seconds from the time he and Respondent entered the apartment until Crichlow was handcuffed (T. 114). O'Brien testified that he never saw Respondent punch Crichlow and that the only force he observed Respondent use was when he grabbed Crichlow's arm and both went down to the floor (T. 114). While Respondent and Crichlow were on the floor, O'Brien walked further into the apartment and observed it open into a living room where there was a couch on the far left-hand wall, another couch on the right-hand wall, and a staircase (T. 124). O'Brien stated that he observed a female laying on the couch to the right [REDACTED], but he did not recall interacting with her (T.

113-114, 124). He observed more officers enter the living room and, within a couple of seconds, Crichlow was placed in handcuffs (T. 113-114). Shortly after that, O'Brien left the location with Respondent, Detective Topping, and Detective Barrett to execute another search warrant (T. 114-115). O'Brien testified that approximately ten to twenty minutes had passed from the time his team "hit the door" to the time he left the location (T. 115). O'Brien was not aware of any injuries Crichlow sustained during the search warrant execution (T. 115-116).

O'Brien has worked with Respondent more than ten times within the past two and a half years (T. 102, 117-118). He confirmed that he has a social relationship with Respondent outside of work and that he briefly discussed the incident with him before his testimony (T. 118).

On September 1, 2015, Detective Topping was assigned to execute two search warrants, the first at [REDACTED] (T. 165-167, 174-175). As assigned breachers, Topping and Detective Jack Barrett used tools to open the apartment's front door for the entry team, which included Respondent and O'Brien (T. 167-169, 174-175). Once the team forced open the door, they entered the apartment in a "stack" (T. 167-169); before entering the apartment, Topping could not see what was occurring inside because it was dimly lit and numerous people blocked his view (T. 169-170). Topping heard officers saying, "Police, search warrant" and "Stop resisting" (T. 170).

Ten to fifteen seconds after the door was opened, Topping and Detective Barrett entered the apartment (T. 170, 185-186). Topping testified that he observed a scuffle ensuing on the ground and a female, later identified as Sheila Green, laying on a couch [REDACTED] [REDACTED] (T. 170-171, 176). Approximately fifteen to twenty-five seconds passed from the moment Topping entered the living room to the time that Crichlow was ultimately handcuffed (T. 173).

Topping testified that once he knew that he had secured the female on the couch, that the couch was clear of weapons, [REDACTED] he "turned around to make sure everything was all right on the ground" (T. 172). While he stood over Green, Topping periodically looked over his shoulder to see Respondent "literally right below [him]" (T. 171-172, 182). He observed Respondent trying to get Crichlow's hands behind his back, without striking, punching, kicking, or making any other physical contact with him (T. 171-172). Crichlow was on the living-room floor with two or three officers "resisting, moving his arms, not letting the officers get him in a position to put his hands behind his back and handcuff him" (T. 172-173, 176).

Topping stated that at some point during the scuffle, Respondent had gotten Crichlow's left hand behind his back, but not his right hand (T. 173). Since Green and [REDACTED] were safe, secure, and had no weapons, Topping got down, grabbed Crichlow's right arm, and helped Respondent handcuff him (T. 173-174). Topping stated "at that point, it was over" (T. 174). He and Respondent placed Crichlow on the couch, found another female officer - Detective Kaur - to "interact" with Green, and left to execute another search warrant (T. 174).

Topping admitted that he has a social relationship with Respondent outside of work (T. 165, 182-184). Topping admitted that he spoke with Respondent and Respondent's lawyer the same day of his testimony before this Tribunal (T. 182-184).

On September 1, 2015, Damon Crichlow lived on the second floor of [REDACTED] [REDACTED] (T. 23-24, 37). At 0600 hours, Crichlow, Sheila Green, [REDACTED] were sleeping in the living room on the second floor (T. 24, 37-39). Crichlow testified that he awoke to see six to eight officers entering his apartment through the front door "in formation" (T. 42). He admitted that he tried to get off the living room floor, [REDACTED] but was

never able to stand on his own feet (T. 43-44, 63). According to Crichlow, three to four officers jumped on him and immediately began to "beat" him; he responded by "just taking it" (T. 25-27, 34, 56).

Crichlow stated that he was lying on his stomach while officers struck "the left side of my body, the right side, the side of my stomach, legs, and arms" (T. 27-29, 51-53). Crichlow estimated that there were more than twelve strikes in total and more than six blows to his left arm (T. 28-29, 53, 55). Crichlow was able to see one officer striking him but was unsure whether that officer was Respondent (T. 52).

Crichlow stated that an older officer slammed his head to the floor; he described this officer as Caucasian, approximately 5'9" tall, with gray hair and a gray beard. At the time of the incident, Crichlow was 5'6" tall and weighed 150 pounds¹ (CCRB Exhibit 1; T. 30-31, 48-49). Crichlow could not see any of the other officers on top of him because it was dark in the living room (T. 31). Crichlow recalled that the officer above cursed at him, saying, "You are a piece of shit. You are lying here naked [REDACTED] in the room. Just a piece of shit" (T. 31, 47-48). Crichlow confirmed that the older officer with the gray hair and beard was on top of his upper body (T. 31, 49-52).

Crichlow stated that once he was handcuffed, he was not struck again (T. 32, 55-56). Crichlow estimated that five to ten minutes had passed from the time he woke up until the moment he was handcuffed (T. 56). The officers placed Crichlow, who was still naked, on the couch in a sitting position. Respondent's team brought the other occupants of the premise upstairs in handcuffs, searched the house, and [REDACTED]

¹ According to [REDACTED] medical reports, Crichlow weighed approximately [REDACTED] at the time of the incident (CCRB Exhibit 1, T. 30-31).

██████████ (T. 32, 55, 57). Crichlow testified that he did not know why the officers had come to his home but later learned that they were executing a search warrant (T. 32-33).

On cross-examination, Crichlow denied that: (1) he was a heavy sleeper; (2) he woke up startled; or (3) he attempted to grab onto Detective O'Brien's ballistic shield (T. 40, 64-65). He also denied squirming or holding his hands beneath him, in an attempt to prevent the officers from handcuffing him (T. 25-27, 34, 56). Crichlow conceded that he never observed Respondent strike him (T. 52). Although he initially denied it, Crichlow subsequently admitted that officers were holding down his body (T. 31, 49-52). Crichlow testified that he did not recall officers announcing, "police," "search warrant," or any other orders not to resist (T. 31, 45). Crichlow declined first aid, stating that he did not trust the police at that point "because of the situation that just happened" (T. 34, 56-58).

Crichlow conceded that while he settled a civil suit against the New York City Police Department and several officers, including Respondent, he had not received any compensation as of the date of his trial appearance (T. 35, 53-55). Crichlow further conceded that he left his employment with Pathmark Supermarket after being accused of taking items outside the store which he had not purchased (T. 58-61).

Few things are more difficult, yet more fundamental to the role of a trier of fact, than the task of attempting to reconstruct the most probable nature of a past event by conflicting testimonial accounts. While the law creates the framework within which such a task is accomplished, the ultimate determination of which account to accept depends almost solely on an assessment of witness credibility. That assessment remains the exclusive province of the fact finder.

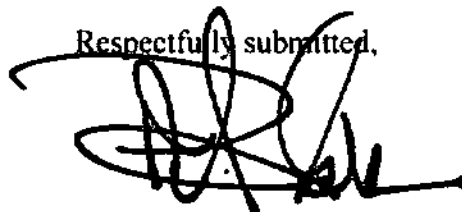
In making such an assessment, the trier of fact should consider a wide range of factors, including but not limited to, witness demeanor, corroborating evidence the consistency of a witness account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps the most basically the degree to which the witness accounts are logical and comport with common sense and general human experience (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]).

Patrol Guide Procedure 203-11 (August 1, 2013) limits the use of force by police officers to that which is necessary to overcome resistance. Based upon the credible, relevant evidence in the record, I find that CCRB has not met their burden of proving by a preponderance of the evidence that Respondent wrongfully used force by striking Damon Crichlow without police necessity. First, although Crichlow denied resisting the officers' attempts to restrain him, Green testified that there came the point during the struggle where Crichlow "rolled to his right and lay face-down on the ground," after which he was handcuffed. This assertion, which I find credible, implies that until Crichlow rolled to his right, he was resting on his left side, which would logically make it difficult to handcuff his left hand. Accordingly, I find that the preponderance of the credible evidence establishes that during the physical altercation with police, Crichlow was attempting to avoid placing his hands in a position where they could be handcuffed. Thus, the police were entitled to use reasonable physical force to compel him to acquiesce in their attempt to restrain him.

Second, there is no evidence in the record that any witness observed Respondent strike Crichlow. Crichlow and Green both testified that a gray-haired officer struck Crichlow several times, but neither testified that Respondent struck any blows. While I find that Crichlow was


struck several times in an attempt to obtain his acquiescence to being handcuffed. the number and severity of the blows were not unreasonable under the circumstances. Respondent was made aware that the object of the warrant execution was the seizure of a firearm. Respondent was also aware that several individuals could be expected to be on the premises at the time of the warrant execution. It is undisputed that Crichlow did not follow clear and unambiguous orders to "get down" issued by armed police officers who announced their presence and purpose. Under these circumstances, Respondent could not be sure what Crichlow's intentions were as he attempted to rise from the floor. It would not be surprising that someone in Crichlow's position might be disoriented after being awakened unexpectedly at that early hour; nevertheless, the possibility that he might have been attempting to either gain access to a weapon or destroy evidence made it imperative for the police to immobilize him until the premise was secure. Accordingly, I find Respondent Not Guilty.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUL 14 2017

JAMES P. O'NEILL
POLICE COMMISSIONER