



POLICE DEPARTMENT

March 7, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Vincent Trozzi
Tax Registry No. 935878
44 Precinct
Disciplinary Case No. 85636/09

The above-named member of the Department appeared before me on October 6, 2010 and October 21, 2010, charged with the following:

1. Said Police Officer Vincent Trozzi, assigned to the 44th Precinct, while on duty on March 23, 2008, at approximately 0017 hours, while in the vicinity of Cromwell Avenue and 170th Street, Bronx County, did use excessive physical force against Ms. Maritza Ortiz, in that Police Officer Trozzi used his hand to strike Ms. Ortiz in the face, without proper police necessity.

P.G. 203-11, Page 1, Paragraph 3 – USE OF FORCE

The Department was represented by David Bernstein, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Lawrence Gomez, Maritza Ortiz, and Jose Coronado as witnesses

Police Officer Lawrence Gomez

Gomez is a 13-year member of the Department currently assigned to the 30 Precinct. He testified that prior to becoming a police officer, he worked as a police dispatcher for the Mount Vernon Police Department and prior to that, he spent four-and-a-half years in the United States Air Force.

Gomez testified that on March 23, 2008, he worked routine patrol in the 44 Precinct with his partner, Respondent, from 11:15 p.m. to 7:50 a.m. They were in uniform, in a marked radio motor patrol car (RMP). At approximately 12:12 a.m., they were traveling eastbound on West 170 Street approaching Cromwell Avenue in the Bronx. Gomez, who was the driver, observed a male and female on the northeast corner and the male began to hail them. Gomez stated that they stopped and he and Respondent exited the vehicle and Respondent went to talk to the male. He described the area as desolate at that time. He explained that on the northeast corner was a parking lot and the northwest corner had a livery car dealership. The male, (later identified as Jose Coronado) stated in broken English that his wife was drunk and in need of medication. He then attempted to speak to Respondent in Spanish but Respondent told him that he did not speak Spanish. Coronado did not believe him and continued to speak to him in Spanish.

The female (later identified as Maritza Ortiz), at that time, was seated on the pavement. She got up and also insisted that Respondent speak to them in Spanish. Gomez said that Ortiz became frustrated and took her open hand and struck Respondent on the top of his vest in the shoulder area. He described the strike as a "light tap." Respondent then grabbed Ortiz by the arm and brought her over to a car in front of the RMP. He continued to hold her by the wrist as he waited for an ambulance to come because he had already called for one. They determined that Ortiz needed medical attention. Gomez asked him if he wanted handcuffs but Respondent replied, "No."

Gomez stated that Ortiz was facing the car as Respondent stood behind her waiting for the ambulance. Gomez said that he was standing behind them to the left, less than two feet away. The next thing that happened was Ortiz turned her head, twisted her body and spat on Respondent. The spit landed in Respondent's face. Respondent removed his handcuffs, placed them on Ortiz as she leaned over the car. Gomez said Respondent then leaned over looking at Ortiz. Gomez said he leaned forward also to see what was going to happen. Ortiz turned her face to the right, moved forward and turned back toward the car. She then turned her face to the right a second time and Respondent punched her with his closed right fist in the cheek. Gomez said at this point he was only inches behind Ortiz.

Once punched, Gomez said that Ortiz yelled out, "ow," and began screaming and crying hysterically. Coronado, who was three to four feet behind them became irate, ran up behind Respondent, tapped him on the shoulder and was threatening to fight Respondent. He said words to the effect in English that Respondent hit his wife and he would fight him. Gomez said he stopped him and told Coronado to step back.

Respondent stood by waiting for the ambulance. Coronado stopped a vehicle traveling southbound on Cromwell Avenue. Coronado allegedly called 911 because he stated that a supervisor was on the way.

Gomez testified that as he was boarding the ambulance with Ortiz, a supervisor arrived on the scene. He stated that he did not speak to the supervisor because he was with Ortiz. He accompanied her to the hospital. Once Ortiz was triaged at the hospital, he waited for Respondent to come and pick him up. He discussed the incident with Respondent. He told him that what he did was unacceptable and Respondent had no response. Gomez said that he did not report what he observed on that day to anyone. He said that it was either after a "swing" (days off) or on March 25 or 27 that he told Sergeant Bermingham what had happened. He told Bermingham that they were hailed by an aided case, an emotionally disturbed person (EDP) and Respondent struck the female in the face. He also told Bermingham that he wanted another partner. Gomez said he had a new partner on March 27, 2008.

Prior to the incident, Gomez said he had a good relationship with Respondent. They had been partners for about three months from January 2008 to March 2008. In his career, Gomez said he had three or four steady partners and this was the first time that he asked for a change in partner. Gomez stated that when Respondent began to handcuff Ortiz, he approached but did not take an active part such as handcuffing Ortiz.

Gomez testified that after he gave statements to the Civilian Complaint Review Board (CCRB) and the Internal Affairs Bureau (IAB) regarding the incident, he suffered retaliation. In the locker room bathroom at the command, he found pictures of rats drawn on them with his name on it. Other police officers do not want to work with him, and he

feels an "air of anger and resentment" toward him in the 44 Precinct

During cross-examination, Gomez stated that he has been a police officer for less than 13 years. He acknowledged that he spent the majority of his career at the 44 Precinct, and was transferred out a few weeks ago on September 25, 2010. When asked whether he put in for the transfer he responded, "Not exactly, no," but he stated that he wanted to transfer out. He testified that he put in for a transfer to the Detective Bureau three times in the past. He explained that he put in for a transfer in 2006, 2007 and then had to update the application in the years following. When asked the reason for his transfer denials, Gomez stated that there were no classes available at the time. Gomez admitted that he was assigned to the Domestic Violence Unit from 2001 to 2008. He left that assignment because he was there too long and began to stagnate. He said that he asked to leave that assignment.

With respect to the incident involving Respondent, Gomez admitted that he made entries in his Activity Log about the incident [Respondent's Exhibit (RX) C]. When asked to summarize his entry, Gomez stated that he wrote

0012 [hours] pick up 10[-]10 [possible crime] West 170th Street Cromwell male Hispanic flagging PD indicating person on ground. At 0013 [hours] female intox, husband states wife EDP female becomes angry strikes [Respondent] after a bus [ambulance] is requested and later spits on [Respondent]

Gomez admitted that he went through the Police Academy and was told the importance of an Activity Log. He acknowledged that it is important to note the things that would
after the
incident while at the hospital, and that his Activity Log is an official Department record

Gomez replied, "No," when asked if he noted anywhere in his entry that Respondent handcuffed the female and punched her in the jaw. He also replied, "No," when asked if he noted any misconduct by Respondent. Gomez acknowledged that when he testified he noted that Ortiz "tapped" Respondent. He agreed that he made no reference to the "tap" in his Activity Log but instead wrote that Ortiz "struck" Respondent.

Regarding whether a civilian had a right to spit in a police officer's face, Gomez acknowledged that a civilian had no such right and that spitting amounted to an assault. He admitted that a civilian could be arrested for spitting on a police officer as well as for pushing a police officer. Gomez agreed that he had been spat on in the past and he did everything to prevent the person from being able to do it to him a second time. Gomez explained that an ambulance was necessary for Ortiz because she was intoxicated, could not stand up and he could not leave her on the street in that condition. He said that she was in need of medical attention.

Gomez acknowledged that both Ortiz and her boyfriend Coronado thought that Respondent spoke Spanish. He admitted that they were being irrational by insisting that he speak Spanish. Gomez acknowledged that neither he nor Respondent spoke Spanish and that Ortiz did not insist that he (Gomez) speak Spanish.

Gomez agreed that Ortiz was not allowed to strike or tap Respondent. He admitted that every police officer has their own level of comfort in terms of how to handle such a situation. He agreed that Respondent took control of Ortiz by grabbing her wrists and used a parked car as leverage to control her. He admitted that he offered to provide his (Gomez's) handcuffs to help secure Ortiz, but at that time Respondent refused. It was not until Ortiz spit at Respondent that he tried to handcuff her. Gomez

stated that he did see Respondent strike Ortiz in the face. He stated that he did not see Ortiz try to spit at Respondent a second time, but he did see her turn her head toward him. Gomez noted that he did not put that in his Activity Log.

Gomez denied that when he went with Ortiz to the hospital he told anyone that she had been punched in the face. He acknowledged that he did not observe any marks, bruises or other evidence that she had been punched in the face. He admitted that he did not tell the ambulance workers or the sergeant who responded to the scene that Respondent punched Ortiz. He also admitted that he did not speak to Respondent about it. He stated that either the next day or his next tour following a swing he reported the incident to Sergeant Bermingham. He told Bermingham that Respondent was dealing with an intoxicated EDP on Cromwell Avenue. The woman struck Respondent, spat on him and Respondent then handcuffed her and punched her in the face. He acknowledged that he told Bermingham Respondent engaged in misconduct.

Respondent was asked why he did not tell the first sergeant he encountered about Respondent's action. He stated that he was busy with Ortiz. He acknowledged that the ambulance personnel were treating Ortiz, that she was in handcuffs and that there was no emergency preventing him from speaking to the sergeant who came on the scene moments after the incident. He admitted that despite the fact that Ortiz had struck Respondent and spat on him, Respondent never placed her under arrest. He noted that she was being treated by the ambulance workers and later transported to the hospital, but Ortiz was not under arrest in police custody.

Gomez testified that he did not recall telling Respondent that he was wrong to punch a prisoner in handcuffs. He admitted that the only thing he said to Respondent was

what he did was unacceptable. Gomez denied ever seeing Respondent throw Ortiz to the ground. He also denied seeing Respondent punch her twice in the face while she was on the ground. Gomez acknowledged that when he initially saw Ortiz she was on the ground and later during the incident, she went down to the ground on her own volition. He admitted that both Ortiz and Coronado had slurred speech.

Gomez acknowledged that he initially testified that he worked with Respondent the day following the incident and never again. After review of his Activity Log, he noted that he worked with Respondent again on March 28. He admitted that he asked not to work with Respondent and at some point he had rotating partners. Gomez agreed that aside from telling Birmingham about the incident involving Respondent, the next time he discussed the incident was at CCRB on July 22, 2008.

During redirect examination, Gomez stated that he did not contact IAB because he did not think this incident was a matter of serious misconduct or corruption. He thought the incident was simply misconduct. He said that Respondent's punch of Ortiz surprised him and he did not think that it was necessary. Gomez testified that he was not allowed to punch a prisoner in the face for spitting on him after the prisoner had already been handcuffed. He explained that there was no other reason that he wanted a new partner other than the events that he witnessed with Respondent. Gomez estimated that he worked another tour or two with Respondent following his request to Birmingham to get another partner.

During further cross-examination, Gomez acknowledged that one could prevent a person from spitting on him a second time. He admitted that one could forcibly use his hand to turn a person's face away to prevent spitting a second time. He stated that one

could stand back to prevent it. Gomez acknowledged that Respondent was behind Ortiz when she was able to turn her head and spit on him. He also acknowledged that the Patrol Guide does not require that one be allowed to spit in another person's face.

During further redirect examination, Gomez stated that he can tell the difference between an open hand redirection of someone's face and a closed fist punch. He stated that in this instance, he observed a closed fist punch.

Upon questioning by the Court, Gomez was asked to describe the punch. He stated that it was not a forceful blow where one uses his foot for leverage. He said it was more than a tap and it was a moderate punch. He denied that his view was obstructed in any way. He stated that he could see the side of Ortiz's cheek as Respondent's hand came in contact with her face. *When asked to describe the strike that Ortiz made to Respondent's body*, Gomez said that she struck him with an open hand to the top of his shoulder and Respondent did not move as a result of the strike.

Martiza Ortiz

Ortiz is a Bronx resident who stays at home. She testified that she has lived in the Bronx for the past 11 years where she resides with her boyfriend Jose Coronado. Ortiz stated that sometime after midnight on March 23, 2008, she and Coronado went to a friend's house. They knocked on the door and when no one answered, they went back to the street to get a taxicab to go home. Ortiz explained that while she waited for the taxicab, she took two [REDACTED], which helps her to fall asleep because she knew she was going home. She further explained that she took the [REDACTED] and drank some ginger ale that she had in her purse.

Ortiz began to feel drowsy and her legs became shaky so she sat down on the sidewalk as Coronado attempted to hail a taxicab on the other side of the street. Ortiz said that when Coronado noticed that she was sitting on the sidewalk, he came over and attempted to pull her up. As he was doing this, she noticed the police in a marked car. There were two officers, one was black and the other was white. The white officer told Coronado to step back because he was going to help her get up. The white officer then said that he was going to search her and he proceeded to do that. Ortiz testified that he touched her bag and her pockets and then pushed her against a green van. The white officer then asked her for her hands and he handcuffed her. Ortiz stated that she told him the handcuffs were too tight but he told her that she was going to stay like that. The white officer then grabbed her by the shirt and turned her to face him. He then grabbed her shirt again and placed her on the ground.

Ortiz said that the white officer was angry and yelling. She asked to be picked up off of the ground, but the white officer said she would remain there until an ambulance arrived. It took a long time but eventually an ambulance arrived. Ortiz testified that the white officer removed the handcuffs, she was placed in a stretcher, then into the ambulance and transported to the hospital.

Ortiz was asked whether the white officer used his hands to touch her face. She responded, "No, that was at first when he pulled me up with the handcuff he started hitting me like crazy in my face and my arms, he was hitting me like crazy I don't know why." Ortiz described the white officer slapping her on both sides of her face. Ortiz was asked whether he punched her. She stated that while she was on the ground, he punched her in the right eye area twice with a closed fist. Ortiz stated that a photograph of her

face was taken by Coronado two days following the incident, on Monday, about 12 30 p m [Department's Exhibit (DX) 1]

During cross-examination, Ortiz acknowledged that she went through the entire story with the police officer up to being handcuffed and placed in the ambulance with no reference to being hit. Then she admitted that once the Assistant Department Advocate prompted her about being hit, she all of a sudden remembered being hit. When asked why she did not mention it in her first account, Ortiz stated that she did not remember. She said that she did not forget that she was punched in the eye. She stated that she was punched in the face twice. She acknowledged that she was slapped in the face also. Ortiz said that she was on the ground when the officer punched her, but then he pulled her up and continued hitting her in the arms. She explained that while she was on the ground, the officer turned her face and struck her twice in the eye area. When asked whether she was also struck in the face by the van, she stated that that happened also. She said that she was nervous and that is why she forgot to mention it.

Ortiz was asked what medications she was currently on and she stated she was on approximately [REDACTED]. Ortiz acknowledged that she was on several medications the night of the incident also. She admitted that when she was interviewed at CCRB she signed a medical release so that CCRB, along with IAB, could have access to her medical records and prescriptions. Respondent agreed that on the night of the incident, she was taking [REDACTED] which helped her to sleep. She admitted that it was a medication taken for [REDACTED] and she had been on it for a while. She admitted that she was also taking [REDACTED] which helps her to stay awake. She agreed it is for people who suffer with excessive daytime sleepiness or narcolepsy. Ortiz agreed that she was also taking

██████ which helps her fall asleep Ortiz was asked,

Question: So you have trouble staying awake and then you have trouble falling asleep?

Answer: Both sometimes

Ortiz admitted that she was also taking ██████. She said it was not for ██████, but she could not remember what it was for. She acknowledged that the doctor told her to take it so she did. Ortiz admitted that she was also taking ██████. She explained that she was ten years sober and it helped her fight urges to drink alcohol. She denied that she was an alcoholic and stated that she does not drink and did not have a drink the night of the incident. She also denied that Coronado had an alcoholic drink.

Ortiz acknowledged that she went to a friend's house after midnight and the friend, ██████, was not at home. She admitted that she did not call before going to her house. She said that she ██████ lived at ██████ and that ██████ lived at "██████". Prior to going to ██████'s house she was with Coronado watching television at home. She denied that they were home drinking. She said that she wanted to go to ██████'s house just to visit. Since ██████ was not at home, she waited near "██████" to get a taxicab to take her and Coronado back home. Ortiz admitted that she took the medication to make her sleepy before she even got into a taxicab. When asked why she did that, she stated that she does it all the time. She acknowledged that the medication works fast. When asked why she did not wait until she was home so she could get in the bed, she stated, "Because I didn't feel like "

Ortiz stated that this was the first time that she ever collapsed in the street from taking her medication. She admitted that she was not sleepy when she went to ██████'s

house, but once she realized [REDACTED] was not home, she decided that she wanted to sleep and took the medicine. Ortiz denied that she and Coronado were having an argument on the street. She also denied ever spitting on either of the police officers or laying hands on either of them. Ortiz acknowledged that she was transported by ambulance to the hospital. She denied having any problems with the ambulance workers. She stated that she did not know them. She could not explain why they stated in their report that Ortiz told them that she had been drinking alcohol. Ortiz stated that she did not remember being diagnosed with [REDACTED]. She said that she did not tell the hospital personnel that she had a history of [REDACTED]. She denied telling anyone that she was [REDACTED]. Ortiz denied being told by the doctor that she thought her problem was [REDACTED]. Ortiz said that she spent about four hours in the hospital. She did not tell anyone in the hospital that she was assaulted by a police officer. She said that Coronado did not come to the hospital.

Ortiz admitted that she filed a lawsuit against the City of New York and the Police Department. She stated that her lawyer told her where to sign the document and she did not read it. She saw her lawyer when she first signed the document, but has not seen him in a year-and-a-half. She acknowledged that initially she filed the lawsuit to get money, but now she does not want to file a lawsuit. Ortiz stated that she did not know whether or not the lawsuit mentioned that she was punched by a police officer. She reviewed the lawsuit (RX A) and acknowledged that it contained her signature. Ortiz agreed that she stays home and does not work. She collects social security disability to support herself and Coronado works in an auto parts warehouse.

Ortiz acknowledged that pursuant to her lawsuit, she had to sign a release of her

medical records. She acknowledged her signature on the documents (RX B is Ortiz's medical records). She admitted that she was interviewed by IAB investigators at her home. She stated that she was interviewed separate from Coronado and Coronado never told her to tell the investigators the story the way he told her.

During questioning by the Court, Ortiz acknowledged that she was wearing glasses in court as she testified. She said that she was wearing glasses on the incident date also, but when she was punched, her glasses came off and got scratched and she had to get a new pair of glasses.

Jose Coronado

Coronado is a Bronx resident who works at an auto parts warehouse where he buys and sells auto parts. He testified that he has worked for the company, [REDACTED] [REDACTED] for eight years and two months. He has lived in New York City since 1983. Coronado testified that on March 23, 2008, around midnight, he and Ortiz¹ went to visit a friend of his who resided at [REDACTED]. No one was at home, so they went downstairs and waited for a taxicab. When no taxicab arrived, they proceeded to walk in the direction of Cromwell and 170 Street. Coronado said that he stopped on the corner and tried to hail a taxicab. While there, he looked back and observed Ortiz sitting on the sidewalk. He walked over to her and attempted to lift her up. Then he noticed a marked police car with two police officers inside.

Coronado testified that one police officer was white and the other one was black. The white officer told Coronado to move away and the white officer attempted to lift Ortiz up. He could hear Ortiz saying to leave her alone because she was not doing

¹ Coronado described Ortiz as " my wife or my girlfriend ".

anything. He heard the white officer tell Ortiz to say that Coronado threw her to the ground. He then lifted her up, threw her into a parked van and began to hit her. Coronado said that he told the officer not to hit her because she was a woman, but he hit her all over the body. When asked if he hit her in the face, Coronado replied, "Yes." Coronado said that the other officer had him so far away that he could not tell if the white officer hit Ortiz with an open hand or a closed fist.

Eventually, Ortiz was placed in handcuffs on the ground. Coronado said that Ortiz's pants were below her waist and her panties were showing. He asked that her pants be pulled up. An ambulance came and when Coronado asked where Ortiz was being taken to, the police officer he asked did not respond. The paramedic informed him that she was being transported to [REDACTED] Hospital. Coronado said that while Ortiz was being hit, he thought about intervening, but a guardian angel stopped him. He waited for Ortiz to be transported to the hospital and then he took a taxicab and went home.

Coronado testified that the next time he saw Ortiz was three to four hours later when she came home from the hospital in the early morning hours. Coronado was shown DX 1. He testified that the photograph depicted Ortiz and the impact of the injuries she sustained from the white officer. He said that he took the picture on Monday. He explained that Ortiz returned home on Saturday, they rested on Sunday and he took the photograph on Monday. He further explained that she sustained injuries from the waist up. He denied that she had any of those injuries prior to her interaction with the police. Coronado stated that he looked around the courtroom and could not identify the officer who was involved in this incident because it was two years ago, that the officer was bald.

and white and all bald, white officers look the same to him

During cross-examination, Coronado said on the incident date, he and Ortiz were going to visit his friend [REDACTED]. He did not know her last name. She lived on the corner building on [REDACTED]. They were never at 172 Street. Prior to going to [REDACTED]'s house, he and Ortiz were home watching television. They took a taxicab to [REDACTED]'s house. They did not call before going to her house. Coronado denied that either he or Ortiz drank alcohol or consumed drugs before going to [REDACTED]'s house. He denied telling the police that Ortiz consumed alcohol or was crazy. He told the police that she took [REDACTED] [REDACTED] but he did not know what they were because he is not a doctor.

Coronado testified that he has been living with Ortiz for over eight years. When asked whether he discussed her medical condition with her, he stated that he knows because he sees all of the pills that she takes. Coronado acknowledged that when he tried to hail a taxicab, he observed Ortiz sitting on the curb. When asked what was wrong with her, Coronado stated that she told him to leave her alone and that she was tired. He explained that when she takes her medication at home she has the same reaction. When asked how long it took him to get from his home to [REDACTED]'s house, Coronado said he did not know but he estimated it was about 20 minutes.

Coronado did not know when Ortiz took the medication, but she was known to carry them in her pocketbook and takes them without water. Coronado denied that in his effort to hail a taxicab he instead called the police over. Once the officers arrived, the white one told him to stand to the side. He said the black one was very nice and never touched him and took him to the corner. Coronado acknowledged that he tried to speak Spanish to the white officer. He also admitted that the white officer was telling Ortiz to

say that he (Coronado) hit her. He said Ortiz responded that she was not going to say that, that she wanted the officer to stop hitting her and that she was going to get up on her own.

Coronado denied seeing Ortiz either spit or hit either police officer. He denied that he had been drinking that night. He stated that he does drink at times, but he did not that night. He denied that Ortiz drinks alcohol. He then stated that she drinks on other occasions, but she did not on the night of the incident. Coronado said that he was not aware that Ortiz takes medication to prevent her from drinking. He stated that Ortiz told him her medications were for her [REDACTED].

Coronado stated that he did not go to the hospital with Ortiz. He explained that he took a taxicab and went home because he was afraid that the police would do something to him. Coronado acknowledged that he loves his wife and when asked why he did nothing, he stated through his translator, "Tell him that if I was to hit a police officer where would I be right now?" He explained that the "little angel" told him to go home so that he would not get into any problems. Coronado admitted that the last time he saw his wife she was beaten by the police and taken to the hospital and he did not go to the hospital. When asked how Ortiz got home, Coronado explained that she called him and he told her to take a taxicab home.

Coronado acknowledged that investigators from the Department came to his house to interview him and Ortiz. He admitted that a Spanish-speaking officer came to translate. He was in the bedroom when the investigators interviewed Ortiz in the living room. He agreed that he was later interviewed separate from Ortiz. Coronado denied that at some point he told his wife in Spanish in the presence of the investigators to tell

the story the way that he told her to. When asked whether he and Ortiz prepared for the interview, Coronado said that he did not know.

Coronado testified that he is aware that Ortiz filed a lawsuit against the City of New York and the Department. He said that he was interviewed in connection with that matter. He did not know how much the lawsuit was for.

Upon questioning by the Court, Coronado acknowledged that the black officer told him to stay back. He explained that the black officer remained in front of him by a foot or two. He further explained that he was close to Ortiz, but as the white officer commenced to hit her, the black officer moved him further and further back. He noted that on the incident date his wife took many medications. He stated that her reaction to the medication was to become calm and fall asleep. Coronado noted that when the investigators came to his residence they came unannounced and he was surprised by their visit.

During redirect examination, Coronado said that as the white officer hit Ortiz, he pleaded to be able to get her pocketbook so that he could show the officer that she was on medication, but he was told to shut up.

During questioning by the Court, Coronado stated that as the officer hit Ortiz, she began to slouch and eventually fell to the ground as he was hitting her. He stopped hitting her once she fell on the ground.

During further cross-examination, Coronado stated that when Ortiz fell to the ground following being hit, he observed that she had handcuffs on, but he did not know when they were placed on her. He acknowledged that he had been interviewed by CCRB on April 16, 2008. He recalled being interviewed and stating that he saw his wife get

punched before the handcuffs were placed on her

The Respondent's Case

The Respondent called Sergeants Eusebio Perez and Philip Bermingham and testified in his own behalf. The parties also entered into a stipulation in regard to Sergeant James Weck.

Sergeant Eusebio Perez

Perez is an almost 15-year member of the Department currently assigned to the Bronx Investigations Unit. He investigates allegations against police officers. He stated that he had been in the rank of sergeant for four years.

On March 23, 2008, Perez testified, he was working a midnight tour from 11:05 p.m. to 8:02 a.m. as the 44 Precinct patrol supervisor. At some point he responded to a job regarding Respondent and Gomez. He recalled speaking to who he believed was Respondent and who informed him that they picked up an EDP and they needed a supervisor and an ambulance. He responded to 170 Street and Cromwell Avenue, where he observed an Hispanic female (later identified as Ortiz) sitting against a vehicle with her hands behind her back and her head down. Periodically she would pick up her head and begin yelling, cursing and screaming. Perez said that at the time he believed she was handcuffed but learned later on that she was, in fact, handcuffed.

Perez testified that when he arrived, Respondent, Gomez and Ortiz were on the scene. Emergency Medical Service (EMS) arrived about the same time that he did. He stated that neither Ortiz nor Gomez were in the ambulance when he arrived. Perez said

he had an opportunity to speak to both officers who were standing in between EMS and Ortiz. He explained that an officer was on either side of her. He spoke to both officers at the same time who informed him that they were driving by when they observed a man on top of a woman. They thought it might be a rape so they got out. When they attempted to address the situation, the woman, Ortiz, "went EDP on them" and they had to grab her and handcuff her for their safety.

Perez stated that no one advised him that Respondent hit Ortiz. He also did not observe any injuries on Ortiz as she sat there. Perez said that Ortiz did not complain of any injury but she continued to yell, scream and curse. Perez stated that he assessed Ortiz to be a drunken EDP. He felt that she was intoxicated because she kept putting her head down and then she would yell and scream. Perez said she made no allegations against either police officer.

Perez noted that there was an Hispanic male later (identified as Coronado) on the scene, but he did not pay attention to him because he was speaking to the police officers. When he did attempt to speak to Coronado, he hailed a taxicab and left the scene. Perez noted that he (Perez) was in his police uniform at the time and had his gold shield on. He stated that at no time did Coronado attempt to speak to him. He was informed by the police officers that Coronado was the husband of Ortiz. He noted that Coronado appeared to be drunk because he was yelling and screaming and when he hailed a taxicab, he stumbled into the street.

Perez testified that eventually an ambulance took Ortiz away. Later on he received a call from Central (the Communications Section) to contact IAB in reference to an EDP job. Perez said he contacted IAB and was informed that Ortiz had made an

allegation and he needed to report to the hospital and interview her. When he responded to the hospital, he found Ortiz in the corridor of the emergency room on a gurney and she was unconscious. Perez attempted to wake her, but she would not move. He observed vomit on the gurney and on the floor. A nurse came to him and informed him that she was intoxicated. He explained that he was unable to interview her at that time. He testified that he did not notice any bruises on her. He also said that no medical staff advised him that she complained of being assaulted by the police.

During cross-examination, Perez estimated that he spent about 15 minutes at the scene. He denied that he spent the entire time observing Ortiz. He could see and hear her while at the scene, but he was speaking to the officers. He could not recall which officer informed him that Ortiz was an EDP. He stood in front of Ortiz about five feet away and the two officers were on either side of him during that 15-minute period. Gomez was a little closer to Ortiz. He recalled that the two officers each grabbed one arm of Ortiz and helped to transport her to the ambulance.

Perez acknowledged that when he came on the scene, he was not looking for injuries on Ortiz. He noted that the ambulance arrived and he continued to talk to both officers and then they attempted to place Ortiz in the ambulance. Once she was in the ambulance, he observed Coronado and the officers informed him of who he was. Perez noted that the officers informed him that Ortiz resisted and spit on one of them and she had to be handcuffed at that time. Perez acknowledged that at the hospital he attempted to wake Ortiz and the nurse told him that she was intoxicated. He estimated that he spent about a minute with Ortiz.

During questioning by the Court, Perez stated that he was close enough to Ortiz to

smell alcohol. He noted that she had also thrown up on herself and it had the smell of alcohol in that area. He said that her hair was also a mess. He stated that he had not gotten close enough to Coronado to smell alcohol. Perez testified that he was at the scene when he was contacted by Central to call IAB. He left the scene and went to the command to call IAB. They directed him to report to the hospital, so he left the command and went to the hospital to attempt to interview Ortiz. He estimated, but was not certain, that he left the scene and headed to the hospital within an hour.

Sergeant Philip Bermingham

Bermingham is an over 14-year member of the Department assigned to the Bronx Investigations Unit where he has been assigned for the past year. He has been in the rank of sergeant for over three years. He testified that his duties include monitoring patrol during the midnight tour and to assist patrol duty captains with investigations involving allegations made against members of the service. Prior to working in Bronx Investigations, Bermingham was a midnight squad sergeant for two years and prior to that he was a police officer working in the Emergency Services Unit.

In March 2008, Bermingham testified, he was a 44 Precinct patrol sergeant assigned to midnights. He always worked from 11 05 p.m. to 8 00 a.m. the following morning. He stated that Respondent and Gomez were two police officers that he supervised. Sometime in the spring of 2008, Gomez told him that he no longer wanted to work with Respondent. Gomez did not express to him that Respondent had engaged in any type of misconduct. Bermingham stated that the first time he learned of an allegation that Respondent punched someone was a year ago. He explained that Gomez came back

from a Department interview with IAB. When he asked Gomez how it went, Gomez informed him that it involved Respondent punching an aided or EDP. Birmingham stated to his knowledge, when the incident occurred a year earlier, Gomez had not made any notifications regarding the incident. He explained that an incident of misconduct is to be reported to IAB. Had Gomez informed him a year earlier about misconduct involving Respondent, Birmingham said that he would have contacted IAB. Birmingham stated at no point did he contact IAB.

During cross-examination, Birmingham stated that he worked with Respondent for approximately two years and a few months. He stated that Respondent is liked around the precinct because he has friends. He also stated that he has a good working relationship with Respondent. He acknowledged that he was not at the scene of the incident. He admitted that he learned of the incident from Gomez. He did not discuss the matter with Respondent. He noted that when he had an official Department interview on the matter, Respondent had one the same time, but he did not recall having any discussion with Respondent about the incident at that time.

Birmingham acknowledged that Gomez asked for a new partner around the time of the alleged incident. He noted that he did grant his request for a new partner. He assumed that it was a personality conflict, but he could not recall ever asking Gomez why he wanted a new partner. He explained that Gomez and Respondent had a shared work ethic but different personalities. He explained that sometimes this can cause partners to not be able to work with each other. Birmingham testified that he was not aware of any arguments or physical fights between Respondent and Gomez while they were partners. He said he was aware of a time when there was friction between them. He explained that

they had a prisoner who was injured during the arrest and Gomez was upset. Shortly after that, Gomez asked for a new partner. He denied that Respondent ever requested a new partner.

During redirect examination, Bermingham stated that the incident involving Respondent and Gomez and an injured prisoner involved a male, not related to this incident. He explained that Respondent advised him that an intoxicated prisoner who was handcuffed leaned and fell into a door and cut his head. He was sent to the hospital for treatment. He stated that he did not recall any member being disciplined for what transpired. He stated that he was satisfied with the explanation he received and the prisoner was intoxicated. He acknowledged that if he thought something else was wrong, he had an obligation as a supervisor to report it.

During further cross-examination, Bermingham stated that he did not know the date of the injured-prisoner incident or the date that Gomez was interviewed. He stated that both incidents were around the same time and he could only state that they occurred in the spring of 2008.

Stipulation in regard to Sergeant James Weck

A Stipulation (Court Exhibit 1) was entered into between the parties which stated the following: If Sergeant James Weck were called to the stand, he would testify as follows that on August 17, 2009, Weck, working as an investigator for IAB Group 21, went to the residence of Ortiz and Coronado in order to interview them. He was accompanied by Detective Leslie Santiago, who was to translate, as Weck does not speak Spanish. Santiago informed Weck that while inside the residence she overheard

Coronado tell Ortiz in Spanish, in sum and substance, to tell the officers the story like Coronado had told her to

Respondent

Respondent is an over six-year member of the Department assigned to the 44 Precinct since completing the Police Academy. He testified that he worked for six months in field training doing a 4 00 p.m. to 12 00 a.m. tour. He then worked midnights on patrol in an RMP. He stated that he was in uniform performing his patrol duties. He is currently full duty and has made over 100 arrests to date. He said that he has never been placed on modified assignment, had his guns taken away or ever been the subject of Charges and Specifications aside from this case.

In March 2008, Respondent testified that he was working midnight patrol in a marked sector car in uniform with Gomez. He stated that specifically on March 23, 2008, they were performing patrol functions. They had been partners for a short period of time, a few months. He explained that Gomez left the Domestic Violence Unit and since he (Respondent) did not have a partner because his partner was assigned to the Conditions Unit, Respondent and Gomez were assigned as partners.

At the beginning of his tour on March 23, 2008, Respondent said he and Gomez ended up on Cromwell Avenue and 170 Street. Their tour started at 11 15 p.m. and he estimated that they left the station house about 15 to 20 minutes later. He said that at that intersection, his eye caught a female lying down in the street with her pants down and a male standing over her. He could not remember if he was the operator or the recorder, but he recalled that they stopped and got out of the RMP. He did not recall the male flagging them down. His police training told him that the male was either robbing or

raping the female. He stated that they separated the two and he went with the female (later identified as Ortiz) and Gomez went with the male (later identified as Coronado). Respondent said that they took them to two separate areas for tactical reasons as they tried to ascertain what was going on.

Respondent testified that Ortiz was highly intoxicated. She had blurry, bloodshot eyes and she could barely keep them open. She was very unsteady on her feet and would go from standing to a seated position to falling over. Her speech was incomprehensible. He explained that Ortiz would try to speak part Spanish, part English but whatever she was saying was unintelligible. He observed Coronado with his partner and he thought he was intoxicated also. He explained that when they separated them, Coronado had the smell of alcohol. He was unsteady on his feet but not to the extent that Ortiz was unsteady.

In describing the area of 170 Street and Cromwell Avenue, Respondent stated that 170 Street is a fairly busy road but that Cromwell Avenue is not, and the incident took place on Cromwell Avenue. He concluded that Ortiz was not able to take care of herself so he and Gomez decided to call EMS over the radio. He explained that both Ortiz and Coronado were a danger to themselves and others if they continued in the street and cars had to swerve to avoid hitting them. He further explained that the Patrol Guide required them to get medical assistance once the police officers determined that they were unable to care for themselves. He stated that once they took police action, they had to wait for medical assistance to arrive and could not just leave them. They became the officers' responsibility.

Respondent said that Ortiz tried to speak to him in Spanish and became frustrated

when he did not speak it. She called him a pig several times. She became more agitated when they called for an ambulance because she did not want to go to the hospital. He explained that Ortiz would stop, fall over, lie on the ground, sit up and try and stand up again. Respondent said he was touching her to prevent her from hitting her head on the concrete. She became violent and pushed Respondent with both hands in the chest. He stated that he did not get hurt or fall down, yet he still decided not to arrest her because his key concern was the safety of everyone involved. Once he was pushed, he decided to move Ortiz near some parked cars. Her anger became heightened because she wanted to get away and go about her business. Respondent stated that he was dealing with Ortiz most of the time, but Gomez did come over and assist to keep her in place, but then he went back to talk to Coronado.

Respondent denied that he ever told Ortiz to say that Coronado hit her. Ortiz never complained that Coronado did anything to her. Just as Respondent had Ortiz in place against the car, she puckered her lips and spit in his face. It went into his eyes and on his face. Immediately, he and Gomez turned Ortiz around and placed her in handcuffs. Respondent explained that he did not place Ortiz under arrest at that time because she was not engaged in a criminal act since she was not responsible for her actions while intoxicated. She never had control of herself. Respondent said that Ortiz became more agitated once handcuffed. She kicked her legs out at him and wrestled her body. As she faced the parked car, she then turned her head back toward Respondent and puckered her lips as if to spit a second time. Respondent said he took his open hand and quickly moved it toward her face and pushed her head back toward the car. He described it as a "mushing" push motion to turn her head. He explained that he wanted to prevent

her from spitting on him or his partner. He further explained that the Patrol Guide allows him to use necessary force to control someone from assaulting or spitting on him. He kept his hand on her to prevent Ortiz from spitting. He estimated that Gomez was five to seven feet away from him dealing with Coronado.

Respondent stated that he could not recall if he had on his black leather gloves at the time, but it was his practice to wear them when having physical contact with someone. Shortly after the second spit attempt by Ortiz, the ambulance arrived. Perez arrived also. Respondent believed that Ortiz had already been placed in the ambulance when Perez arrived. Gomez was with him and they both told Perez what had transpired. Respondent denied ever telling Perez that he wanted Ortiz arrested. He stated that she needed to be taken to the hospital where she could be seen by medical personnel. Respondent noted, however, that there were several things Ortiz could have been arrested for including assault in the second degree, assaulting a police officer, disorderly conduct, and obstructing governmental administration. Respondent testified that once Ortiz left in the ambulance, he never saw her again until the start of this proceeding.

Respondent denied hearing either Ortiz or Coronado make any allegations against him or Gomez. He stated that Gomez never made any comments about what transpired between him [Respondent] and Ortiz. He never expressed that he was unhappy. They worked two or three additional tours together. Then Gomez came to him and said he did not want to work with him anymore. Respondent took it to mean that he did not want to work with him and they went their separate ways. He had no animosity toward Gomez. Aside from the allegations made against him by Gomez, they had no other incidents. He had several partners in his career. He stated that it is not unusual for partners to change

Respondent said he did not strike Ortiz but rather pushed or “mushed” her. The first time he learned of the allegations against him was when he received a notification to report to CCRB, many months after the incident.

During cross-examination, Respondent acknowledged that when he first approached the scene he thought a rape or robbery was in progress. He admitted that he never spoke to his partner about what he observed, they both instinctively exited the RMP. Respondent said he did not recall notifying Central about the situation. Once he encountered Ortiz he acknowledged that both he and Gomez came in contact with Ortiz. He believed that Gomez assisted him in placing the handcuffs on her.

Respondent stated that Ortiz was facing him when she spit in his face. He did not have any emotion after being spat on, he simply knew that she needed to be controlled. He denied feeling bothered or disgusted. He admitted that his hand stayed in contact with her face and it was not a quick, momentary connection with her head. He also admitted that Ortiz spitting on him was an aggressive action. Respondent acknowledged that he gave a statement to CCRB on June 25, 2008, a few months after the incident. He was asked whether he recalled the following question and answer.

Question: Did they ever—did—umm, the male or female ever get aggressive with you at any point?

Answer: She was flailing her arms, never really—you know, in aggressive as to say she like—she took swings at us or kicks at us per se.

Regarding his recall of that question and answer, Respondent stated that if it is in the transcript and he was asked that, then his answer is yes, but he does not recall it offhand. He acknowledged that he never stated at that point that Ortiz spat on him. He also acknowledged that he never stated during his entire interview that Ortiz spat in his eye.

Respondent acknowledged that he told CCRB that Ortiz pushed him and called him a pig. He agreed that he was informed while at CCRB that Ortiz suffered a black eye. When asked whether he told CCRB that he used an open hand to redirect Ortiz's face, he stated that he was never asked that question. He stated that he was asked whether he punched Ortiz and he said no, but he was never asked what he did.

Respondent admitted that when asked at his IAB interview held on August 19, 2009, whether he did strike Ortiz in the face, he stated no and elaborated on the answer. He also admitted that he stated that in order to gain leverage, he put his hand toward her head to put her down toward the car and that it was not an attempt to strike her. He agreed that he did not elaborate at his CCRB interview. He acknowledged that at the end of his CCRB interview he was asked if he had anything to add and he did not add anything. He also acknowledged that in the beginning of his CCRB interview he was asked what happened in his own words. He agreed that he did not mention that he used an open hand to Ortiz's face to restrain her.

Respondent acknowledged that during his interviews at CCRB and IAB, he mentioned that he spoke to Sergeant Otero at the scene. He agreed at trial that he stated that he had actually spoken to Perez at the scene. He could not recall the conversation he had with the sergeant or whether he stated that he used his hand and made contact with Ortiz's head. Respondent was asked to review his Activity Log entries (DX 2) in connection with the incident. He acknowledged that he made no reference to being spit in the eye or the restraint he used on Ortiz.

Respondent admitted that the reason for using an open hand on Ortiz's face was to control her from spitting on him a second time. He acknowledged that there was no

police necessity to punch or strike her in the face. He agreed that neither Ortiz nor Coronado made a complaint to him at the scene that he hit Ortiz. When asked whether Coronado tapped him on the back and stated that he wanted to fight him (Respondent), Respondent replied, "He may have. I don't remember that." Respondent acknowledged that both he and Gomez had interaction with Ortiz and Coronado. He explained that as he restrained Ortiz, Coronado would come up to him at times. Respondent was asked whether he recalled the following question and answer from his IAB interview:

Question: Was the gentleman—umm, angered by how she was being handled?

Answer: I don't remember. I don't remember any interaction with him."

Respondent acknowledged that he gave that answer.

Respondent admitted that when the sergeant came to the scene both he and Gomez informed him of what transpired. Respondent acknowledged that at his IAB interview he stated that he did not remember if both he and Gomez were present when he spoke to the sergeant. Respondent admitted that he never spoke to Gomez about the incident. He denied that Gomez ever told him that his actions were unacceptable. Respondent agreed that during his CCRB interview, he stated that there was nothing in his interaction with Ortiz, nor his partner or the sergeant that would have caused her to obtain a black eye.

During redirect examination, Respondent agreed that he also stated in his CCRB interview that Ortiz may have sustained the black eye from actions that occurred prior to his arrival on the scene. He noted that he did not see Coronado hit Ortiz, but when he arrived at the scene, Coronado was standing over her. Respondent also noted that in his

CCRB interview, he stated on two occasions that he used reasonable force to keep Ortiz at the scene and to ensure her safe movement into the ambulance. He also stated that he used reasonable force when she flailed her arms, stating that she did not want to go to the hospital. Respondent denied that anyone from CCRB asked him any follow-up questions about what type of reasonable force he used when he made those statements. He stated that no one asked him to describe the reasonable force that he used. He recalled telling CCRB that both Ortiz and Coronado were highly intoxicated and they determined that Ortiz was a voluntary EDP. He also informed CCRB that he called for a sergeant to the scene and an ambulance for Ortiz.

During further cross-examination, Respondent acknowledged that he did not tell CCRB that he used reasonable force to keep Ortiz from spitting in his eye.

Upon questioning by the Court, Respondent was asked to expand on what Bermingham testified to regarding the difference in policing between Respondent and Gomez. He stated that he was a verbal police officer while Gomez is a quiet police officer, but they both are willing to make arrests and do police work. Respondent stated that he had encountered people intoxicated on alcohol and also intoxicated on prescription drugs. He explained that intoxication on drugs does not smell like alcohol. In this instance, Ortiz had the smell of alcohol and was falling down. Respondent stated that he only considered Ortiz an EDP because she could not control herself or stand up. He stated that although Coronado was also intoxicated, he could stand, communicate, and he was not an EDP.

FINDINGS AND ANALYSIS

Respondent stands charged herein with the sole specification of using excessive physical force on March 23, 2008 in that he used his hand to strike Ortiz in the face without proper police necessity. Respondent is found Not Guilty. The Assistant Department Advocate failed to establish this Charge and Specification by a preponderance of the credible evidence.

To commence this action, the Assistant Department Advocate called as its first witness, Gomez, Respondent's partner. He testified that he and Respondent were on routine patrol in an RMP in the vicinity of Cromwell Avenue and 170 Street in Bronx County when they observed an Hispanic male (Coronado) hail them. They exited the RMP and Coronado informed them that his wife was drunk and in need of medication. Gomez observed an Hispanic female (Ortiz) seated on the pavement. Gomez observed Ortiz get frustrated and strike Respondent in the shoulder with her open hands. Respondent then grabbed Ortiz by the hands and moved her toward a parked car in front of the RMP. Gomez said Respondent did this to control Ortiz while they waited for an ambulance for her which Respondent had already called for. They had already determined that Ortiz was highly intoxicated and could not care for herself and was considered an EDP (emotionally disturbed person) in need of medical attention.

Gomez then stated that he stood two feet behind Respondent and Ortiz when he observed her spit on Respondent. He then closed in and was "only inches behind Ortiz" as he observed Ortiz turn her head toward Respondent twice and Respondent punched her with his closed right fist into her cheek. What is ironic about this account is that Gomez took no police action at this point. He never testified that he moved Coronado to a safe

distance away from Ortiz and his partner who was securing Ortiz. In fact, Respondent testified that Coronado repeatedly came up to him and even tapped him on the shoulder. Gomez also failed to remove Ortiz for her safety. He exchanged no words with Respondent.

In fact, when the patrol supervisor, Perez, arrived on the scene shortly thereafter, Gomez did not tell him what he observed. In addition, Ortiz was removed from the scene via ambulance and Gomez testified that he accompanied her. Yet, at no point did he tell the EMS personnel treating Ortiz that she was punched in the face. Nor did he tell hospital personnel when she arrived at the hospital. Actually, by Gomez's account, the first time he mentioned this matter to anyone was his next tour of duty which could have been after a "swing," his days off. He testified that he told Bermingham about the incident. The problem is, Bermingham testified before this Court and the only thing Gomez told him was that he wanted a new partner and Bermingham granted the request. Bermingham said that Gomez and Respondent had different styles of policing and he accounted the request for a new partner on this personality conflict. At no point did Bermingham state that Gomez told him about the punch. The first time he learned of the allegation was when Gomez came back from an IAB interview in 2009, a year after the incident date.

Furthermore, Gomez made an entry in his Activity Log regarding this incident. He notes an intoxicated female on the ground and her husband flagging police for his EDP wife. He notes that she strikes and spits on Respondent and an ambulance is requested. Gomez, however, makes no mention that Respondent used any force toward Ortiz. This omission in his Activity Log entry is glaring.

Gomez's action or lack thereof, on the incident date leads this Court to believe that he was unsure of what he observed. Clearly, if he saw his partner subduing Ortiz, it would not make tactical sense for him to be standing "inches" from Ortiz while he controlled her husband Coronado. The Court does not believe he stood that close with Coronado. That would enable Coronado to easily interact with Respondent, possibly in a violent way. It is more plausible that Gomez stood some feet away from Respondent and Ortiz, and as such, what he observed may not have been clear to him.

After all, Coronado said he stood far enough away that he could not see if Respondent had a closed fist or an open hand. If Gomez observed Respondent punch a handcuffed prisoner without police necessity, he had a duty to do something that night. He said he was within inches of Ortiz. He should have stepped in and tried to move her. He should have notified the patrol supervisor who arrived on the scene shortly thereafter about what he observed. Telling a supervisor or advising medical personnel that Ortiz was punched when she was being transported to the hospital in his presence that night is the least Gomez could have done.

The Court questions the veracity of some of Gomez's statements. His close proximity to Respondent and Ortiz as described above, and his statement that Ortiz only gave a "light tap" as she shoved Respondent with an open hand in the "shoulder area." Respondent said she shoved him in the chest. He did not fall, but he stated that Ortiz needed to be restrained at that point.

Respondent testified that once Ortiz spit on him, the next time she turned her head in his direction, he pushed her face away in a quick motion to prevent a second spitting incident. It is possible that this is what Gomez actually observed and this is why he failed

to make mention of it that night. He thought Respondent's action was minor.

Next, the Assistant Department Advocate called Ortiz, the alleged victim. She testified from beginning to end of how the incident unfolded leading to her being handcuffed by the white officer (identified as Respondent) and eventually placed in the ambulance and transported to the hospital. Ortiz made no mention of any force being used against her. Ortiz was asked direct questions:

Question: Did there come a time that he made physical contact with you?

Answer: No. Who, the white police?

Question: The white officer?

Answer: No, he just wait for the ambulance came and he put me in the stretcher and he took the handcuffs out of my hands and that's it.

It was not until she was prodded by the Assistant Department Advocate as to whether Respondent used his hands to touch her face that she commenced to describe being hit repeatedly in the face and arms for no reason.

Question: Did there come a time that he used his hands to touch your face?

Answer: No, that was at first when he pulled me up with the handcuff he started hitting me like crazy in my face and my arms, he was hitting me like crazy I don't know why.

This factual account was not corroborated by anyone who could be considered credible. Gomez did not corroborate this account. He did not testify about repeated strikes to Ortiz. Only Ortiz's interested boyfriend, Coronado, who was also deemed intoxicated at the scene, recounted a beating of his girlfriend. He testified that Ortiz was punched in the eye, punched in the face twice, slapped in the face, punched on the ground, hit in the arms and struck in the eye area two times while on the ground. Yet Coronado, who

allegedly witnessed this brutal beating of his girlfriend, jumped in a taxicab and went home without reporting anything to Perez, the patrol supervisor who arrived on the scene prior to the ambulance leaving with Ortiz. Coronado did not even accompany Ortiz to the hospital in the ambulance.

Ortiz was found to be an incredible witness. She denied pushing and spitting on Respondent, yet she gave no reason why she was placed in handcuffs. She also denied drinking alcohol on the incident date. Yet her chief complaint as per her medical records when she arrived at [REDACTED] Hospital was, "I've been drinking a lot" (RX B, enclosure 22F). The doctor attributed her condition to "[REDACTED]" (RX B, enclosure 22 H). The Emergency Physician Record notes the chief complaint to be "[REDACTED]" (RX B, enclosure 22J). Ortiz had reason to lie about her alcohol consumption because she has a lawsuit pending.

In addition, it notes Ortiz is suffering with the [REDACTED] and [REDACTED]. The Emergency Nursing Records notes that the patient states that she has been drinking a lot. It further notes that the patient is observed crying and has verbalized that [REDACTED]. This was at triage at 12:44 a.m. (RX B, enclosure 22L). Ortiz makes various statements during her time at the hospital, but she makes no mention whatsoever of being assaulted, beaten, or struck by a police officer.

In fact, in the Emergency Nursing Record taken upon Ortiz's arrival at the hospital, she is asked whether she has pain and the box "No" is checked. She is also examined. Her neck, back, abdomen and extremities are examined and no signs of trauma are noted. This is despite her testimony and Coronado's testimony allegation of being beaten all about the body by Respondent. In addition, upon her release, at

approximately 5 20 a m , she is reexamined It notes "No c/o pain," that is, no complaint of pain. It notes patient has rested, is awake, demanding and denying [REDACTED] This Court notes that Ortiz's release from the hospital was more than four-and-a-half hours after she was admitted This would have given some time for any alleged injuries sustained during her encounter with the police to materialize, particularly a close-range punch to the cheek area or beatings about the body

Further review of Ortiz's medical records indicate that in addition to her alcohol use, a month before the incident she was prescribed several medications at one time on February 27, 2008 [REDACTED] to manage [REDACTED], [REDACTED] improve [REDACTED] to treat [REDACTED] to treat [REDACTED] to maintain [REDACTED], [REDACTED] to treat [REDACTED] [REDACTED] to treat [REDACTED] Ortiz acknowledged that she at least consumed Seroquel shortly before her encounter with the police According to her medical records, the side effects of [REDACTED] include sleepiness and drowsiness One can only imagine the effects of [REDACTED] combined with alcohol consumption Given the fact that Ortiz was observed lying on the ground (according to Respondent) when the police arrived, it is not beyond belief to consider that she may have caused the injuries to her face all by herself as she fell to the ground when reviewing the photograph in evidence (DX 1) Ortiz appears to have a small bruise above her right eyebrow, a darkened ring under her right eye, red abrasions or pimples on her right cheek Reference was made to Ortiz having a "black eye," but the eye condition is not black and blue or purple in the photograph And this Court is hard pressed to believe that in the five hours Ortiz spent at the hospital, her eye did not swell to the point that she would complain of pain and

receive an ice pack to reduce the swelling while at [REDACTED] Hospital, or would seek follow-up treatment for the eye at a later date. Given the fact that Ortiz was prescribed medication to keep her [REDACTED] ([REDACTED]) as well as to put her to [REDACTED] ([REDACTED]) at the same time, it does not seem uncommon that she would suffer from conditions around the eye area.

Moreover, Ortiz has a reason to fabricate her story. She has filed a Notice of Claim with an unspecified sum for damages in anticipation of a lawsuit. She testified that she does not work and "stays at home always." Although in her Notice of Claim she alleges being pushed down to the ground where she hit her face and being pushed into a police van (she failed to make either allegation at trial), she failed to allege being hit in the face or beaten by Respondent in her Notice of Claim (RX A).

Based on the above, I found the testimony of Ortiz to not be worthy of belief.

The next witness called was Coronado. He testified that on the incident date, he attempted to hail a taxicab. He looked back and saw Ortiz sitting on the sidewalk. He attempted to help her get up and the next thing he knew, the police arrived. They told him to step back, the white officer lifted Ortiz up against her will, threw her into a parked van and began to hit her all over her body. He said she was hit in the face, but he could not tell if it was with an open hand or a closed fist. He thought about intervening, but a "guardian angel" stopped him. Once the ambulance arrived, he hailed a taxicab and left the scene.

Coronado denied that either he or Ortiz consumed alcohol. Although he testified that he watched from the time the police arrived until Ortiz left in an ambulance, he did not see Ortiz hit or spit on Respondent. I found Coronado's testimony to be incredible,

particularly his account of the beating. He embellished on a beating and denied any wrongdoing or alcohol consumption on Ortiz's part in favor of a lawsuit. A stipulation was entered between the parties which indicated that an IAB investigator, who was a Spanish translator, heard Coronado say to Ortiz to tell the story the way he (Coronado) told her to. It is likely he made the statement when police arrived unannounced to his residence to interview them. I did not credit his testimony.

Respondent, on the other hand, testified consistent with even Gomez's account. He held Ortiz without handcuffing her in anticipation of the arrival of an ambulance to transport her to the hospital. She pushed him in the chest, so he decided to move her near some parked cars to keep better control of her. She then turned her head and spit in his face, so at that point he handcuffed her. He stated that the next time she turned her face in his direction (which Gomez observed), he did a quick move and turned her head away from him so that she could not spit on him again. I found this testimony of Respondent to be credible. She also was never arrested by Respondent. It defies logic why he would punch her in the face after placing her in handcuffs, calling an ambulance to transport her because she is highly intoxicated and awaiting the arrival of a patrol supervisor who was also called to the scene.

In addition, if Respondent had punched Ortiz in the face at such a close range, it is likely that Ortiz would have sustained a visible imprint immediately or a visible bruise in the five subsequent hours that she spent at the hospital. Instead, her medical records did not support this allegation.

The Assistant Department Advocate repeatedly questioned Respondent on why he did not mention the spitting and his hand movement during his CCRB interview.

Respondent testified that he mentioned the use of reasonable force during his CCRB interview and no one asked him what that meant. One open-ended question at the commencement of the interview, in sum and substance, requesting Respondent to tell what happened in his own words may not elicit every, single detail of an event. Follow-up questions may. Similarly, an open-ended question at the conclusion of the interview stating in sum and substance, whether there is anything else Respondent would like to add, rarely yields a positive response, if any response. Respondent did acknowledge that it was during a second interview, conducted by IAB, where more follow-up questions were asked, i.e., did you strike Ortiz at all, that elicited more detailed responses.

It is the belief of this Court that Respondent, while performing his official police duties, came to the aid of Ortiz, acted in good faith and used reasonable force to control a highly intoxicated individual who was in need of medical assistance and was refusing medical attention. Perez, the patrol supervisor who responded not only to the scene, but also to the hospital, observed Ortiz, who was intoxicated. She did not complain of being injured at the scene. He spoke to both Respondent and Gomez at the scene and no one mentioned that Ortiz was punched.

For all the reasons stated above, Respondent is found Not Guilty.

APPROVED
SEP 02 2014
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

Claudia Daniels-DePeyster
Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials