



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

June 9, 2009

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Peter Morales**  
Tax Registry No. 916267  
67<sup>th</sup> Precinct  
Disciplinary Case No. 83809/08

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on October 21, 2008 and was charged with the following:

**DISCIPLINARY CASE NO. 83809/08**

1. Said Police Officer Peter Morales, assigned to the 67<sup>th</sup> Precinct, while on-duty on September 23, 2006, at or about 2325 hours, in the vicinity of Church Avenue between 56<sup>th</sup> and 57<sup>th</sup> Streets, Kings County, did use excessive force against an individual known to this Department, to wit: Officer Morales, without just cause, struck said individual in the face with his hand/fist.

**PG 203-11, PAGE 1, PARAGRAPH 2**

**USE OF FORCE**

In a Memorandum dated March 17, 2009, Assistant Deputy Commissioner DePeyster found the Respondent GUILTY of the above sole Specification, and recommended the forfeiture of 10 Vacation days.

Having read the Memorandum and analyzed the facts of this instant matter, I approve the finding, but disapprove the penalty. The Respondent's use of excessive force here merits a greater penalty. Therefore, the disciplinary penalty shall consist of the forfeiture of fifteen (15) Vacation days.

Raymond W. Kelly  
Police Commissioner



## POLICE DEPARTMENT

March 17, 2009

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Peter Morales  
Tax Registry 916267  
67 Precinct  
Disciplinary Case No. 83809/08  
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The above-named member of the Department appeared before me on October 21, 2008, charged with the following:

1. Said Police Officer Peter Morales, assigned to the 67<sup>th</sup> Precinct, while on-duty on September 23, 2006, at or about 2325 hours, in the vicinity of Church Avenue between 56<sup>th</sup> and 57<sup>th</sup> Streets, Kings County, did use excessive force against an individual known to this Department, to wit: Officer Morales, without just cause, struck said individual in the face with his hand/fist.

### PG 203-11 – PAGE 1 – PARAGRAPH 2 – USE OF FORCE

The Department was represented by Adam Sheldon, Esq., Department Advocate's Office, and the Respondent was represented by John P. Tynan, Esq.

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

### DECISION

The Respondent is found Guilty.

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SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Michael Jean Baptiste, Deborah Crowder, and Police Officer David Lawston as witnesses.

Michael Jean Baptiste

Baptiste is a 24-year-old resident of Kings County. He is not married, has no children and is currently unemployed. Baptiste testified that he has been unemployed for two weeks after doing clerical work for a temporary agency called Executive Search. Prior to that position, he worked for Abercrombie and Fitch for a year and a half. Baptiste stated that he had never been convicted of a crime, nor filed a complaint with the Civilian Complaint Review Board (CCRB) aside from this matter. He also stated that he does not have a civil lawsuit pending with respect to this incident.

Baptiste testified that on September 23, 2006 at approximately 11:25 pm in the vicinity of East 56 and East 57 Streets in Brooklyn, he was riding his bicycle on the way to a bodega. He stated that he was riding his bike in the street from his friend's house and was on Snyder Avenue and East 56 Street, a block away from the bodega. He denied that he had consumed any alcohol or drugs. He explained that he was stopping to get something to eat and drink and had plans of going out to a party later in the evening. He further explained that as he approached East 56 Street, he made a right turn onto Church Avenue. Baptiste said that he "jumped on the sidewalk," rode about ten feet, placed his bike in front of the store and then went inside the store. He denied that anyone was on the sidewalk or in the vicinity of the store when he got there. He spent about two minutes in the store and purchased a drink and a muffin.

Baptiste stated that after he made his purchase he observed two police officers standing outside near his bicycle. His first response was to ask the officers, "Is there a problem officer?" Baptiste testified that he recognized the Respondent to be one of the police officers. He described the other police officer as a tall, Caucasian male with white hair. Baptiste said the Respondent replied, "Are you riding this bike on the sidewalk." Baptiste said he responded, "No. I was not riding my bike on the sidewalk." Baptiste explained that he did feel "jumping on the sidewalk" was not riding his bike on the sidewalk for a long period of time. Baptiste said the Respondent asked him for his identification (ID) and he inquired as to why the Respondent needed it. Baptiste testified that the Respondent did not answer his question he merely asked for his ID a second time. After the second request, Baptiste stated that he pulled out his wallet and gave the Respondent his ID. Baptiste explained that he pulled his wallet out from his left pocket as he still continued to hold the muffin and juice in his hand. Eventually as he spoke to the Respondent he put the juice in his back pocket and the muffin in his right pocket.

Baptiste testified that he eventually handed his ID over to the Respondent, who handed it to his partner. Baptiste explained this conversation between the three of them took place in front of the bodega. He said that the Respondent's partner took the ID and walked with his back to them toward the police department vehicle (RMP). Baptiste stated the RMP was parked in front of the bodega but near a bus stop about seven to ten feet away from the front of bodega. Baptiste stated that at some point he learned that he was going to be issued ticket. He responded, "You're going to give me a ticket. Do what you have to do and give me back my fucking ID." Baptiste admitted that he was angry and that he did in fact use profanity. He stated that he spoke in an aggressive tone but he

was not yelling at the time. He denied that he made any physical gesture or that he raised his hand or threatened the Respondent in any way. He denied making any sudden moves. He explained that his hands were by his side one hand held the wallet and the other hand was by his side holding his hat.

Baptiste said that the only person that he believed heard his comment was the Respondent. He explained that after he made this statement the other police officer (identified as Police Officer Lawston) had no reaction to his statement. Baptiste said Lawston was approximately seven to ten feet away walking toward the RMP to issue him a summons. Baptiste stated at no point did the Respondent ever tell him that he was under arrest. He was never asked to place his hands behind his back nor did the Respondent take out any handcuffs. Baptiste did state, however, that the Respondent responded to his statement, "with a punch." Baptiste explained he did not see the punch coming and at the time he was looking at Lawston. He said he was unable to block the blow and was hit with a closed fist in the face. Baptiste explained that he was in shock and did not actually feel anything. He stated that he did not know he was injured at the time.

Baptiste testified that once he was punched in the face, the wallet and the hat that he was holding in his hands fell to the ground. He took a step back turned and ran because he was scared. Baptiste testified that he was hit once by the Respondent. He denied that he ever put his hand on the Respondent, pushed him or that he observed the Respondent fall at any point. Baptiste stated that he left all of the property behind including his friend's bike, his hat, wallet, and ID that was held by Lawston. He did observe the Respondent chasing him but he did not see Lawston in pursuit of him. As he

ran, he observed blood coming from his nose area and he also saw it on his shirt. He stated that he ran to a friend's house because it was closer than running the distance to his own home.

Baptiste estimated that the Respondent pursued him for approximately half a block. He stated he got away pretty quickly and when he arrived at his friend's house he went to the backyard and jumped over the fence. He called his friend from his cell phone and his friend opened the back door. Baptiste estimated that it took him between 25 to 30 seconds to run from the scene and arrive at his friend's backyard. Baptiste stated that his friend opened the back door and he went into the house and spoke to him and his mother, Deborah Crowder. Baptiste estimated that it took him about five minutes to tell them the story. He stated that the bleeding had stopped when he arrived at the house and he cleaned himself up. He stated that as he sat down telling the story he began to feel pain. Baptiste said that both photographs and a video were taken of him on that evening.

The videotape and photographs were turned over to CCRB. Baptiste testified that he learned the photographs were misplaced by CCRB. He stated that the videotape was in existence. He said that a portion of the five-minute videotape, approximately seven seconds had been taped over at some point. He explained that the video had been in Crowder's possession. Baptiste explained that he did not learn the videotape was taped over until he met with the attorney from the Police Department.

After taking photographs and videotaping him at Crowder's house, Baptiste stated that they went to file a complaint at the 67 Precinct. He explained that the 67 Precinct was the closest precinct to the Crowder home. Once at the precinct, he spoke to someone about the incident and they advised him to file the complaint at a different precinct. They

then went to the 69 Precinct to file a complaint. Baptiste estimated that it was sometime after midnight when he filed the complaint. After leaving the 69 Precinct he proceeded to the hospital for treatment. Baptiste stated that his nose was not bleeding, but that when he went to Kings County Hospital he was still in pain.

During cross-examination Baptiste acknowledged that he pedaled his bike four or five times on the sidewalk before getting off of it. He acknowledged that he had been riding the bicycle on the sidewalk. He also admitted that he lied to the police officer when he told him that him that he had not been riding his bicycle on the sidewalk. Baptiste stated that he understood riding on the sidewalk was against the law. Baptiste acknowledged that he did not immediately turn over his ID to the Respondent. He noted that the Respondent did not forcibly take his ID from him. Baptiste stated he knew the Respondent and his partner were police officers because they were dressed in police uniforms.

Baptiste acknowledged that when he exited the bodega, he was within arms reach of both police officers and that the bike was located in between the three of them. He never received a ticket for riding his bicycle on the sidewalk before and he was pretty upset when he learned he was going to receive one. He denied that he spoke in a loud voice to the Respondent, but admitted that he was aggressive. He denied that he was violently aggressive in his tone but stated that he spoke with an "attitude." Baptiste admitted that he said, "Give me my fucking ID back." Baptiste acknowledged that after he made the remark he was punched in the nose by the Respondent. He stated that he did leave all of his property and that he took off. When asked why he did not go into the bodega, he stated that the Respondent was blocking the store.

Baptiste acknowledged that the videotape showed him with several drops of blood on his person. He admitted that he had blood on his chin area but his chin was not cut. He noted that he washed his nose area but not his chin. Baptiste estimated that the videotape was five to ten minutes in duration. He acknowledged that he did not call anyone from his cell phone other than his friend and that he did not immediately contact police or CCRB to inform them of what had transpired. Baptiste stated when he went to the hospital he received an ice pack, but he did not recall receiving Motrin. He did state that he did not have any follow-up at the hospital or at the doctor's office. Baptiste stated that he had to run from the store to the corner of East 57 Street, which was approximately 40 feet. He stated that it did not take long for him to cover that distance, and once he got to East 57 Street and Snyder Avenue, he took off and the Respondent was some distance behind him.

Upon questioning by the Court, Baptiste acknowledged he approached the sidewalk from the middle of the block in the vicinity of where the bus stop was and the bodega was behind the bus stop. Baptiste denied that at any point during his discussion with the Respondent that he lunged at him. He also denied making any aggressive body motions. Baptiste explained that when he is angry he does not look at a person in the face and he stated that his sense of direction was toward Lawston who had his ID.

Deborah Crowder

Crowder is unemployed and resides in East Flatbush Brooklyn where she has lived for the past 37 years. She testified that she volunteers for St Jude's Hospital, where she collects donations for kids with cancer. She has two children who reside with her at her residence on Snyder Avenue in Brooklyn. She stated that she is familiar with the



bodega located on Church Avenue between East 56 and East 57 Streets. She stated that the bodega is around the corner from her house which is literally located behind the bodega, one block away. She said that she is familiar with Baptiste and that he has been friends her children since they were very young.

On September 23, 2006 at approximately 11:30 pm at her home on Snyder Avenue Crowder stated that she was with her entire family along with her girlfriend, Candy Smith. She heard banging at the back door and she let in Baptiste, who was bleeding all over his shirt and screaming. Crowder stated that she does live in a private house and that Baptiste had been to her house several times and that he in fact sleeps, eats, and showers at her residence. She said that the blood appeared to be coming from his nose as well as his lip. She said when she asked Baptiste what happened to him he stated, "a cop busted me in my face." She stated in sum and substance that Baptiste told her he was riding his bike in front of the bodega when a police officer asked him for his ID. He said the police officer told him he had been riding his bicycle on the sidewalk. He eventually gave the police his ID but during the course of it he stated words to the effect, "Give me back my fucking ID," and the police officer "clocked him in his nose." Crowder said Baptiste was still upset as he was telling the story and he was still bleeding. She explained that she told Baptiste to lie on the bed downstairs in the basement and told him to stay there while she went and got her camera. She stated that she inquired from Baptiste whether or not he hit the police officer and he stated he did not. She decided to get her video camera because anytime someone is hit by a cop, one has to prove it and so she did take photographs as well as video of Baptiste. She explained that she later turned over her photographs and video to the CCRB on Rector Street.

Crowder testified that the videotape and photographs that she turned over to the CCRB had not been tampered with. She stated that Baptiste stayed at her house for a very long time. She estimated that it was not until some ten hours later that they decided to go to the 67 Precinct. She explained that she ended up filing the complaint at a precinct in Canarsie she believed to be the 69 Precinct. She stated that herself, Baptiste, and her friend went to the station house.

During cross-examination, Crowder acknowledged that the bodega was around the corner from her home but stated that it would take her longer than a minute to walk from her home to the bodega. She acknowledged that Baptiste was ranting and raving when he arrived at her house but she denied that he was acting wild. She stated that he was hysterical because he had been punched. When asked whether Baptiste's shirt was "soaked in blood," Crowder responded that there were "drops of blood going down his shirt."

Police Officer David Lawston

Lawston is a 15-year member of the Department currently assigned to the 67 Precinct. He testified that he was assigned to the 67 Precinct on the incident date of September 23, 2006 and his partner that day was the Respondent. He stated that he is still partnered with the Respondent today. On September 23, 2006 at approximately 11:25 pm in the vicinity of Church Avenue and East 56 Street in Brooklyn, Lawston stated that he was working in uniform with the Respondent in a marked RMP. He stated that he was the operator of the vehicle and the Respondent was the recorder. Lawston testified that both he and the Respondent were carrying working radios on that date. Lawston said he was traveling eastbound on Church Avenue coming up to the

intersection of East 56 Street when he spotted Baptiste. Baptiste was traveling northbound on East 56 Street and then he made a right turn, went up on the curb off the street and ended up heading eastbound on Church Avenue. Lawston testified that he observed Baptiste on East 56 Street and then he observed him hop onto the sidewalk once he turned on Church Avenue. Baptiste then got off the bicycle when he was on the sidewalk in front of the bodega. He stated he made no effort to stop Baptiste prior to him entering the bodega. Lawston explained that he pulled close to the curb with the RMP, walked up to the sidewalk near the bodega and waited for Baptiste to exit the store.

When Baptiste exited the store, Lawston testified that he could not recall if he was holding any items. Lawston said he informed Baptiste that he had been riding his bicycle on the sidewalk and that he was going to be issued a summons. Lawston acknowledged that at some point Baptiste was asked for his ID. He stated that a warrant check would be done and if Baptiste did not have a warrant, he would be issued a summons. Lawston could not recall if it was he or his partner who requested the ID. From what he could recall, Lawston stated that Baptiste seemed fine and that he had not used any profanity. He could not recall if Baptiste voluntarily turn over his ID or if he used any racial slurs.

Lawston acknowledged that he turned his back on Baptiste and his partner to walk back to the RMP. He also acknowledged that he did not maintain eye contact with his partner or Baptiste. Once he turned away, Lawston stated that he could not hear the conversation between his partner and Baptiste and he did not hear his partner make any verbal commands. Lawston testified that at the time he turned to walk to the RMP, he did not consider Baptiste to be under arrest. He explained that Baptiste had not

committed any crime and that he was only going to be issued a summons. He denied observing Baptiste engaging in any violent or threatening behavior.

Lawston testified that once he walked to the RMP to do the warrant check with the ID, the next observation he had of Baptiste was him running down the street. He stated that he had just sat in the RMP and had not yet closed the door. He also observed three people who he believed came out of the bodega, but who were not involved in the incident involving Baptiste. Lawston stated that while he observed his partner in pursuit of Baptiste, he never observed the Respondent take out his radio. He stated that he also continued his own pursuit by car and did not radio anyone either. Lawston said he continued his car pursuit until the Respondent and Baptiste made a right on Church Avenue down East 57 Street going southbound. He stated that he was not able to see them at that point and he noticed that his partner had stopped midway down the block. He saw no signs of Baptiste at that time.

Once he observed the Respondent, the Respondent entered the vehicle and the two of them did a quick canvass of the area to look for Baptiste. He stated the results were negative. They then went back to the scene and obtained the property that was on the sidewalk. Lawston stated that they vouchered the property which included the bicycle, Baptiste's hat, and a wallet. Lawston said they went back to the bodega to canvass for evidence and they also stopped at Baptiste's residence to look for him. He reviewed his Activity Log and found that the two of them returned to the station house at approximately 11 pm. Lawston stated that they spoke later that evening and the Respondent informed him that Baptiste pushed him and he decided he was going to place him under arrest. The Respondent also admitted to him that he took a "swing" at

Baptiste. Lawston stated that he could not explain what a “swing” was. He said that he was in the station house at the time that the arrest paperwork was prepared, but he took no part in its preparation. He stated that he was not familiar with what charges were prepared with respect to the Baptiste incident.

Lawston testified that he learned at a later date that Baptiste was arrested in this matter. He stated that Baptiste was not issued a summons for riding his bicycle on the sidewalk. At the time that he walk back to RMP to issue a summons to Baptiste, Lawston stated that he had not previously observed Baptiste engaging in any conduct with the public, engaging in any tumultuous or violent behavior nor using any profanity. Lawston acknowledged that he had possession of Baptiste’s ID and that there was nothing preventing him or his partner from making an arrest with respect to the complaint reported on the incident which occurred September 23, 2006.

During cross-examination Lawston stated that he did not observe the Respondent hit Baptiste.<sup>1</sup>

#### The Respondent’s Case

The Respondent testified in his own behalf.

#### Police Officer Peter Morales

The Respondent is a 13-year member of the Department, currently assigned to the 67 Precinct. He testified that he has been assigned to the 67 Precinct since graduating from the Police Academy. His steady partner is Lawston who he has been assigned with

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<sup>1</sup>Following the cross-examination of Lawston, the Respondent’s attorney moved to strike the entire testimony of Lawston. This Court denied the application and stated that the Deputy Commissioner of Trials Rules of Practice state that a decision made by the Deputy Commissioner of Trials must be based on the record as a whole and that the testimony of a witness who was at a scene of incident would not be stricken.

for the past five years. On September 23, 2006 the Respondent stated that he was working an evening tour from 3:00 pm to 11:35 pm. He stated he also worked a "spike" extended tour in which he had four hours added to the end of his tour in which to issue summonses for quality-of-life infractions.

Prior to September 23, 2006 the Respondent stated that he had written summonses for improper operation of a bicycle on the sidewalk. On September 23, 2006 the Respondent testified that he had an occasion to see an individual riding his bike on the sidewalk. He stated he observed him in the vicinity of Church Avenue and East 56 Street in Brooklyn. He described Church Avenue as a commercial street and East 56 Street as a residential street. The Respondent said he observed the male riding his bike on the sidewalk, then rode to the front of the bodega, dropped his bike and went inside the store. He and his partner then parked the RMP and waited for the individual to exit the bodega. Once the individual, (identified as Baptiste) exited the bodega, the Respondent stated that he observed him holding a paper bag, the contents of which he was unaware. He then asked him for ID.

The Respondent testified that he was arm's length from Baptiste when he asked him for ID. He stated that Baptiste seemed annoyed when he was asked for his ID. He explained that Baptiste had an attitude, and that he asked him several times for his ID. Baptiste inquired, "What is this about?" The Respondent stated that he informed him, "Operating a vehicle on the sidewalk is illegal. You are going to get a summons. If you are all clear, you get a ticket." The Respondent further explained that if he was "clear" that meant Baptiste had no outstanding warrants. The Respondent stated he would check this information by going to the RMP and running Baptiste's name on the mobile digital

terminal. The Respondent said that Baptiste began to argue with him stating that he was not on the sidewalk. He explained to him that he saw him riding his bike on the sidewalk and that a woman had to stop in her tracks to get around him. Baptiste responded, "This is bullshit." The Respondent said that Baptiste became combative and he tried to explain to him that he was only getting a summons. The Respondent estimated that this exchange took a few seconds.

The Respondent stated that the responsibility to determine whether Baptiste had any open warrants was his partner's on that date. He explained that his partner was responsible for writing summonses during that particular tour. The Respondent said that he explained to Baptiste that this was a \$25 summons and that if it was his was first offense there was a good chance that the judge would throw out the summons. The Respondent said Baptiste used profanity; he called him "white fucking cops harassing the black people." The Respondent explained to him that he was Hispanic and that his conduct was a violation. The Respondent said that Baptiste continued to be aggressive, talking loud and using profanity and at one point Baptiste said, "Fuck that. Give me back my license." The Respondent explained that at that point he decided to tell Baptiste to put his hands behind his back.

The Respondent testified that once he asked Baptiste to put his hands behind his back, Baptiste slapped and pushed his hand. The Respondent said that Baptiste then bit his lip and made a gyrating motion with his body and advanced toward him and put him in fear that he was going to be hit with whatever Baptiste had in the bag in his hand. The Respondent stated that he responded by ducking down and striking Baptiste in the upper chest area. He said that he struck Baptiste with an open hand. When asked whether he

hit Baptiste in the face, the Respondent replied, "I am not sure if I hit him." The Respondent said that he attempted to grab Baptiste but wound up stumbling over the bicycle. The Respondent explained that as he stumbled he ended up falling toward his left side and his radio and ASP<sup>2</sup> fell out. He explained that he did not actually fall to the ground but he was able to get his balance. When he was able to get his balance, Baptiste was "down the block." The Respondent estimated that Baptiste had between 25 to 30 feet distance ahead of him before he began his pursuit. The Respondent said that he started chasing Baptiste but lost him. He tried to get his "air back," and his partner drove up in the car and they began to canvass for Baptiste. He estimated that they drove around canvassing for Baptiste for approximately a minute and then they drove back to the scene of the incident.

The Respondent stated that he notified his supervisor and explained what happened. Afterward he went to Baptiste's residence and spoke to his mother who gave responses of "No." He later went to the station house and vouchered the property from the scene. Baptiste was arrested some months following the incident. He said that he was the arresting officer and that Baptiste was charged with an Administrative Code violation for his action with the bike.

During cross-examination, the Respondent acknowledged that he was working as part of a summons team. He stated that he has issued many summonses while working in this team and that occasionally in issuing summonses it results in arrests based on the warrant check. He stated that in the course of issuing summonses this was the only incident in which an arrest resulted not from a crime but just from the escalating circumstances. The Respondent stated that when he first saw Baptiste he saw him on

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<sup>2</sup> expandable baton



East 56 Street on the sidewalk. He denied seeing him hop onto the sidewalk on Church Avenue. The Respondent said that he was proceeding in the RMP eastbound on Church Avenue and that East 56 Street was ahead of him. The Respondent explained that the purpose of his overtime was to issue summonses for quality-of-life offenses. He also stated that there was a concern in the neighborhood with larcenies where bicyclists would snatch purses or commit robberies while they were on bicycles. The Respondent acknowledged that Baptiste was not considered to be a part of any of these offenses at the time when he approached him. He estimated that he only observed him for a few seconds.

The Respondent acknowledged that he was interviewed by CCRB. He was read an excerpt from his interview of November 8, 2006.

**Question:** "How long did you observe him before you began to pursue him?"

**Answer:** "Like a minute. A minute or two."

When the Respondent was asked whether he recalled being asked that question and giving that answer, he stated, "I don't remember."

The Respondent acknowledged stating that when he first observed Baptiste, he almost collided with a woman pushing either a stroller or a shopping cart. The Respondent admitted that he never stopped Baptiste upon making these observations, but allowed him to enter the bodega. He also admitted that when Baptiste exited the bodega the only people on the street were Baptiste, the Respondent, and his partner. The Respondent acknowledged that at the time Baptiste provided his ID, he was not under arrest. The Respondent stated that Baptiste did utter profanity referring to the issuance of the summons and calling it "bullshit." The Respondent was asked whether Baptiste using

profanity on the street was a crime and he stated, "Yes, you can't curse on a public street." The Respondent explained to Baptiste that he would only be receiving a summons, and if this was his first offense it was likely that the summons would be dismissed. The Respondent said that Baptiste continued to curse at him and uttered words to the effect that he wanted his "fucking ID back." The Respondent said Baptiste was not under arrest at that time; however, Baptiste continued to use profanity and to get loud and people were coming out of the bodega and standing around. He estimated that three or four people gathered. The Respondent denied that any of the people that gathered interjected in the situation between himself and Baptiste. The Respondent said that he felt that his safety was in jeopardy at that time. The Respondent acknowledged that there was nothing preventing him from taking a step away from Baptiste to evaluate the situation. He also admitted that there was nothing preventing him from calling his partner or calling for backup on his radio. The Respondent admitted that he also could have placed Baptiste on the wall for his safety if he felt he was in danger.

The Respondent testified at some point he told Baptiste to place his hands behind his back and Baptiste did not comply. The Respondent said that when he went to grab Baptiste's arm, Baptiste slapped his hand. When asked whether he informed CCRB at any point during his interview that Baptiste slapped his hand the Respondent stated, "I don't remember." The Respondent said that at some point Baptiste bit his lip and advanced toward him and he thought he was going to hit him so he responded by striking him on his shoulder in his upper body to knock him down. The Respondent denied that he ever punched Baptiste. He stated that he did not believe he struck him in the nose area, either. He only acknowledged hitting him on the "top portion of his chest" and that

he only struck him one time. He said at some point he was separated from Baptiste who took off running down the street. The Respondent acknowledged that he never got on his radio for help. The Respondent admitted telling his partner that he took a swing at Baptiste. He could not recall if Baptiste took a swing at him. The Respondent acknowledged that Baptiste did not strike him, but he stated that he could not tell if Baptiste lunged at him because he dipped down when he saw that Baptiste pivoted toward him. The Respondent said he took a minute or two to canvass the area for Baptiste. He testified that the first time he called for his supervisor was when he returned to the location of the bodega, after the canvass for Baptiste.

The Respondent was shown a copy of a complaint report for this incident (DX 3). The Respondent acknowledged that he personally provided the information that was contained in the report. He stated that he did not personally enter the report into the computer. The Respondent admitted that after the computerized complaint report was prepared, he did review it.

During a *voir dire*, the Respondent acknowledged that he prepared a "scratch 61" for the complaint report. He stated that the "scratch 61" was a handwritten version of the complaint report which he provided to his supervisor who then forwarded it to someone to type. The Respondent was shown a document which he recognized to be a scratch copy of the arrest worksheet (RX A). The Respondent testified that he recognized the document because it contained his original signature.

During further cross-examination, the Respondent testified that there were differences between the "scratch 61" and the computer printout of the complaint report. He stated that he never requested that the Disorderly Conduct charge include subdivision

2 or 3. He only requested subdivision 1. The Respondent acknowledged that in the original scratch copy there is an indication that no physical force was used and the same thing appeared on the computerized Omniform report. The Respondent admitted that both on the scratch copy and the computer-generated complaint report there was no indication that a canvass was conducted. The Respondent also acknowledged that in all the paperwork he completed on September 23, which included his Activity Log, the Omniform complaint report the scratch worksheets and vouchers, that at no point did he indicate that he used physical force against Baptiste.

During further re-direct examination of the Respondent, the Respondent stated that force was used to effectuate the arrest of Baptiste. The Respondent stated that he did not review the computer-generated form and that it was prepared at a later date.

During further cross-examination, the Respondent acknowledged that he had testified during cross-examination that he had reviewed not only the scratch report but the computer-generated complaint report. The Respondent stated "Yes, I glanced at it."

During questioning by the Court, the Respondent stated that he was the reporter in the RMP and his partner was the operator. He stated that he was seated in the passenger seat and as he proceeded eastbound, Baptiste was riding the bicycle on his side of the street. He testified that both he and his partner made the decision to stop Baptiste because of the infraction of him riding the bicycle on the sidewalk. When asked whether he recalled punching Baptiste in the face the Respondent replied, "I don't recall punching him in the face." He stated that the only time he made contact with him was an open hand to his chest.

FINDINGS AND ANALYSIS

The Respondent stands charged herein with using excessive force against Michael Jean Baptiste in that without just cause he struck him in the face with his hand/fist. The Respondent is found Guilty as charged. Evidence adduced at trial established that the Respondent and his partner decided to stop Baptiste and issue him a summons for riding his bicycle on the sidewalk. Baptiste testified that he was riding along Church Avenue in the vicinity of East 56 and 57 Streets when he "jumped" onto the sidewalk. He acknowledged that he rode on the sidewalk about ten feet until he arrived at the bodega, dropped his bike and entered the store. He also stated that upon exiting the store, he got upset when he learned from the Respondent and his partner that he would be issued a summons for riding on the sidewalk.

Baptiste testified that he spoke in an aggressive tone with an "attitude" to the Respondent and his partner as he uttered the words, "You're going to give me a ticket. Do what you have to do and give me back my fucking ID." He acknowledged that he made this statement as the Respondent's partner, Lawston walked back to the RMP with his ID and as the Respondent stood near to him. He said that the Respondent did not respond by telling him that he was under arrest or to place his hands behind his back. He said the Respondent responded "with a punch." Baptiste described being punched in the face by the Respondent one time with a closed fist. He stated that he did not see the punch coming, was in shock and initially did not feel anything. Baptiste testified that he never advanced, lunged or threatened the Respondent. He stated that at the time he was punched, he had a hat in one hand, a wallet in the other hand and that the items he purchased at the bodega, the muffin and the juice, he placed in his coat pockets.

Baptiste stated that when he did get himself together, he took a step back and ran because he was scared. Baptiste testified that he took off leaving behind his ID, the bike, along with his hat and wallet which fell from his hands after the punch. He ran a block to his friend's house where he explained what happened to his friend and his friend's mother, Deborah Crowder. I found the testimony of Baptiste to be credible.

Crowder testified at this proceeding. She stated that she took photographs and a videotape of Baptiste that night of the incident when he arrived at her home. He was also taken to the station house where he filed a complaint that night. She later accompanied him to the hospital where he received medical treatment. Crowder said that Baptiste was bleeding from his nose and that he was in pain. She stated that Baptiste told her a police officer told him he was riding his bike on the sidewalk. He eventually gave his ID to the police officer but stated, "Give me back my fucking ID," and the police officer "clocked him in the nose." When questioned during cross-examination as to whether Baptiste's shirt was "soaked in blood," Crowder testified that there were drops of blood going down his shirt." I found her testimony to be straightforward and credible.

A review of the evidence in the case established the following: The videotape (DX 1), which had been erased in part and/or edited in part, did show Baptiste with what appeared to be blood stains on his shirt. A review of the medical records from the night of the incident (DX 2) indicated that Baptiste was treated for a contusion to his nose. He was given 400 mg of ibuprofen and an icepack. The evidence corroborated the testimony of both Baptiste and Crowder.

The Respondent's partner, Lawston did testify in this matter. His testimony was important on several points. Although he did not witness the physical encounter between

the Respondent and Baptiste, he was there for the stop. He acknowledged seeing Baptiste riding his bicycle in the street and then jumping onto the sidewalk and riding to the bodega. He admitted that Baptiste was not acting in a threatening manner or using profanity as he exited the bodega. Lawston acknowledged that after he obtained Baptiste's ID, he turned his back away from Baptiste and the Respondent and walked to the RMP to run Baptiste's name on the mobile digital terminal. He admitted that at that point, Baptiste was not under arrest and would only have been issued a summons. He also admitted that Baptiste was not loud and disruptive. Lawston acknowledged that the Respondent told him that he took a "swing" at Baptiste, but he could not testify as to what the Respondent meant when he said he that.

Lawston also testified that he learned that Baptiste was not arrested until much later following the September 23, 2006 incident. This was despite the fact that he and the Respondent had possession of Baptiste's ID and wallet the night of the incident and could have effected an arrest of him prior to a year following the incident as was revealed at trial.

The Respondent testified before this Court. He testified that he saw Baptiste riding on the sidewalk and did not observe him hop onto the sidewalk with his bike. When questioned on cross-examination as to why he did not stop Baptiste for riding on the sidewalk before he entered the bodega, the Respondent said that he wanted to see where Baptiste was going. When the Respondent was questioned by this Court as to whether he recalled punching Baptiste, rather than respond with a yes or no answer, the Respondent replied, "I don't recall punching him in the face." The Respondent stated that a crowd began to form and he feared for his safety, yet this was not corroborated by

his partner. The Respondent never called out to his partner or used his radio to call for backup. In fact, Lawston testified that he never heard anything that raised his concern. Lawston also stated that when Baptiste was stopped outside of the bodega, the only people on the street were the three of them.

The Respondent acknowledged that in his view, the use of profanity on a public street was a crime. The Colloquy during cross-examination between the Respondent and the Assistant Department Advocate was as follows:

**Question:** If somebody curses at you [the Respondent] it is not disorderly conduct?

**Answer:** Yes, you can't curse on a public street.

**Question:** It is your understanding you can't curse on a public street under any circumstances?

**Answer:** Yes.

The Respondent stated that after Baptiste spewed profanity, he attempted to place him under arrest and Baptiste then slapped his hand away. Yet there was no evidence presented at this trial that the Respondent provided this information about the slap to CCRB when he was interviewed. It must also be noted that up to the point that the Respondent stated he was placing Baptiste under arrest, Baptiste had not committed any crime. He had only uttered profanity. The Respondent said he had not threatened him, lunged at him or touched him in any way.

The Respondent went on to describe Baptiste biting his lip and gyrating his body as he advanced toward the Respondent. The Respondent said he was in fear that Baptiste would hit him with the bag in his hand so he [the Respondent] ducked and struck Baptiste in the upper chest with an open hand. That was the only force that the Respondent



admitted to using against Baptiste, an open-hand slap to Baptiste's chest. The Respondent discussed stumbling over Baptiste's bike, but that occurred only after he had already struck Baptiste. The Respondent never called his partner over or used his radio to call for assistance. In addition, there was no other testimony at this proceeding that intimated that that type of force was used against Baptiste. Moreover, the Respondent made no reference in any of the Police Department paperwork that he prepared (the arrest report, the complaint report) that he used any force at all against Baptiste. The medical records show that Baptiste sustained a contusion to his nose and that he had clotted nasal blood in the nasal cavity. The Respondent could not "recall" at trial whether he punched Baptiste. In essence, the Respondent offered no plausible explanation as to how Baptiste sustained such an injury following his encounter with him such that he needed medical attention. And the Respondent's explanation of the force he used was not consistent with the evidence presented at trial. Furthermore, the Respondent waited a year to seek to arrest Baptiste in connection with this incident, despite having his ID and knowing his place of residence the night of the incident.

I found that Baptiste, Crowder and Lawston testified credibly before this Court. Baptiste admitted that he used profanity and even admitted that he rode on the sidewalk as he approached the bodega. Crowder did not exaggerate Baptiste's injuries. She said he was bleeding from the nose when he came to her house, that the bleeding stopped, but that he did have blood spots on his shirt which appeared to be the case after a review of the videotape. Lawston also testified credibly. He stated that Baptiste was not loud, disruptive or disorderly. He could not even hear his conversation from the RMP. He stated that he would have only been issued a summons for riding on the sidewalk. He

acknowledged that the Respondent told him that he took a swing at Baptiste. Baptiste admitted that he uttered profanity. He did not lunge, swing at or hit the Respondent. Baptiste admitted this at trial and the Respondent admitted this during cross-examination. Yet Baptiste was punched in the face when stopped for the issuance of a summons. Baptiste testified that he had never been arrested before this incident. He does not have a civil suit pending and he did identify the Respondent by name in open court. Moreover, Baptiste took immediate action by running to a neighbor's house to complain and get help; he reported the incident to the police that same night at the station house; and he sought immediate medical attention that night at the hospital. The Respondent's closed fist punch of Baptiste amounted to excessive force.

Accordingly, I find the Respondent Guilty as charged.


#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). The Respondent was appointed to the Police Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of using excessive force when he struck Baptiste in the face with a closed fist. The Assistant Department Advocate asked for a penalty of the forfeiture of ten vacation days. In Disciplinary Case No. 78412/02, an eight-year member of the Department with no prior disciplinary record forfeited ten vacation days for the use of excessive force while on duty. The Respondent in that matter grabbed an individual by the neck and took him up a flight of stairs in an attempt

to recoup his cell phone from the individual whom he attributed the theft to. Based on the above, I recommend that the Respondent forfeit ten vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner-Trials

