



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

October 25, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Jesus Santos**  
Tax Registry No. 948274  
Police Service Area 6  
Disciplinary Case No. 2015-13090

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on April 6, 2016, and was charged with the following:

**DISCIPLINARY CASE NO. 2015-13090**

1. Police Officer Jesus Santos, while on duty, and while assigned to Housing PSA 6, on October 11, 2014, at [REDACTED], New York County, did use force against Person A without justification, to wit: Said Police Officer Santos punched Person A in the face causing Person A to fall to the ground and hit his head.

**P.G. 203-11**

**USE OF FORCE**

In a Memorandum dated July 22, 2016, Assistant Deputy Commissioner David S. Weisel found Police Officer Jesus Santos Guilty of the sole Specification in Disciplinary Case No. 2015-13090. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

In consideration of the totality of the issues and circumstances in this matter, I deem that a greater penalty is warranted. Therefore, Police Officer Santos shall forfeit ten (10) vacation days, as a disciplinary penalty.

  
James P. O'Neill  
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

July 22, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jesus Santos  
Tax Registry No. 948274  
Police Service Area 6  
Disciplinary Case No. 2015-13090

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**Charges and Specifications:**

1. Police Officer Jesus Santos, while on duty, and while assigned to Housing PSA 6, on October 11, 2014, at [REDACTED] New York County, did use force against Person A without justification, to wit: Said Police Officer Santos punched Person A in the face causing Person A to fall to the ground and hit his head.  
P.G. 203-11 USE OF FORCE

**Appearances:**

For the Department: Anna Krutaya and Beth T. Douglas, Esqs.  
Department Advocate's Office  
One Police Plaza, 4th Floor  
New York, NY 10038

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

**Hearing Date:**

April 6, 2016

**Decision:**

Guilty

**Trial Commissioner:**

ADCT David S. Weisel



## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on April 6, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Detective Alexander Melendez, Sergeant Nicholas Colavito, Detective Rodney Howard and Police Officer Jean Francisco as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty of the charged misconduct.

## FINDINGS AND ANALYSIS

At approximately 2100 hours on October 11, 2014, Person A was in the vicinity of West [REDACTED] Street and [REDACTED] Boulevard [REDACTED] in Manhattan, sitting on the ground, hand-rolling a cigarette containing K2, a kind of synthetic marijuana. Person A did not testify at trial, but two statements that he made to IAB investigators following the incident were entered into evidence. In the statements, Person A stated that he did not remember anything that occurred after he was rolling the K2 cigarette (Tr. 30; Dept. Ex. 6, p. 3, Dept. Ex. 7).

It was undisputed that Respondent and Police Officer Jean Francisco, both assigned to PSA 6, were working in uniform as part of the conditions unit. As they were driving an unmarked van southbound on Seventh Avenue, they observed Person A in front of a building rolling what they believed to be a marijuana cigarette. Respondent stopped the van and Francisco got out to approach Person A. When he got within three to five feet of Person A started running southbound on Seventh Avenue. A chase ensued, with Francisco running after



Person A and Respondent following in the van. There were several stop-and-go moments during the chase in which Francisco struggled with Person A as he attempted to arrest him. Two of these moments were captured on surveillance cameras in the area. The chase came to a final stop around the corner, in front of the YMCA located at [REDACTED] east of [REDACTED] Avenue. Respondent exited the van, ran over to where Francisco and Person A were standing, and punched Person A once in the head. Person A fell to the ground and was handcuffed. Respondent called for an ambulance and Person A was taken up the block to Harlem Hospital, where he was treated for a laceration to the back of his head and received seven staples. Person A did not file a complaint against Respondent (Tr. 103, 126, 128-30, 162-64, 168, 171, 183; Dept. Ex. 5, medical records).

As per Department procedure, however, PSA 6 notified the IAB Command Center of the incident. Detective Alexander Melendez, assigned to Group 9 (Nightwatch), responded to the hospital after 0200 hours on October 12, 2014, to investigate. Melendez interviewed Person A in the emergency room of the hospital. Person A stated that he did not remember anything that occurred after he was rolling the K2 cigarette and before he woke up in the hospital (Tr. 24-28, 30; Dept. Ex. 6, p. 3).

Melendez took photographs of Person A's injuries at the hospital. Following the completion of the hospital interview, Melendez responded to the scene of the incident to canvass for witnesses and video footage, but was unsuccessful because all of the businesses in the area were closed at that time. Subsequently, the case was reassigned to Group 54, IAB's force investigation unit, and Melendez's involvement ceased (Tr. 30-33; Dept. Ex. 1a, photograph of Person A lying on gurney with blood under head on linens; Exs. 1b & 1c, photographs of head wound).



At approximately 0900 hours, Sergeant Nicholas Colavito of Group 54 responded to the hospital, interviewed Person A back at the command which was holding him in custody, and took more photographs. Colavito also responded to the scene of the incident and took pictures (Tr. 43-44, 53-54; Dept. Exs. 2b & 2c, photographs of head wound; Dept. Exs. 3a-3d, photographs of sidewalk with blood stain and scaffolding).

Colavito then went into the YMCA looking for surveillance footage. While there, he was approached by Person B, who attended the Y's gym and told Colavito that she witnessed the incident the night before. At approximately 1015 hours, Colavito interviewed Person B in the lobby of the Y. Person B recounted that she saw a Caucasian man (Person A is white) running down [REDACTED] being chased by a police officer on foot and another in a police van driving against traffic. At one point the man crossed the street and the van tried to block him. According to Person B, the officer on foot caught up to the man, and then the man "just stopped running and was standing there" with his hands at his sides. The officer that was driving the police van got out, ran toward the man, and punched him in the face, knocking him out. The man immediately fell backward onto the ground (Tr. 46; Dept. Ex. 8, transcript and recording of Person B interview, pp. 3, 5).

Video footage from three different cameras was entered into evidence at trial (Dept. Ex. 4, surveillance footage). The first video, from a liquor store on the west side of [REDACTED] Avenue between [REDACTED] Streets, captures approximately five seconds of Francisco chasing Person A. Francisco can be seen trying to grab Person A's arm while Person A pushes Francisco away. The second video, from a Popeye's restaurant located next to the liquor store at the corner of [REDACTED] Avenue and [REDACTED], captures another few seconds of the continued foot chase. The third and final video, from a camera located outside the Y, depicts the following. Person A enters the bottom left hand side of the frame backing up to a portion of scaffolding with his arms



at his sides. Respondent enters the frame running and punches Person A in the head. Person A falls to the ground and is handcuffed by Respondent and Francisco (Dept. Ex. 4).

Francisco testified that during the foot chase, he caught up with Person A at one point, and then Person A threw several punches at him, striking him in the chest. The chase continued and Francisco again caught up to Person A in front of the Popeye's. Person A put up his fists as a boxer would and he again threw punches at Francisco, who reciprocated. Person A crossed the street, still running southbound on [REDACTED] Avenue. He stopped and got into a fighting stance again, threw another punch, and then ran east on [REDACTED] Street. Throughout the duration of the chase, Francisco was telling Person A to stop. At one point, Person A threw the item that he previously was rolling into the middle of the intersection as he continued to run (Tr. 129-30, 132).

Francisco was able to pull the backpack Person A had been wearing off of him about five to six minutes after the chase began. Person A then stopped in front of the Y and said to him, "I want my stuff back. I didn't do nothing. I want my stuff back." Francisco told Person A to put his hands behind his back. He testified that Person A kept moving backward and as he did so, he dropped his hands, but they were balled up in fists. Person A was no longer swinging at him or moving toward him, however. According to Francisco, he just kept repeating to Person A that he needed to put his hands behind his back, before Respondent arrived and punched Person A. Prior to Respondent arriving and punching Person A, he did not hear Respondent give Person A any verbal commands (Tr. 131-35, 137, 151).

On cross examination, Francisco estimated that during the course of the chase, Person A threw about six or seven punches at him. Francisco testified that when they stopped in front of the Y, he believed that Person A was going to try to get his backpack back and keep running. Furthermore, at the point when Respondent punched Person A, Francisco might have opted to punch Person A or physically bring him to the ground (Tr. 145, 147, 155).



Respondent testified that after Francisco got out of the van and started chasing after Person A, he followed in the van. Multiple times during the chase, Respondent observed Person A swinging at Francisco. Respondent travelled about one and a half blocks following the foot chase in the van. At one point, he was driving into oncoming traffic to keep up with the chase and to try to cut off Person A as he ran. When Person A stopped running in front of the YMCA, Respondent got out of the van. He testified that as he approached Person A and Francisco, Person A had his hands down and Francisco was gasping for air, and they both looked tired (Tr. 165, 167-68).

Respondent testified that he punched Person A one time "to stop the threat" and to help Francisco because he did not think that Person A was surrendering at that moment. Furthermore, Person A did not give any indication that he was not going to fight anymore. Respondent believed that Person A still was a threat based on what he had seen as he followed Francisco chasing Person A, particularly Person A "punching my partner" and continuously disregarding Francisco's orders to stop (Tr. 169, 171).

After Respondent punched Person A, he fell to the ground and lost consciousness for approximately one minute. Respondent immediately called for an ambulance and notified his supervisor about what had happened (Tr. 171-72).

On cross examination, Respondent testified that upon exiting the van and running toward Person A in front of the YMCA, he said to him, "You're gonna keep running?" He did not give Person A any instructions prior to punching him. He conceded that though there had been several stop-and-go moments, at the moment Person A and Francisco were standing in front of the Y, Person A was not engaging in the same kind of behavior he had during the previous moments of the chase. Respondent further conceded that despite seeing Person A throw punches at Francisco during the foot pursuit, he did not call for backup from the van (Tr. 177-78, 180).



Respondent stated that he felt that if he were to tackle Person A rather than punch him, both he and Person A would have been injured because they were surrounded by scaffolding. He did not know if Person A's head injury was caused by him hitting his head on part of the scaffolding as he fell or from hitting the ground (Tr. 184, 186).

Respondent is charged with punching Person A in the face without justification. The Court finds that Respondent's use of force against Person A was unnecessary and thus without justification. Pursuant to Patrol Guide § 203-11, effective at the time of this incident, officers were permitted to use "[o]nly that amount of force necessary to overcome resistance" to effect an arrest (p. 1, para. 2). At trial, Respondent's attorney argued that based on what Respondent witnessed during the previous minutes of the chase, it was reasonable for him to believe that Person A remained a threat when he was stopped in front of the YMCA. Furthermore, he argued that though Person A had stopped, he gave no indication to either Respondent or Francisco that he actually was surrendering.

There is an inherent danger in chasing a suspect because officers generally do not know if the suspect is armed. This is even more so when the suspect, as here, has demonstrated an unwillingness to obey commands. In the tribunal's view, however, Respondent's punch of Person A was unnecessary because an objective view of the facts indicates that Person A was no longer resisting.

Here, Francisco admitted that Person A was "not being loud or anything" when he stopped and faced the officer under the Y's scaffolding. He seemed annoyed and wanted his backpack returned (Tr. 152-53). Contrary to Francisco's testimony, the video shows that Person A's hands were not in fists. He held them and his arms limply at his sides and was not maintaining a fighting stance. The time on the Y video, from when Person A enters the frame and turns toward Francisco, and when Respondent barrels up and punches him, is 2.78 or 2.79 seconds. This is



consistent with Respondent's testimony that it was two to four seconds between the time Person A stopped running and the time of the punch (Tr. 173). This was not a huge period of time, but it is enough time for a reasonable officer to assess the situation. A punch to the head was not reasonably necessary at that point in time to place Person A in custody safely, or to prevent him from running off again.

Respondent punched Person A solely because of what he had witnessed during the prior few minutes of the chase. When asked why he believed Person A was a threat at that moment in front of the YMCA, Respondent answered by saying that his assessment was based on seeing Person A punching Francisco multiple times and trying to escape. Respondent admitted, however, that Person A was no longer behaving in the way he had while running from and punching at Francisco. Respondent also admitted that before punching Person A, he said to him "You're gonna keep running?" This statement suggests at best that the force was used not to overcome Person A throwing punches at him but to stop Person A from running off again. At worst, it suggests that the force was retaliation for Person A's past resistance, not his present behavior (Tr. 170-71, 178).

The Court notes that Detective Rodney Howard, who investigated the case for Group 54, testified that in his opinion, the incident constituted a use of excessive force because Person A was not resisting arrest when Respondent punched him, notwithstanding the prior resistance and the short period of time he is seen not resisting (Tr. 65-66, 79, 82).

Furthermore, Respondent's testimony that both Person A and Francisco were out of breath when he reached them and were not engaged in any way physically with each other, indicates that under the totality of the circumstances, it was unreasonable for Respondent to punch Person A to take him into custody.



Therefore, in sum, the Court finds that Respondent's use of force was without justification and in violation of Patrol Guide § 203-11, which governed at the time. As such, he is found Guilty.

### PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 14, 2009. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department recommended that Respondent forfeit 10 vacation days as a penalty, but provided no precedent to support their recommendation. The Court finds 10 days to be excessive here. Respondent's use of force was limited to a single punch in the furtherance of effecting an otherwise valid arrest. Additionally, a lesser penalty is consistent with Department precedent. See Case No. 2014-12674 (Mar. 22, 2016) (8 vacation days for punching individual without police necessity and intentionally tightening handcuffs on said individual's wrists, causing lacerations); Case No. 2010-2433 (Feb. 5, 2013) (5 days for unnecessarily hitting prisoner with expandable baton during arrest [reduced by Police Comm'r from recommendation of 15 days]).

Accordingly, the Court recommends that Respondent's penalty be the forfeiture of five vacation days.

Respectfully submitted,

  
David S. Weisel  
Assistant Deputy Commissioner Trials







POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JESUS SANTOS  
TAX REGISTRY NO. 948274  
DISCIPLINARY CASE NO. 2015-13090

On his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent." He has been awarded one medal for Excellent Police Duty. [REDACTED]

From July 18, 2011, to January 18, 2013, Respondent was on Level 1 Force Monitoring for having three or more CCRB complaints in one year.

He has no prior formal disciplinary history.

David S. Weisel  
Assistant Deputy Commissioner Trials