



POLICE DEPARTMENT

February 21, 2020

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2019-20510
Police Officer Arland Belande	:	
Tax Registry No. 948649	:	
5 <sup>th</sup> Precinct	:	

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

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Simone Manigo, Esq.  
Claudia Avin, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

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

To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

## CHARGES AND SPECIFICATIONS

1. Police Officer Arland Belande, on or about September 9, 2018, at approximately 0313, while assigned to 005 PCT and on duty, in the vicinity of front of 9 Rivington Street, New York County, wrongfully used force, in that he used a chokehold against Person A while Person A was rear-cuffed.

P.G. 221-01, Page 3, Prohibition 2(a)

FORCE GUIDELINES

2. Police Officer Arland Belande, on or about September 9, 2018, at approximately 0313, while assigned to 005 PCT and on duty, in the vicinity of front of 9 Rivington Street, New York County, wrongfully used force, in that he placed his hand around Person A's neck and pushed Person A onto the ground while Person A was rear-cuffed without police necessity.

P.G. 221-02, Page 2, Prohibition 11

FORCE GUIDELINES

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 24, 2020. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. This is a hearsay case. The Civilian Complaint Review Board called Investigator Cassandra Fenkel as a witness and offered the telephone statement of Person A and a video recording of the incident. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the testimony and evidence in this matter, I find Respondent Not Guilty of the charged misconduct.

## ANALYSIS

It is uncontested that on September 9, 2018, at approximately 0300 hours, Respondent was in uniform and on patrol, with his partner, Police Officer Pong, in Sector B of the 5 Precinct. The pair encountered Person A, who was urinating in public. When Respondent took his ID to issue a summons, he learned that Person A had an outstanding bench warrant. After Person A was handcuffed, a physical struggle ensued and Respondent ultimately pushed

Person A to the ground. Person A was transported back to the precinct after an additional unit responded; he was later brought to a hospital for evaluation of alleged injuries. At issue is whether, in the course of bringing Person A under control, Respondent (i) used a prohibited chokehold or (ii) used excessive force in pushing him to the ground while he was rear-cuffed.

Cassandra Fenkel testified that she was the supervising investigator at CCRB assigned to this matter. (Tr. 14) She spoke to Person A once on an “initial intake phone call” a few weeks after the incident. No formal interview was conducted, as Person A refused to come to CCRB to provide a statement, partially because he didn’t see the need to do so regarding an incident that was already captured on video. (Tr. 29, 50, 62, 66-68) Though Person A had indicated to Ms. Fenkel on the intake call that he intended to file a civil lawsuit, she acknowledged at trial that she later learned he had never filed any such claim. (Tr. 69)

CCRB submitted into evidence the audio recording and accompanying transcript of Person A’s September 25, 2018 telephone conversation with Ms. Fenkel. (CCRB Exs. 1A & 1B) On that call, Person A alleged, “[Respondent] choked me a little bit.” (CCRB Ex. 1B at 3) He further recounted, “[Respondent] scratched me in my neck, he broke the chain on my neck, he damaged my \$25,000 watch...he cracked my phone.” (*Id.* at 5) He also expressed a desire to sue the City and Respondent. (*Id.* at 4) However, toward the conclusion of the call, he told Ms. Fenkel that he was not interested in cooperating with a CCRB investigation because doing so would be inconvenient and cost him potential income. (*Id.* at 7)

CCRB Exhibit 2 is a body-worn camera video of the incident that was recorded by Respondent’s partner, Officer Pong. The video begins with Person A in handcuffs, standing with his back to the RMP and shouting at Respondent, although there is no audio until 00:59. Respondent has his left hand on Person A’s left shoulder, and his forearm is near Person A’s

throat, although a gap between the two is visible at approximately 00:18. (CCRB Ex. 2: 00:00-00:22) Person A begins struggling more forcefully and attempts to turn around twice; on the second attempt, Person A is halfway turned and Respondent is unable to control him completely. Respondent's arm remains near Person A's neck. (00:26-00:35) For a few seconds, Respondent and Person A are either outside the frame of the video or move by too quickly to be seen.

When they are next clearly visible, Respondent has his right arm under Person A's right arm, grabbing his right shoulder, and his left arm holding Person A's left shoulder near his neck. He then releases Person A's left shoulder and tries to grab his leg instead. Respondent spins Person A around, places his right leg behind Person A's left leg and pushes Person A by his upper chest and neck area. Person A falls backward over Respondent's knee. In total, Respondent's left hand appears to touch the right side of Person A's neck for approximately one second. (00:36-00:48)

Next, Respondent kneels down where Person A is lying on his back, placing his hand on Person A's chest. When the audio begins, Person A can be heard shouting, "You hit me like this?! You snatch my chain off my neck?!" and "Punch me! Punch me!" (01:07-01:33) Person A also utters various profane and racial insults such as, "You can't fight. You're not hard. You're soft as fuck;" (01:50-02:05) and "Fucking black ass mother fucker." (04:02-04:07) Respondent continues talking to him in a low voice. (04:07-04:23) When an additional unit responds, Person A tells those officers, "I have marks all over my neck right now. He scratched me. He hit me. He pulled my chains off my neck." (03:46-03:53) As Respondent guides Person A to the RMP and tries to place him inside, he continues to resist and make profane comments before eventually sitting down. (04:50-05:35)

CCRB entered into evidence the Medical Treatment of Prisoner form, which notes that Person A injured his wrist, neck, back and head and that he refused medical assistance at the command. (CCRB Ex. 4) Photographs from the Threat, Resistance or Injury (TRI) report depict various abrasions on Person A's arm, hip and neck. (CCRB Ex. 3)

Respondent asserted at trial that he used only the force needed to control a non-compliant Person A. He recounted that at approximately 0300 hours on September 9, 2018, he was on patrol with his partner, Officer Pong, in the vicinity of 9 Rivington Street when he noticed Person A urinating on a wall next to his RMP. Respondent asked Person A for ID in order to issue him a summons and recalled that Person A was initially "nice and cool." Respondent ran a check of his name, which revealed an outstanding bench warrant. Respondent told Person A that he would have to arrest him and bring him to the precinct. Person A then began "acting up" and challenged whether arresting him was necessary. Respondent detailed that "he was kind of mad [and] cursed me a little bit." (Tr. 107-109, 127-129)

Respondent explained that once Person A was in handcuffs, he positioned his forearm near Person A's shoulders to prevent him from head-butting. Person A "was moving around too much" and Respondent asked Pong to begin recording the incident and call for an additional unit with a prisoner transport car. Respondent kept his hands high on Person A's body to prevent him from head-butting him. Person A, he recalled, "said he could have run from me," causing Respondent to fear that he might escape. To keep control, Respondent grabbed his arms and shoulders and then used his right hand, with an open palm, to shove Person A to the ground. Once he fell, Respondent knelt next to him and tried to calm him down. Respondent denied wrapping his hand around Person A's throat or neck, asserting that his hand was on Person A's "upper chest area." (Tr. 109-114, 135-38, 151-152, 165-166)

Respondent recounted that when Person A was on the ground, he continued shouting and telling Respondent to punch him, while numerous civilians were nearby. Once the transport vehicle arrived, Person A began kicking the door of the car. Eventually, he was brought to the precinct and issued a summons. Respondent completed a TRI report regarding the use of force and Person A was brought to the hospital to check for injuries because he alleged that Respondent had broken various bones. No hospital records were introduced into evidence. (Tr. 114-117)

*Specification 1: Use of Chokehold*

Specification 1 charges Respondent with wrongfully using a chokehold on Person A while he was rear-cuffed. The Patrol Guide directs that, “Members of the service **SHALL NOT**...use a chokehold, which it defines as “includ[ing] but... not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.” (P.G. § 221-01 (emphasis added in original)) The administrative prosecutor for CCRB clarified that CCRB’s position is that the alleged chokehold began at the 00:42 mark on the video. (Tr. 194) Having carefully reviewed the record in its entirety, I find that CCRB has failed to prove by a preponderance of the credible evidence that Respondent applied pressure to Person A’s throat or windpipe in a way that may have prevented him from breathing.

First of all, I find Respondent’s testimony to be credible. He testified in a forthright manner on both direct and cross-examination. Additionally, his recollections are supported by the video in evidence. The video confirms that Respondent’s hand was in the general area of Person A’s neck, but it is not clear that he touched the throat or windpipe. Rather, it appears that his hand touched the right side of Person A’s jaw and neck for an instant, incidentally, as he reached for Mr. Person A’s collarbone and upper chest. I also credit Respondent’s testimony

that he pushed Person A with an open hand. Pushing the jaw and side of the neck with an open hand would not constitute pressure to the windpipe or throat.

Additionally, it is noteworthy that when Person A complained to Respondent and other officers, he did not allege that he was choked. Rather, he mentioned that he was scratched and expressed concern about his jewelry. The noted scratches or abrasions and any damage to his jewelry could quite possibly have happened during the struggle and are not proof that a chokehold was applied. While Person A did tell Fenkel that Respondent “choked me a little,” his brief and vague hearsay statement, which could not be probed further with cross-examination and is not corroborated by any medical records, is an insufficient basis to depart from the impressions drawn from the video and from the credible testimony provided by Respondent. Accordingly, I find Respondent Not Guilty of Specification 1.

*Specification 2: Wrongful Push*

Specification 2 charges Respondent with using excessive force when he pushed Person A to the ground. Patrol Guide Section 221-02 instructs that officers should, “[a]pply no more than the reasonable force necessary to gain control.” The video confirms that during the incident, Person A was actively resisting, defined by the same section of the Patrol Guide as “physically evasive movements...including bracing, tensing, pushing....” The video further shows that as Respondent attempted to attain compliance, Person A appeared on the verge of breaking away and escaping. I credit Respondent’s testimony that he feared that Person A might head-butt him or succeed in running away. It should be noted that Respondent attempted to control Person A for at least 45 seconds before eventually positioning himself to bring him to the ground. I find that Respondent showed a great deal of restraint throughout the encounter when he simply pushed Person A against the RMP and then carefully grabbed his legs and waist in an attempt to

set up a tri p maneuver. After pushing him in a way that caused him to fall to the ground, Respondent then waited beside Person A for the arrival of the transport car.

Based on the totality of these circumstances, I do not find Respondent's use of force to be excessive. Accordingly, I find Respondent Not Guilty of Specification 2.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

APR 21 2020

DERMOT SHEA  
POLICE COMMISSIONER