



POLICE DEPARTMENT

May 5, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2020-22289
Police Officer John Brennan	:	
Tax Registry No. 960275	:	
63rd Precinct	:	

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Nicole Jardim, Esq.
Civilian Complaint Review Board
100 Church Street, 10th 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 KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer John Brennan, on or about March 9, 2019, at approximately 2230, while assigned to 63rd Precinct and on duty, in the vicinity of Avenue M and East 48th Street, Kings County, wrongfully used force, in that he used a chokehold against Alexander Pierre-Louis.

P.G. 221-01, Page 3, Prohibition 2

FORCE GUIDELINES

2. Police Officer John Brennan, on or about March 9, 2019, at approximately 2230, while assigned to 63rd Precinct and on duty, in the vicinity of Avenue M and East 48th Street, Kings County, wrongfully used force, in that he restricted Alexander Pierre-Louis's breathing without police necessity.

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

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 28, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Alexander Pierre-Louis as a witness, and 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 evaluated all of the evidence in this matter, the Tribunal finds Respondent Not Guilty.

ANALYSIS

This case involves an allegation of using a prohibited chokehold during a police-citizen encounter on March 9, 2019. Also at issue is whether Respondent restricted Pierre-Louis' breathing without police necessity.

The following is a summary of the facts that are not in dispute. On March 9, 2019, at approximately 2230 hours, Respondent was patrolling in an unmarked vehicle as part of the 63rd Precinct Anti-Crime Unit, working as the operator to Sergeant Behan. Respondent became aware of a car stop on East 48th Street and Avenue M involving Police Officers Noel and Cioffi,

who were both in plain clothes, but was unaware of the basis for the car stop. A music video was being recorded on the street in the same area at the same time as the car stop was conducted. As Respondent approached the vehicle, Police Officers Noel and Cioffi stood on either side while the driver, Alexander Pierre-Louis, was seated inside (T. 15, 70-71).

Video Evidence

An individual known to Pierre-Louis video-recorded the following events. The relevant portions of the video are summarized below:

00:00-00:15 - Respondent is standing in a grey hoodie and jeans, holding a black flashlight. Respondent is next to an open car door. An unidentified voice says, "Step back, Step back." The camera is aimed toward the ground, only showing the feet of several individuals and the car door.

00:15-00:30 – The individual with the camera moves closer to the car and states, "Get out of the car, bro." Two officers take hold of Pierre-Louis and pulling him from the vehicle. Pierre-Louis appears to be doubled over and moves toward the ground as police officers attempt to take him out of the car. The crowd is again instructed to move back.

00:30-00:40 – Police officers begin removing Pierre-Louis from the vehicle. The camera shows an officer in a black sweatshirt, closest to the camera, who is struggling with Pierre-Louis to remove him from the car. Pierre-Louis eventually ends up on his hands and knees outside the car with two officers bending over him on either side.

00:40-00:45 - Respondent moves towards Pierre-Louis and the other officers; Pierre-Louis is now standing upright. Three officers are moving with Pierre-Louis, attempting to restrain him. There is an officer on either side of Pierre-Louis' body, holding his arms, while Respondent stands behind him. Pierre-Louis takes approximately five steps to his front and left.

00:45-00:50- As Pierre-Louis steps forward, Respondent takes his right arm from behind Pierre-Louis and wraps it across his chest. Respondent's left arm is under Pierre-Louis' left arm. Respondent's right fist is closed, holding a black flashlight.¹ Respondent's fist is in front of Pierre-Louis' left shoulder. Pierre-Louis' chin is above Respondent's forearm. Respondent takes about five steps backward while the other two officers are holding onto Pierre-Louis' arms. Pierre-Louis yells, "Get off me, son; what are ya'll doing?" Respondent then moves back from Pierre-Louis with both arms.

00:50-01:05- Respondent places his right hand on Pierre-Louis and reaches for his Taser with his left hand. Respondent loses his grip with his right hand as Pierre-Louis and the other two police officers move several steps forward. The two police officers bring Pierre-Louis to the ground,

¹ A still image was taken from the video, displaying Respondent's arm across Pierre-Louis' body (CCRB Ex. 2).

and Respondent walks around in front of him with his Taser in his left hand. The person recording yells, “Taser him, let me see you fucking Taser him, let me see you fucking Taser him, I’ll make sure you get fucking fired.”

(CCRB Ex. 2).

Respondent

Respondent testified that as he and Sergeant Behan approached the driver’s side of the car, Noel was already speaking with Pierre-Louis; he could not recall what they discussed² (T. 72-73, 88). Sergeant Behan told Pierre-Louis to step out of the car (T. 74). Respondent placed his hand on Pierre-Louis’ back and pulled him from the driver’s seat, along with Sergeant Behan and Noel (T. 75-76). Pierre-Louis was then in a kneeling position on the ground, facing away from Respondent; Noel and Sergeant Behan were on either side of Pierre-Louis, trying to get his hands behind his back (T. 76). Respondent testified that Pierre-Louis appeared to be tensing up and flailing his arms (*Id.*).

Respondent testified that Pierre-Louis then stood up, with Respondent still standing behind him (T. 77). He stated that Pierre-Louis began stepping forward while Noel and Sergeant Behan held onto Pierre-Louis’ arms (*Id.*). To prevent Pierre-Louis from breaking free, Respondent placed his right arm across Pierre-Louis’s chest, near his collarbone, with his hand held in a fist on Pierre-Louis’ left shoulder (T. 77-78, 105). On cross-examination, he admitted that he pulled backward against Pierre-Louis’ torso (T. 98). Responding to a question from the Tribunal, Respondent testified that the dark object seen in his right hand was a flashlight (T. 106).

² On cross-examination, Respondent conceded that he had given a statement to CCRB stating that Pierre-Louis had asked, “Why are you stopping me?” (T. 92).

Respondent denied making contact with Pierre-Louis' neck at any point; he estimated that the connection lasted approximately three seconds (T. 78). He stated that Pierre-Louis never asserted that he could not breathe (*Id.*).

Respondent testified that while he used his right arm to prevent Pierre-Louis from moving forward, his left arm was at his side (T. 79). He was later confronted with CCRB's Exhibit 1 and conceded that the video showed his left arm around Pierre-Louis' torso (T. 95).

Respondent testified that because Pierre-Louis continued to struggle against the three officers, he released his right arm from Pierre-Louis' torso and reached for his Taser (T. 80-81). After he removed his Taser and turned it on, he stepped in front of Pierre-Louis and showed it to him; according to Respondent, within a second, Pierre-Louis ceased struggling and placed his hands behind his back (T. 82).

Alexander Pierre-Louis

Pierre-Louis testified that on March 9, 2019, at approximately 2040 hours, he was sitting in his car, parked legally, on 48th Street in Brooklyn, watching a music video being filmed. About five minutes after Pierre-Louis parked, an unmarked police car pulled up behind him and three police officers emerged from it (T. 15).

Police Officer Noel, whom Pierre-Louis claimed he recognized, came to his window and asked for his license and registration. Pierre-Louis asked why he was being stopped several times since he was parked legally. According to Pierre-Louis, the officer gestured, indicating whether the interaction could go smoothly or not, to which Pierre-Louis then proceeded to pull out his wallet. Pierre-Louis stated it took about two minutes to produce his wallet (T. 14-17, 26).

Pierre-Louis testified that he was then pulled out of his car by his neck. He stated he was pulled to the floor, and his face was dragged. He then felt a knee on his back. To his

recollection, Police Officer Noel, Respondent, and a third officer aided in removing him from the car (T. 18-19). Pierre-Louis stated he was pulled up and then felt a forearm on his throat, choking him and pulling him backward while having his arms pulled outward simultaneously (T. 19, 21). Pierre-Louis identified Respondent as the officer whose forearm was on his throat (*Id.*). He alleged that Respondent's arm was around his neck for at least five seconds (T. 55). He claimed that he was trying to allow the police officers to handcuff him and complied with their directions to place his hands behind his back (T. 46-47).

Pierre-Louis admitted he was moving his feet forward as Respondent placed his arm on him (T. 49). He conceded that he did not pass out from the alleged constriction, nor were there any marks on his neck (T. 50, 63). Pierre-Louis also acknowledged not seeking medical attention at the scene (T. 40, 63).

Credibility

I credit Respondent's testimony as forthright, concise, and logical. Even though Respondent is interested in the outcome of this disciplinary hearing, any concern about the effect of this interest on his veracity was alleviated by the corroborative result of the video. While the video evidence was not dispositive on the issue of whether Respondent used a chokehold, his explanation for his actions captured on the video was plausible under the totality of the circumstances. Respondent's willingness to admit to using force during the encounter, an admission against interest, further enhanced his credibility.

In contrast, Pierre-Louis' statement was disjointed, self-serving, and embellished. First, some of his factual assertions during his trial testimony were not supported by the video evidence; in other cases, the video evidence made his factual claims less plausible. For instance, his assertion that the police dragged his face across the ground after being removed from his

vehicle was unsupported by the video evidence. His claims that he could not breathe due to Respondent's forearm on his throat appeared to be undercut by the portions of the video showing Pierre-Louis yelling several times loudly at the same time Respondent allegedly used unlawful force. While Pierre-Louis' ability to speak does not mean that Respondent could not have used a prohibited chokehold, it is less likely that Pierre-Louis' breathing was obstructed.

Pierre-Louis stated he did not resist and was actually trying to help the officers place his hands behind his back. His assertion that he was not resisting is undermined by his testimony that he was moving away from officers. The video showed him flailing his arms and yelling, "Get off me, son."

Based upon all the surrounding circumstances, I find Pierre-Louis an unreliable narrator of the events.

Specification 1: Use of a Chokehold

I find that CCRB has failed to meet their burden of proof by a preponderance of the credible, relevant evidence that Respondent used a chokehold.

Patrol Guide procedure 221-01 states, "Members of the service **SHALL NOT** ... use a chokehold" (emphasis in original). It defines a chokehold as follows: "A chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which *may* prevent or hinder breathing or reduce intake of air" (emphasis added) (P.G. § 221-01).

This Tribunal must determine, therefore, whether Respondent's arm made contact with Pierre-Louis' throat or windpipe in a manner that may have prevented or hindered his breathing. A close review of the footage entered into evidence does not establish that Respondent used a chokehold against Pierre-Louis. The hold that Respondent admitted to using on Pierre-Louis is seen for approximately five seconds. Respondent admitted to using his forearm across Pierre-

Louis' collarbone to prevent Pierre-Louis from pulling free (CCRB Ex. 1 at 00:45-00:50). The portion of the video corresponding with the still photo image (CCRB Ex. 2) shows Respondent's arm across Pierre-Louis' upper torso area with his right fist on Pierre-Louis' left shoulder. I note that Respondent's forearm appears below Pierre-Louis' chin.

While Pierre-Louis testified that Respondent's arm did make contact with his neck, I have found that he is an unreliable narrator of the event, as discussed above.

Having reviewed the video and still photo carefully, this Tribunal cannot reasonably conclude that the hold depicted made contact with the neck or throat area in a manner that may have restricted Pierre-Louis' breathing or reduced air intake.

Based upon the foregoing, I find Respondent Not Guilty of Specification 1.

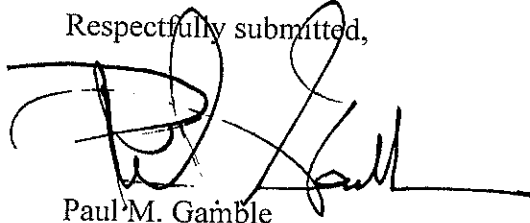
Specification 2: Obstruction of Breathing

I find that CCRB has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent obstructed Pierre-Louis' breathing.

While Pierre-Louis testified that Respondent's right arm prevented him from breathing, the other evidence, in this case, does not support that assertion. He did not assert at the time of the incident that he could not breathe at the scene and did not seek medical attention. There is no forensic evidence, such as bruising or swelling, from which the Tribunal may infer circumstantially that Respondent applied pressure to Pierre-Louis' throat, as he alleged. Finally, the video of the incident, taken by one of Pierre-Louis' associates, does not support Pierre-Louis' claim that Respondent used his right arm so that his breathing was obstructed.


Accordingly, I find Respondent Not Guilty of Specification 2.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble', written over a horizontal line.

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

AUG 14 2023

EDWARD A. CABAN
POLICE COMMISSIONER