



POLICE DEPARTMENT

August 4, 2022

-----X
In the Matter of the Charges and Specifications :

- against - :

Sergeant Michael Hansson :

Tax Registry No. 949084 :

Warrant Section :

Case No.

2021-23756

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

John D'Alessandro, Esq.
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To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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SERGEANT MICHAEL HANSSON**CHARGES AND SPECIFICATIONS**

1. Sergeant Michael Hansson, on or about July 20, 2019, at approximately 2002 hours, while assigned to the 75th Precinct and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that he used a chokehold against Complainant.

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

FORCE GUIDELINES
(eff. 6/1/17)

P.G. 221-02, Page 2, Prohibitions 11-12

USE OF FORCE
(eff. 10/18/16)

2. Sergeant Michael Hansson, on or about July 20, 2019, at approximately 2002 hours, while assigned to the 75th Precinct and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that he restricted Complainant's breathing without police necessity.

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

FORCE GUIDELINES
(eff. 6/1/17)

P.G. 221-02, Page 2, Prohibitions 11-12

USE OF FORCE
(eff. 10/18/16)

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 17, 2022.

Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The CCRB presented Complainant's hearsay statement and video footage of the incident obtained from Body-Worn Cameras. Respondent called Police Officer Sean Keegan as a witness and 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 evidence in this matter, I find Respondent Not Guilty of the charged misconduct.

ANALYSIS

1. Undisputed Facts

This case involves an allegation of the use of a prohibited chokehold during a police-citizen encounter on July 20, 2019. Also at issue is whether Respondent restricted Complainant's breathing without police necessity.

It is undisputed that on July 20, 2019, at approximately 2002 hours, Respondent was patrolling in an unmarked vehicle as part of the 75th Precinct Anti-Crime Unit with Police Officers Sean Keegan and Joseph Reyes. Keegan observed Complainant on the sidewalk in front of [REDACTED] smoking what appeared to be a marijuana cigar.¹ The officers, who were in plainclothes, exited their vehicle and confronted Complainant with Keegan's observation. As Keegan conducted a frisk of Complainant's person, a physical altercation ensued between the officers and Complainant. Each police officer was equipped with a Body-Worn Camera during the encounter (Dept. Ex. 2 [Respondent]; Dept. Ex. 3 [Keegan]; Dept. Ex. 4 [Reyes]).

2. Video Evidence

Police Officer Reyes' Body-Worn Camera recorded the following events:

- 00:00-00:30: Reyes is seated in the driver's seat of the patrol vehicle, and he exits and follows Respondent, wearing a green shirt, to the sidewalk. There is no audio for the first thirty seconds.
- 00:31-00:34: Keegan, wearing a black shirt, holds Complainant's right arm as Complainant has both arms outstretched to the side. Complainant says to Keegan, "You told me to stand up." Complainant brings his arms down, and Keegan pushes them back up and puts Complainant against the fence; Complainant then says, "Stop moving me." Respondent is standing to Complainant's left.
- 00:35-00:55: Complainant pushes back against Keegan while saying, "Chill, chill, chill out." Respondent appears to try to grab Complainant's arm. A struggle ensues between the officers and Complainant; Reyes' BWC seems to fall

¹ At the time of this incident, possession of a burning marijuana cigarette in open view was illegal in New York.

SERGEANT MICHAEL HANSSON

off his chest to the ground; from that position, only unidentified feet are visible, apparently kicking at each other. A woman is shouting Complainant's name, and an officer says, "Back the fuck up."

00:56-00:57: An officer's shield and a Body-Worn Camera fall to the ground.

00:58-01:04: The sound of the altercation continues, but there are no visual images of it.

01:05: Complainant is facing Reyes, and Respondent is facing Complainant's left side. Respondent's chest is pressed against Complainant's left side and left bicep. Respondent's left arm is across Complainant's upper body, beneath his chin, with both hands near Complainant's right shoulder. There does not appear to be any discernable pressure on Complainant's neck or throat. Respondent's left elbow is pointed downward and pressed against Complainant's chest. Respondent has tucked his head to the right, behind Complainant's head and shoulder. Complainant's right arm is free to move while his left arm is caught between his side and Respondent's chest.

01:06- 01:18: Reyes moves closer, and only a fence is visible. It appears that Respondent, Complainant, and Reyes all fall over to the ground.

(Dept. Ex. 4).

Police Officer Keegan's Body-Worn Camera recorded the following events:

00:00-00:30: Keegan is seated in the front passenger seat of the patrol vehicle. He exits the car and approaches Complainant. There is no audio for the first thirty seconds.

00:30-00:43: Keegan says, "It's just bud on you, that's it? Just stand up real quick; you're not under arrest or anything." Complainant stands up. Keegan says, "Relax," and Complainant says, "I am relaxed; you told me to stand up." Keegan then says, "Stop, stop. Your heart's beating," and he moves Complainant back against the fence. Complainant then says, "Yo, chill out."

00:44-01:04: Complainant pushes Keegan away while saying, "Chill out, bro." Keegan says, "Stop pushing," and grabs at Complainant's arm while saying, "Relax." Complainant continues to resist the officers, and an altercation begins.

01:05- 01:20: Reyes is in a grey t-shirt, and Respondent is in a green t-shirt. Both officers are trying to grab Complainant. Keegan begins shouting, "What's the address?"

SERGEANT MICHAEL HANSSON

- 01:21-01:33: A woman in a striped shirt runs over to where Reyes, Complainant, and Respondent fell, yelling, "Record it, record it." Respondent and Complainant go to the ground, with Complainant on top of Respondent, while Reyes is on top of Complainant. Keegan radios for an additional unit to that location.
- 01:34-02:01: Reyes is observed wrapping his arms around Complainant's waist from behind. Keegan announces the address over the radio. Keegan begins telling the crowd that is forming to back up.
- 02:02-02:08: Respondent is kneeling next to Reyes and Complainant. Reyes is still on top of Complainant. An unidentified person says, "Lay flat," and Complainant responds, "You still attacking me!"
- 02:09-2:29: The recording captures the sounds of another apparent struggle occurring out of view of the camera. Keegan states, "Give me your fucking hands," and holds Complainant's arm down. Respondent is attempting to handcuff Complainant. Keegan steps back and tells the crowd to back up. Keegan states, "He punched me in my fucking face."
- 02:30-3:13: Keegan continues to tell the people to back up. An unidentified person yells, "He can't breathe; he has asthma." Keegan walks back toward Complainant, who is still on the ground with Reyes on top of him; Respondent is standing next to Complainant. An unidentified person states, "Stop trying to get up." Keegan yells at the crowd, "Back the fuck up," repeatedly.
- 03:14-03:27: Keegan asks Reyes, "Did you fucking toss him? His heart's beating out of his chest; that's why he fucking swung at me." Keegan then states, "Watch those bushes," as Respondent walks along the fence with the bushes. Uniformed officers have now arrived at the location.
- 03:28-03:39: Keegan bends down and says to Complainant, "You punch a cop in the face?" and Complainant responds, "You punched me in my face." Reyes is still sitting on top of Complainant. Complainant is on the ground with his head turned toward Keegan; there appears to be blood on the sidewalk near his mouth. Complainant says, "Yo, I can't breathe." Reyes appears to move to get off Complainant.
- 03:40-04:15: Complainant is turned onto his back by the officers; as his hands come into view, it is apparent that he has been handcuffed from the front. Complainant repeats that he cannot breathe. Complainant says, "I have no warrants, but I have a HIPAA clause." Keegan informs Complainant that he is under arrest for punching a cop in the face, and Complainant starts to

SERGEANT MICHAEL HANSSON

yell, “You punched me in my face. You asked me to stand up, and then you punched me in my face.”

(Dept. Ex. 3).

3. *Respondent's Testimony*

Respondent admitted that he used physical force during the struggle to gain compliance from Complainant, but denied using a chokehold or applying pressure to Complainant's throat at any point. Respondent and his partners were patrolling in the area of [REDACTED] in Kings County in an unmarked vehicle when he heard Keegan say he observed someone smoking marijuana cigarettes (T. 62). He watched as Keegan approached Complainant and spoke with him, then heard him ask Complainant to stand up. Respondent, at that time, suspected Complainant might have possessed a firearm “based on how fast he moved and his eyes were bugging out, him getting rid of the marijuana cigarette” (T. 63).

He observed Complainant put his hands up and then “suddenly lunge down towards his waistband,” which is where Respondent suspected the firearm might have been located (*Id.*). Respondent testified he reached in to grab one of Complainant's hands. Still, Complainant, who was “very sweaty,” pulled out of Respondent's grasp and then punched him in the face, causing his glasses to fly across the sidewalk (T. 64). Respondent testified that he hit Complainant back and kept trying to grab his hands. At the same time, Complainant kept “pulling his arms away, desperately trying to get to his waistband” (*Id.*).

After being punched several times by Complainant, Respondent testified he grabbed him on his shoulder “in the area where it meets his trap,² by the base of his neck.” He explained that he squeezed Complainant's torso with his elbows in an attempt to pin his arms and prevent

² The Tribunal will take judicial notice that “trap,” as used in this context, is an abbreviated version of “trapezius,” referring to a muscle that connects the shoulder, back, and neck.

SERGEANT MICHAEL HANSSON

Complainant from hitting him; he then tucked his head behind Complainant's shoulder blades (T. 65). Respondent explained that this maneuver was a "clinch," which he learned during his Police Academy training. He was taught that it is a defensive maneuver to prevent yourself from being punched by controlling the suspect's arms and body (T. 66, 78).

At trial, Respondent demonstrated the maneuver he performed on Complainant using a volunteer (T. 68). On cross-examination, Respondent conceded that while he controlled Complainant's left arm in the "clinch," the hold did not restrain Complainant's right arm. Respondent explained further that while his arm was under Complainant's chin, he never put his forearm against Complainant's neck and did not squeeze his neck. Respondent conceded that, upon review of the Body-Worn Camera footage, his arm might have touched Complainant's throat. Still, he asserted that he did not have an independent recollection of that happening (T. 79-82).

Respondent recounted that Complainant was still trying to hit him as Respondent held him in a clinch and that his shield and Body-Worn Camera were knocked to the ground. Complainant then pushed into Respondent, causing him to lose his balance, and they both fell to the ground, with Complainant on top of Respondent, still struggling to try to hit Respondent (T. 81-82). Respondent explained that at this point, "Complainant pressed his torso up against my torso. His face was where my face was, facing me. His hands were in between our bodies, and mine was in between our bodies. And my legs were like feet out from underneath him" (T. 86).

Respondent testified that he feared for his life, as he had Complainant on top of him and still suspected that he had a firearm on his person. Respondent stated that once he was able to get out from beneath Complainant, Reyes, who was on top of Complainant, was able to handcuff him (T. 66).

4. Keegan's Testimony

Keegan testified that after he asked Respondent to stand up, he observed Complainant bring his hands back to his waistband; Keegan took protective measures because of Complainant's "nervous demeanor" and "quick, sudden movements when he was concealing the marijuana cigar." Complainant's movements, as described above, led him to suspect Complainant may have possessed a weapon (T. 34).

Keegan was trying to gain control of Complainant's arms when Complainant punched him in the face two or three times. A physical altercation ensued between the three officers and Complainant; during this altercation, Keegan observed that Respondent was punched "at least once, with glasses knocked off his face" (T. 35). He described Complainant as "very, very, very sweaty" and a "very muscular individual," making it difficult to gain complete physical control of him (T. 56-57). Keegan testified that he and the other police officers were trying to regain control of his hands because they feared he would go back to his waistband area and retrieve a weapon (T. 35-36). Keegan denied seeing the alleged chokehold occur (T. 43-45).

5. Complainant's Statement

Complainant did not appear before this Tribunal. CCRB submitted into evidence a hearsay statement from Complainant, which CCRB obtained during a January 10, 2020 interview (CCRB Exs. 1 & 1A).

During the interview, Complainant stated that he stepped away from a party in his front yard with his family to smoke marijuana on the sidewalk (CCRB Ex. 1A, p. 3, lns. 24-25; p. 14, lns. 14-16; 41, lns. 23-25). Complainant explained that he was wearing a tank top and shorts as it was hot that day, and he was on the grill (*Id.* at 42, lns. 13-21). He observed a vehicle driving down the street slowly and surmised it was the police. Complainant stated that when the officers

SERGEANT MICHAEL HANSSON

approached to search him, he was compliant with their directives as they were “grabbing [him] up,” even though they were telling him to stop resisting (*Id.* at 7, Ins. 17-24). He stated that one of the officers punched him in the face, and then the physical altercation began (*Id.* at 8, Ins. 4-5). Complainant described the altercation as a fight: he admitted to intending to grab, choke and head-butt one of the police officers (*Id.* at 9, Ins. 21-23). He further admitted to using his elbows and knees to strike the police officers (*Id.* at 84, Ins. 11-15).

Complainant told investigators that there were about eight people outside when the fight started, but the crowd began to grow (*Id.* at 30, Ins. 4-6). He stated that he fought two officers to the ground and was “dropped by the green shirt³ and two police officers fell with [him] to the ground” (*Id.* at 68, Ins. 18-20). He told investigators that the “green shirt guy” was “catching elbows and knees,” which is why “green shirt” grabbed his leg. He stated that he kneed “green shirt guy,” and then “green shirt guy” “just kept me in the air and I was on one leg” (*Id.* at 84, Ins. 11-15). Complainant then stated, “Homie . . . in the black shirt, right? He tried to put me in a chokehold from the back and trying to put me in a hold choke on the left – in, in, in my – by my neck. But then w[ou]nd up poking me in my eye” (*Id.* at 84, Ins. 19-21; 85, Ins. 9-11).

The investigators began to ask more focused questions about the chokehold itself:

Investigator 1: And so, just the chokehold itself. So, like the front part of your neck, I don't know, whatever this is called. Like, what part of –

Investigator 2: Adam's apple.

Investigator 1: What that would have been like, you know, if you press that, and it kind of hurt. Like what part of his arm was on that? Was it like his elbow? Was it his --?

Complainant: Like his bicep.

Investigator 1: His bicep, okay.

³ It is undisputed that Respondent was the police officer in the green shirt.

SERGEANT MICHAEL HANSSON

Complainant: Yeah, his bicep. He was up under my arm. You feel me?
He was up –

Investigator 1: Yeah. So, close to –

Complainant: Yeah.

Investigator 1: And was he – did you feel him tightening?

Complainant: Because they was all up on me.

Investigator 1: Yeah.

Complainant: It was right there. They was all up on me. His, his shoulder blade was in my ear. Like, you feel me?

(*Id.* at 91, Ins. 15-25; 92, Ins. 2-12)

Complainant stated that the chokehold felt like “muscle and strength” and that it “constricted [his] airways” (*Id.* at 93, Ins. 2, 15). He told the investigators, “I couldn't breathe like not as much as when you when you don't got an arm choking you around your neck ... But I couldn't, but I still, but a lot of it was up-tempo ... And my adrenaline was probably quicker or higher than what it was” (*Id.* at 93, Ins. 20-25; 94, Ins. 4-5).

Complainant further explained that he fell on one of the officers and he was “pushing, and ... used [the officer's] body to brace [his] body from hurting [himself]” (*Id.* at 68, Ins. 21-23). He also told investigators his hand was at the officer's collar, and he was going to head-butt him (*Id.* at 68, Ins. 24-25).

Complainant stated that after he was handcuffed, he was brought back to the 75th Precinct for arrest processing. According to Complainant, the police later took him to Brookdale Hospital for treatment of a contusion on his right temple; a black eye; a cut to his left eye, which received butterfly stitches; and markings on his left and right wrists from the handcuffs (*Id.* at

SERGEANT MICHAEL HANSSON

143-44). No medical records were entered into evidence. The criminal case against Complainant is sealed (T. 22).

6. 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 Body-Worn Camera videos and Police Officer Keegan's testimony. While the video evidence was not entirely dispositive on the issue of whether Respondent used a chokehold, his explanation for his actions captured on the video, which were characterized as a chokehold, was plausible under the totality of the circumstances. Respondent's willingness to admit to using force during the encounter, which runs counter to his interest, further enhanced his credibility.

I also credit Police Officer Keegan's testimony as candid and logical. While Keegan was a member of Respondent's team that day, he is a disinterested witness in this matter whose testimony was consistent with the most compelling independent evidence in the case, the Body-Worn Camera videos. I could not discern any bias in favor of Respondent in Keegan's recounting of the material aspects of the encounter with Complainant.

In contrast, Complainant's hearsay statement was disjointed, self-serving, and embellished. His assertion that the police struck him first during the encounter was unsupported by the video evidence in the case. His claims that he felt force ("muscle and strength") against his neck and that force restricted his breathing are similarly unsupported by any independent evidence. Finally, he identified the police officer in the black shirt, as the individual who attempted to place him an alleged chokehold, when it is clear that the only person recorded

SERGEANT MICHAEL HANSSON

performing a maneuver, which could fairly raise the question of whether a chokehold was employed, was Respondent, who was wearing a green shirt.

While he admitted to fighting with the police officers and being prepared to use even greater force than the video recordings document, his statement repeatedly expressed his displeasure at the police officers for conducting an enforcement action in the presence of children and older family members. His assertion that he merely minded his business smoking marijuana in front of his home suggests that he believed the police were outside their authority in approaching him and that he was justified in resisting them. These assertions, taken together, suggest anti-police bias, which arguably provides an incentive to color his description of the encounter.

While the Complainant's bias is not insurmountable, the inability of Respondent's counsel to confront his recall of the encounter under oath increases the negative impact of the bias on Complainant's veracity. Based upon all the surrounding circumstances, I find Complainant to be an unreliable narrator of the events.

*Specification 1: Use of a Chokehold**Specification 2: Restricting Breathing without Police Necessity*

Respondent is charged with using a chokehold against Complainant. The Patrol Guide 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 Complainant's throat or windpipe in a manner that may have prevented or hindered his breathing.

SERGEANT MICHAEL HANSSON

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 and restricted Complainant's breathing as defined by P.G. § 221-01.

A close review of the Body-Worn Camera footage entered into evidence does not establish that Respondent used a chokehold against Complainant. The hold that Respondent admitted to using on Complainant is seen for approximately one second in Reyes' Body-Worn Camera footage (CCRB Ex. 4A at 0:00-0:01). The video and corresponding still photos (CCRB Ex. 5) show Respondent's arm pressed against Complainant's left side and his left bicep with his left arm draped over and across Complainant's upper body, with both hands near Complainant's right shoulder. Respondent described this as a "clinch hold" he was trained to employ in the Police Academy (T. 45-47, 50-51, 53, 66, 67, 70, 77-80). I note that while a portion of Respondent's left forearm, near his wrist, appears to be situated beneath Complainant's chin, Respondent's elbow is pointed downward and is pressed against Complainant's chest. Furthermore, Respondent's forearm does not appear to press against Complainant's throat or his neck.

Having reviewed the video and still shot 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 Complainant's breathing or reduced air intake, thereby constituting a chokehold. As such, the video and still frame photo cannot be relied on to support a conclusion that Respondent more likely than not employed a prohibited chokehold.

What the Body-Worn Camera footage does clearly depict is the increasingly chaotic nature of the situation: it shows Complainant struggling violently against Respondent and the other police officers as they tried to search him with bystanders becoming increasingly upset and

SERGEANT MICHAEL HANSSON

agitated (CCRB Ex. 4). I note that both Respondent and Keegan described Complainant as being “very sweaty,” which only made their attempts to gain control more challenging. Their description of Complainant is corroborated by the Body-Worn Camera footage, on which Complainant’s forehead, chest, and arms seem to bear a sheen of sweat.

While Complainant did make an out-of-court statement alleging that Respondent placed him in a “strong chokehold that fuck[ed] my shit up” and asserted, “I couldn’t breathe, like, not as much as when you don’t got an arm choking you around your neck,” I do not find his hearsay statements credible. As discussed above in the credibility analysis, Complainant misidentifies Respondent as the officer wearing a black shirt, where the videos clearly show him wearing a green shirt.

Upon further review of the Body-Worn Camera footage, the first time Complainant says, “I can’t breathe,” is while he is lying face down on the sidewalk and Reyes straddling him, attempting to gain physical control of his hands. Keegan helped to turn Complainant over to change the position of his hands as Complainant was handcuffed from the front (CCRB Ex. 3 at 03:35-03:45).

There is no indication that Complainant’s breathing was restricted when Respondent placed him in a self-described “clinch,” nor at any other point during the altercation, other than when Complainant is on the sidewalk. Complainant received medical treatment at Brookdale Hospital, where he was treated for a cut near his left eye. There is no forensic evidence that would suggest that Respondent, or any other officer, applied pressure to Complainant’s throat, as he alleged.

In sum, while the video establishes that an extended scuffle ensued between Complainant and the officers, it does not lend credence to Complainant’s out-of-court statement that

SERGEANT MICHAEL HANSSON

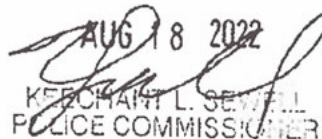
Respondent employed a chokehold against him. Accordingly, I find that the record is devoid of credible evidence that corroborates Complainant's hearsay statement that Respondent used a prohibited chokehold. Additionally, having found that Respondent did not employ a chokehold, there is similarly no evidence to establish that Respondent restricted Complainant's breathing. Accordingly, I find Respondent Not Guilty of Specifications 1 and 2.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

AUG 18 2022

KERCHANT L. SEWELL
POLICE COMMISSIONER