



POLICE DEPARTMENT CITY OF NEW YORK

March 9, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Javier Valentin
Tax Registry No. 924576
49 Detective Squad
Disciplinary Case No. 2015-12960

Sergeant Davon Alston
Tax Registry No. 938326
Patrol Borough Bronx
Disciplinary Case No. 2015-12969

Sergeant Keith Laliberte
Tax Registry No. 920488
107 Precinct
Disciplinary Case No. 2015-12962

Police Officer Charles Gove
Tax Registry No. 939968
47 Precinct
Disciplinary Case No. 2015-12971

Police Officer Matthew Manchester
Tax Registry No. 951959
44 Precinct
Disciplinary Case No. 2015-12966

Charges and Specifications:

Disciplinary Case No. 2015-12960

1. Said Lieutenant Javier Valentin, on or about August 14, 2013, at 2215 hours, while assigned to the 47th Precinct, and on duty in the vicinity of the [REDACTED] [REDACTED], Bronx County engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he participated in the arrest of Javarre Brown aka Jamar Brown without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT- PROHIBITED CONDUCT

LIEUTENANT JAVIER VALENTIN
SERGEANT DAVON ALSTON
SERGEANT KEITH LALIBERTE
POLICE OFFICER CHARLES GOVE
POLICE OFFICER MATTHEW MANCHESTER

2

Disciplinary Case No. 2015-12969

1. Said Sergeant Davon Alston, on or about August 14, 2013, at approximately 2215 hours, while assigned to Patrol Boro Bronx and on duty, in the vicinity of [REDACTED], Bronx County, abused his authority in that he arrested Javarre Brown aka Jamar Brown without having the requisite legal authority to do so.
P.G. 208-01, Page 1, Paragraph 3 - ARRESTS - LAW OF ARREST

Disciplinary Case No. 2015-12962

1. Said Sergeant Keith Laliberte, on or about August 14, 2013, at 2215 hours, while assigned to the PBBX, and on duty in the vicinity of the [REDACTED] Bronx County engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he participated in the arrest of Rajief Raglan without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5- PUBLIC CONTACT- PROHIBITED CONDUCT

2. Said Sergeant Keith Laliberte, on or about August 14, 2013, at 2215 hours, while assigned to the PBBX, and on duty in the vicinity of the [REDACTED], Bronx County engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he participated in the arrest of Terryann Peters without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5- PUBLIC CONTACT- PROHIBITED CONDUCT

Disciplinary Case No. 2015-12971

1. Said Police Officer Charles Gove, on or about August 14, 2013, at approximately 2215 hours, while assigned to the 47th Precinct and on duty in the vicinity of [REDACTED], Bronx County, wrongfully used force in that he used a chokehold against Rajief Raglan.

P.G. 203-11 - USE OF FORCE

Disciplinary Case No. 2015-12966

1. Said Police Officer Matthew Manchester, on or about August 14, 2013, at approximately 2215 hours, while assigned to the 44th Precinct and on duty in the vicinity of [REDACTED] Bronx County, wrongfully used force in that he yanked Terryann Peter's head down by pulling her hair.

P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Suzanne O'Hare, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

LIEUTENANT JAVIER VALENTIN
SERGEANT DAVON ALSTON
SERGEANT KEITH LALIBERTE
POLICE OFFICER CHARLES GOVE
POLICE OFFICER MATTHEW MANCHESTER

3

For the Respondents: Michael LaCondi, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, New York 10279

John D'Alessandro, Esq.
The Quinn Law Firm
Crosswest Officer Center
399 Knollwood Road-Suite 220
White Plains, NY 10603

Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038

Hearing Dates:
November 5, 6 and December 4, 2015

Decision:
Respondents Valentin, Alston, and Laliberte are found Guilty.
Respondents Gove and Manchester are found Not Guilty.

Trial Commissioner:
ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 5, 6 and December 4, 2015. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. CCRB-APU called Tanesha Mackenzie, Vermalee Raglan, Javarre Brown, Rajief Raglan, and TerryAnn Peters as witnesses. Respondent called Deputy Inspector Timothy McCormack as a witness and Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

FINDINGS AND ANALYSIS

It is undisputed that on August 14, 2013, at approximately 10 PM, a candlelight vigil was being held in front of an apartment building at [REDACTED] in the Bronx. The vigil, which was being held for someone who had been murdered, had been going on for a few days. The police had information that the murder victim was a gang member and they had been monitoring the situation.

On this evening there were numerous people on the street in the area of the vigil, including family members Vermalee Raglan (mother), Tanisha McKenzie (daughter), Rajief Raglan (son), TerryAnn Peters (daughter), and Javarre Brown, (referred to as a cousin). The police arrested Ms. Peter's boyfriend, Person A for a charge pertaining to placing graffiti on a mailbox near the candlelight vigil. Ms. Peters, and others, gathered around the area where the police were placing her boyfriend under arrest. Some of the people in the crowd were upset that Person A was being arrested and were yelling at the police. Ms. Peters took a crutch she was using and struck the mailbox with it. Numerous police were now on the scene and they began to order everyone off the street.

At some point after the order to disperse was given, while Ms. Peters, Mr. Raglan, and Mr. Brown were in the lobby area of their building, [REDACTED], and were arrested. The charge for each of them was listed as Unlawful Assembly in the Precinct Command Log entries. (Resp. Ex. A).

There were cameras in the vicinity of the building and video clips of actions which took place both outside and inside the lobby areas of [REDACTED] from that evening were obtained and admitted into evidence. (CCRB Ex. 1).

The charges in this case are that Lieutenant Valentin, Sergeant Alston, and Sergeant Laliberte improperly arrested or assisted in the arrest of Mr. Raglan and Mr. Brown; that Police Officer Gove improperly used a chokehold on Mr. Raglan; and that Police Officer Manchester used unnecessary force on Ms. Peters when he pulled her hair.

The witnesses who testified for CCRB, Ms. Raglan, Mr. Raglan, Ms. Peters, Ms. McKenzie, and Mr. Brown essentially testified in a similar manner as to the events that occurred outside the building that night. They acknowledged that while they initially did not respond to the Officers' instructions to disperse, they in fact were dispersing and were in the lobby of their building when the police arrested Mr. Raglan, Ms. McKenzie, and Mr. Brown. (Tr. 34, 58, 64, 73, 77, 79, 88-89, 143, 151-53, 209-210, 238-39, 251-52).

The CCRB witnesses testified as to what happened inside the building from their varying vantage points. Ms. McKenzie stated that she was entering the second door inside the lobby and she saw her brother, Mr. Raglan, in front of her and her sister, Ms. Peters, on the way up the first interior lobby steps behind her. (Tr. 34). She also saw Mr. Brown inside the building. (Tr. 35). She testified that a female officer shouted at Ms. Peters to hurry up inside and called her a bitch. (Tr. 35). In response, Mr. Raglan told the police officer not to call his sister a bitch. (Tr. 36, 65). Ms. McKenzie stated that next, "pretty much the entire precinct" rushed inside, almost knocked her over and rushed towards Mr. Raglan. She further testified that Ms. Peters was on the top step entering the

lobby at that time when 15 or 20 officers "burn rushed" Ms. Peters and pulled her back outside the building. (Tr. 36). At trial, she testified that she could not see exactly what Ms. Peters was doing, but remembers telling CCRB in her interview that Ms. Peters was wriggling around because she was trying to get away from the police. (Tr. 66-67). She stated that the officers jumped on her brother, Mr. Raglan, "pushed him in the door, pushed him in the wall, had him on the floor and had their knees on his body and all over." (Tr. 36). Ms. McKenzie tried to push the police off her brother. (Tr. 36). She testified that there were probably five or six officers around her brother and he was "refusing" and was "probably wiggling" to try to get away from them. (Tr. 67-68).

Ms. Raglan testified at trial that when she was in the lobby, she heard Mr. Raglan, who was inside the building at that time say, "why you calling my sister a bitch." She stated that the police were already with Ms. Peters and had her on the ground when Mr. Raglan said that. (Tr. 120-21). She saw police go straight up to Mr. Raglan and wrestle him to the ground. (Tr. 96, 118). She further stated the police handcuffed Mr. Raglan and tried to lift him off the ground by his hoodie. (Tr. 99). She did not remember seeing Ms. McKenzie trying to stop the police from arresting Mr. Raglan. (Tr. 118). She also testified that she saw "a lot" of police around Ms. Peters. (Tr. 97).

At trial, Mr. Brown also gave his account of what took place in the lobby area. He testified that as he was walking up the lobby stairs, "a whole bunch of police just start flying in." Right before this he heard a female officer telling Ms. Peters, "something about hurry up, hurry up, bitch" and Mr. Raglan responding by saying, "don't call my sister no bitch, you bitch." (Tr. 176). The police stopped Mr. Brown in a corner on top of

the stairs. (Tr. 136-37). He further stated that an officer he identified in court as Respondent Gove put his hands on him first and Respondent Valentin approached and said, "Get him the fuck out of here." (Tr. 140). When asked on cross-examination to view the video of the lobby area, Mr. Brown could not locate a segment of video which showed that Respondent Gove grabbed him around the neck and threw him against the wall as he had previously told CCRB. (Tr. 153, 162-64). Mr. Brown stated that he was handcuffed and he saw five or six police "getting into a little altercation," with Mr. Raglan. He also testified that he saw Ms. Peters "get flung down the stairs." (Tr. 141). He described Ms. Peters as coming up the stairs when the police dragged her back down all the steps. (Tr. 142). Mr. Brown acknowledged during his testimony that he had been arrested "six, seven, eight times" for marijuana charges. (Tr. 146).

Mr. Raglan testified that he was fourteen years old at the time of the incident. (Tr. 186). As he was in the lobby that night, he heard a female cop telling his sister, who was entering the building, "Get the fuck upstairs, bitch." As he was going up the stairs, Mr. Raglan stated that he turned around and said, "Don't call my sister a bitch. " (Tr. 189-90). It was at that point, according to Mr. Raglan, that "a lot" of police came into the lobby area of the building. (Tr. 191). Mr. Raglan testified that the police came up to him while he was inside the second interior lobby of the building and "started grabbing me by my neck and choking me, pulling me by my hoodie, and they tossed me on the ground." (Tr. 194). He further described that someone he can't identify picked him up by the front of his hoodie and started dragging him (Tr. 196). He felt like he was being choked and he couldn't breathe for a second or two. (Tr. 196-97). On cross-examination, after viewing

the video, Mr. Raglan agreed that his sister, Ms. McKenzie, was also grabbing him as the officers were grabbing him. (Tr. 218).

Ms. Peters also testified about what happened inside the lobby that evening. She stated that as she was either approaching (Tr. 270) or entering the building, or as she was standing right at the front step inside the lobby, she heard a female officer tell her to go in the building and call her a bitch. (Tr. 243). Mr. Raglan then told the officer not to call his sister a bitch and that is when "the cops started running in the building in a quick second." (Tr. 244). Ms. Peters, who was holding a crutch at the time, remembers her hair was being pulled from the back and the police were holding her hands and neck and she was punched in her left eye. She could not see where Ms. McKenzie, Ms. Raglan, Mr. Raglan, or Mr. Brown were at this time. She was placed in handcuffs. (Tr. 245, 269). She was arrested and taken to the precinct. She did not complain to police then that she was hurt, but she went to the hospital herself after her release. (Tr. 264-65)(CCRB Ex. 6). Photos she took of her face and head after she was released from court on her arrest are in evidence. (CCRB 2, 3, 4, 5).

The Respondents all testified. They described the situation on the street that night as one of potential violence or gang retaliation since the vigil was being held for a gang member and also because a gun had been recovered from an area near the vigil earlier that day. (Tr. 296, 329-30, 368, 370, 372, 393). They also testified that the crowd was given orders to disperse, but that not all of them did so. (Tr. 297-98, 345, 373-74, 396-98). Deputy Inspector (captain at the time) McCormack also testified that he arrived at the scene that night, identified himself to the crowd, and stated to the crowd that they

must disperse. (Tr. 415). He noted that some people dispersed but not everyone did so. (Tr. 415-16).

Each Respondent also testified as to their individual actions that evening. Respondent Valentin remembers that an individual he describes as an "instigator" and the main agitator, was the first person to be arrested that night. He was arrested in front of the building. (Tr. 297, 307, 324). He also arrested a female outside the building. (Tr. 297). Some of the crowd started leaving at this time but there were still some people outside yelling. (Tr. 297). Ms. Peters walked around him going into the building. (Tr. 299). Respondent Valentin stated that he then saw units going into the building and he followed.

Once inside the building, Respondent Valentin grabbed Mr. Brown, put him up against the wall and assisted in his arrest. He next went over to the officers who were arresting Mr. Raglan in the lobby. (Tr. 299-300). He testified that he didn't specifically observe Mr. Brown do anything and can't recall seeing him outside the building. (Tr. 300-01, 313). He also doesn't remember being informed anything about Mr. Brown, but stated that since he was just there he was subject to arrest. When someone made the conscious decision to arrest him, Respondent Valentin assisted in that arrest. (Tr. 300-01). He does not know who made the conscious decision as to who to arrest. (Tr. 310). Respondent Valentin also couldn't state what exactly he arrested Mr. Brown for but testified that the probable cause to arrest Mr. Brown was that he refused to leave after being given lawful orders to leave the area. (Tr. 303, 308). He further testified that he believed that everyone on the street who did not disperse after the order to disperse was

given was subject to arrest and that the officers used discretion in arresting just some of them after they were inside the building. (Tr. 310, 312).

Respondent Alston responded to the scene that night after hearing a radio run from a female officer for a 10-85. (Tr. 330-31). At the time he arrived he saw officers attempting to disperse the crowd and groups and individuals going in many different directions on the street. (Tr. 331). At trial, he testified that the first officer he spoke to on the scene, Officer Culpepper, told him that there was a group of individuals that were refusing to leave and that when she was going to engage the crowd, they went inside the lobby, but that they weren't free to go there. (Tr. 332). He further testified that he, "saw the individual she was talking about. Now she said there were several individuals," so he waited for more officers before entering the building. (Tr. 332). Respondent Alston stated that he went up the stairs inside the building and placed Mr. Brown in handcuffs. (Tr. 332).

On cross-examination, Respondent Alston acknowledged that at his CCRB interview on July 9, 2014, he didn't remember going into the building at all. (Tr. 338). He also said during his CCRB interview that he couldn't reconcile why Mr. Brown was arrested for failing to disperse inside the lobby of the building, but surmised that maybe he was failing to disperse outside and then went inside. (Tr. 340, 342). He testified that he remembered the events better now than when he was interviewed by CCRB because he prepared for the trial testimony by seeing the videotape which jogged his memory. (Tr. 334). He did have his relevant memo book entries with him at the time of the CCRB interview and was also shown still photos taken from the video at that time. At the CCRB

interview he couldn't identify himself in the photos until after he conferred with his attorney. (Tr. 337, 338).

Respondent Laliberte testified that he participated in the arrests of Ms. Peters and Mr. Raglan. He stated that he made the decision to arrest them and they were arrested because Ms. Peters was swinging her crutch at police officers and they were cursing and screaming and refusing to leave the street area. (Tr. 346). He acknowledged that the video shows Ms. Peters swinging her crutch at the mailbox and then shows a female officer taking the crutch away. Ms. Peters was then placed against a wall where she was surrounded by officers. Respondent Laliberte further agreed that the video next showed that Ms. Peters had her crutch back as she walked right past him and headed into the vestibule of the building. He testified that he tried to arrest her but gave her plenty of time to disperse and gave her enough leeway to get out of the situation "where she didn't need to be arrested..." He agreed that after she had her crutch back she walked right past him and walked to the doorway exactly as he had ordered her to. (Tr. 354).

Respondent Laliberte testified that Mr. Raglan was arrested for unlawful assembly. (Tr. 349). When asked if he saw Mr. Raglan causing public alarm, he answered, "Yes, I saw many people causing public alarm, yes." (Tr. 355). He gave no specific examples. In his July 22, 2014, CCRB interview, Respondent Laliberte stated that he had no specific memory of specific people refusing to leave. (Tr. 348). He also stated in that interview that he had no recollection of why Mr. Raglan was arrested and he didn't recall why the people were charged with unlawful assembly. (Tr. 349, 357).

Respondent Gove testified that after having his recollection refreshed by watching the video from that evening, he went into the building that night because he saw his lieutenant going in that direction. (Tr. 376). Respondent Gove identified himself in the video inside the lobby area, and indicated that while he was arresting Mr. Raglan he had his hands on him. He stated that it appeared his right hand was on Mr. Raglan's upper back and his left hand was pushing away a female. (Tr. 377). At another point, he indicates his right hand was on the top of Mr. Raglan's back and his left hand looked like it was near his shoulder. (Tr. 386). He acknowledged that it looked like he was holding onto the back of Mr. Raglan's hoodie. (Tr. 389). He testified that he never put Mr. Raglan in a chokehold. (Tr. 379).

Respondent Manchester testified that he also ran into the building when he saw about fifty other officers run into the building. (Tr. 398). When he was on the stairs inside the building, he saw the officers were trying to arrest Ms. Peters. He was behind another police officer so he reached around that officer to try to help with the arrest. His stated that his hand went to the only available space which was Ms. Peter's head. He tried to push her head down, but couldn't keep his balance, and when he realized that pushing her head down wasn't going to help the arresting officers anymore, he took his hands back out and tried not to fall down the stairs. (Tr. 399, 403). He doesn't think he ever tightly grabbed her hair or yanked any of her hair out. (Tr. 400). He did acknowledge that in his interview with CCRB he said it looked like he was grabbing Ms. Peters' hair in the video. (Tr. 403).

Charges and Specifications Regarding Arrests

Respondents Valentin, Laliberte, and Alston are all charged with making improper arrests. Respondent Valentin specifically is charged with participating in the arrest of Javarre Brown without sufficient legal authority. Respondent Alston is charged with arresting Javarre Brown without having the requisite legal authority. Respondent Laliberte is charged with participating in the arrests of both Mr. Raglan and Ms. Peters without sufficient legal authority.

With regard to the arrest of Mr. Brown, there is video footage of the arrest. (CCRB Ex. 1, Video clip 6 from approximately 22:14:18 to 22:14:35). The video shows Respondent Alston is the first member of service to enter the second interior lobby where Mr. Brown is standing. Respondent Valentin is the second member of service to enter the area. After Respondent Alston enters and turns towards Mr. Brown he then appears to turn back and gesture towards the first interior lobby. It is Respondent Valentin who first directly confronts Mr. Brown. While there is no audio component to the video, it appears Mr. Brown is speaking to Respondent Valentin who is directly in front of him. Respondent Valentin then moves Mr. Brown into a corner and holds him while Respondent Alston then appears to handcuff Mr. Brown.

Respondent Valentin

Respondent Valentin has acknowledged that he was the highest ranking officer in the vestibule that evening. (Tr. 318). His position at trial was that "someone" he couldn't identify made the conscious decision to arrest Mr. Brown and he was just assisting in making that arrest. (Tr. 300, 310). He couldn't remember being informed by anyone

what Mr. Brown had done nor could he remember seeing Mr. Brown on the street that night. Respondent Valentin stated that his belief that Mr. Brown was a target for arrest was that, "I was following the officers that were entering the building." (Tr. 303).

Under Patrol Guide section 208-01, an arrest without a warrant may be made for a crime whether within the member's presence or not when reasonable cause exists that the arrested person committed the crime. In this case, Respondent Valentin, despite being the highest ranking officer at the scene of the arrest, could not articulate that he either had specific information from someone else that Mr. Brown had committed a crime nor could he articulate that he himself observed Mr. Brown commit a crime. While his position is that he merely assisted in Mr. Brown's arrest and that he was following other officers, the video does not support his testimony in that it shows that it is actually Respondent Valentin who first directly confronts Mr. Brown inside the second lobby. In any event, based on Respondent Valentin's own testimony, he did not have reasonable cause either from his own observations, or from information he received from anyone else, to arrest Mr. Brown. I therefore find him Guilty of participating in the arrest of Mr. Brown without sufficient legal authority.

Respondent Alston

While it is not completely clear, since he doesn't specifically link up the individual he says Officer Culpepper identifies to be Mr. Brown, Respondent Alston's trial testimony may be interpreted to indicate he arrested Mr. Brown based on Officer Culpepper's identification of him as someone who refused to leave the street area. (Tr. 332). Assuming this interpretation of his testimony, if indeed a fellow officer had

identified Mr. Brown as an individual who had committed a crime, Respondent Alston would have been able to rely on this information as his reasonable cause to make the arrest. I do not, however, credit Respondent Alston's testimony on this point.

When Respondent Alston was interviewed by CCRB, much closer in time to the incident than at the time of trial, despite having his memo book and despite being shown photos from the video, he could not remember going into the building at all. While it is understandable that sometimes memory can be jogged, and certain portions of events may in fact be recalled better at a date further from the incident, in this case Respondent Alston is going from a position of no memory of the most basic part of the incident, simply entering the building, to now remembering essentially the entire incident including what was said to him at the time by another officer. Without corroboration from any other witnesses concerning what statements were made by Officer Culpepper to Respondent Alston, there is insufficient evidence with to conclude that Respondent Alston was arresting Mr. Brown based on information he received from Officer Culpepper. In that he did not articulate any other reason for the arrest, I find him Guilty of arresting Mr. Brown without sufficient legal authority.

Respondent Laliberte

Respondent Laliberte, in his trial testimony, took responsibility for making the decision to arrest both Ms. Peters and Mr. Raglan. (Tr. 346). With regard to Ms. Peters, Respondent Laliberte's explanation for her arrest does not make sense. He testified at trial that she was arrested for swinging the crutch at police officers outside and refusing to disperse. (Tr. 350). However, Respondent could not point to any portion of the video

which showed Ms. Peters swinging her crutch at anything other than the mailbox. In addition, if she was truly arrested for using her crutch in this manner, it defies logic that the police would simply place her against a wall, return the crutch to her, and then release her. The video completely undermines Respondent Laliberte's testimony regarding the basis for Ms. Peter's arrest in that Ms. Peters can next be seen walking with her crutch right in front of Respondent Laliberte as she heads back into the building. In fact, he pays no attention to her and walks away from the direction she is heading in. (CCRB Ex. 1, Video clip 9 at approximately 22:13:51.). His concession at trial that Ms. Peters was doing exactly what he ordered her to do when she proceeded to enter the building confirms that the reasons he gave for her arrest at trial were not genuine.

It is possible after watching the video and listening to the trial testimony of the arrestees to possibly come up with valid reasons now for their arrests, such as disorderly conduct, based on some of their admissions that they did not immediately leave the area when ordered to. The test of whether these members of the service acted with sufficient legal authority, however, is based on what was in their minds at the time they made the arrests. The question is whether they had reason to believe at that time that there was reasonable cause to arrest the specific individual. It seems more likely than not based on Respondent Laliberte's actions as seen on the video, and from his testimony that Ms. Peters was complying with what he ordered her to do, that he did not believe at the time that he had reasonable cause to arrest Ms. Peters for unlawful assembly. I therefore find him Guilty of arresting Ms. Peters without sufficient legal authority.

With regard to his arrest of Mr. Raglan, while Respondent Laliberte stated at trial that Mr. Raglan was causing public alarm on the street, in his CCRB interview which was much closer in time to the incident, Respondent Laliberte was shown the video of Mr. Raglan being arrested and he stated he had no recollection of why Mr. Raglan was being arrested. (Tr. 347, 349). In that same interview he said he had no specific memory of people refusing to leave. (Tr. 348). Based on his CCRB interview responses as well as a review of the video showing Mr. Raglan's actions on that night, which this tribunal acknowledges do not account for all of his actions, it appears more likely than not that Respondent Laliberte did not have clear articulable probable cause to arrest Mr. Raglan for unlawful assembly, as set out in Penal Law Section 240.10 Unlawful Assembly:

A person is guilty of unlawful assembly when he assembles with four or more other persons for the purpose of engaging or preparing to engage with them in tumultuous and violent conduct likely to cause public alarm, or when, being present at an assembly which either has or develops such purpose, he remains there with intent to advance that purpose.

I therefore find Respondent Laliberte Guilty of arresting Mr. Raglan without sufficient legal authority.

Chokehold Charge

Respondent Gove is charged with using a chokehold on Mr. Raglan. Mr. Raglan essentially says that he felt he couldn't breathe for one or two seconds when Respondent Gove was pulling on his hoodie. Respondent Gove's position is that he may have pulled on part of Mr. Raglan's clothing in an attempt to effectuate his arrest but he never used a chokehold on Mr. Raglan.

The use of chokeholds is prohibited under section 203-11 of the Patrol Guide. Under that section a chokehold is defined as including, but not being limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. In this case, in addition to the testimony of Respondent Gove and Mr. Raglan, we have video clips of portions of their encounter. (CCRB Ex. 1, Video clip 6 at approximately 22:14:26 to 22:15:23). A review of the video does not show Respondent Gove ever putting any part of his body in a position to directly put pressure on the throat or windpipe of Mr. Raglan. The video does not show Respondent Gove grabbing Mr. Raglan by the neck as Mr. Raglan testified the police did. The video also does not show Respondent Gove, who did have his hands on Mr. Raglan's clothing, in any way pulling on Mr. Raglan's clothes in a manner which would have cut off his breathing. Mr. Raglan could not identify any specific officer who might have pulled on his hoodie when Mr. Raglan was out of view of the camera in the corner area of the lobby. Based on the testimony and a review of the video, I find that CCRB did not prove by a preponderance of the evidence that Respondent Gove used a chokehold on Mr. Raglan. I therefore find Respondent Gove Not Guilty.

It should be noted that the video does show Mr. Raglan's sister, Ms. McKenzie, wrapping her arm around Mr. Raglan's neck and trying to pull him away from the police. I find that it is likely that if Mr. Raglan at any point felt he couldn't breathe during the incident as shown on the video portions, he could have confused it with the pressure applied when Ms. McKenzie wrapped her arm directly over his windpipe.

Force Charge

Respondent Manchester is charged with using unnecessary force in that he “yanked Terryann Peter’s head down by pulling her hair.” Again we have both testimony concerning this as well as video footage. (CCRB Ex. 1). There are also medical records from Ms. Peters’ visit to a hospital two days after the incident (CCRB Ex. 6) and photographs taken of Ms. Peters’ face and head after she was released from court. (CCRB Ex. 2, 3, 4, 5). Ms. Peters, in essence, has testified that while she was on the stairs inside the lobby of her building numerous police officers grabbed her and someone pulled her hair. She presented her hospital records which noted that there were patches of hair loss and loosening of extensions on her head. (CCRB Ex. 6, MR 4). Based on her testimony and the hospital records and a review of the video it is clear that Ms. Peters’ hair was pulled during the course of her arrest. (CCRB EX. 1, Video Clip 5 at approximately 22:14:57). The question is whether this was a wrongful use of force by Respondent Manchester. I find that it was not.

As can be seen in the videos (CCRB Ex. 1, Video Clip 4 from approximately 22:14:05 to 22:15:24, Video Clip 5 from approximately 22:14:06 to 22:15:18), there were numerous officers trying to effectuate the arrest of Ms. Peters. When Officer Manchester came upon the scene he was presented with a situation where he could see that the officers were struggling with Ms. Peters and that she was not yet under control. I credit his testimony that he thought he would just reach into the chaos to try to help and that as he was reaching around another officer, what he ended up grabbing was Ms. Peters’ hair. Any hair grabbing done by Respondent Manchester appeared to be more accidental than

a deliberate use of force. There is no clear video clip of Respondent Manchester using force to pull Ms. Peter's hair out. Therefore, based on his credible testimony as supported by the video, I find Respondent Manchester Not Guilty.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Valentin was appointed to the Department on July 7, 1999, Respondent Alston was appointed on July 11, 2005, Respondent Laliberte was appointed on December 8, 1997. Information from their personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has requested penalties of the loss of eight vacation days for Respondent Valentin, the loss of ten vacation days for Respondent Laliberte, and the loss of five vacation days for Respondent Alston. I recommend that these penalties be imposed. They are consistent with prior adjudicated cases.

An eleven-year police officer and six-year officer with no prior disciplinary record forfeited ten vacation days each for stopping complainant and arresting him for disorderly conduct without having the requisite legal authority to do so. See *Case Nos. 2010-912 & 2010-915, (Dec. 7, 2011)*. Respondents claimed that they arrested complainant for impeding traffic. Even taking their testimony at face value, however, there was no basis for the stop and subsequent arrest.

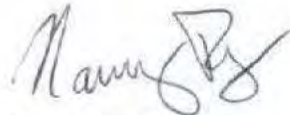
An eight-year police officer, with one prior adjudication, forfeited 15 vacation days for abusing his authority by issuing a summons for Disorderly Conduct without

LIEUTENANT JAVIER VALENTIN
SERGEANT DAVON ALSTON
SERGEANT KEITH LALIBERTE
POLICE OFFICER CHARLES GOVE
POLICE OFFICER MATTHEW MANCHESTER

21

sufficient legal authority. *See Case No. 2010-86108, (Oct. 17, 2011).* On the summons, Respondent cited the penal law section for failing to obey a lawful order to disperse. The recipient of the summons, however, lacked the necessary intent to cause public inconvenience, annoyance or alarm. Nor was the recipient congregating with any other persons. In addition, Respondent pleaded guilty to failing to record the incident in his Activity Log.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

MAY 27 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT KEITH LALIBERTE
TAX REGISTRY NO.920488
DISCIPLINARY CASE NO. 2015-12962

Respondent was appointed to the Department on December 8, 1997. His last three annual performance evaluations were as follows: he received an overall rating of 4.5 "Highly Competent/Extremely Competent" in 2015, a 4.0 "Highly Competent" in 2014, and a 4.5 "Highly Competent/Extremely Competent" 2013. He has two medals for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]
[REDACTED]

He was served with charges and specification in 2014 for hitting a handcuffed suspect with a closed fist. For this substantiated act of misconduct, he forfeited 30 vacation days.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT DAVON ALSTON
TAX REGISTRY NO. 938326
DISCIPLINARY CASE NO. 2015-12969

Respondent was appointed to the Department on July 11, 2005. In his last three annual performance evaluations, he received an overall rating of 4.5 "Highly Competent/Extremely Competent." He has seven medals for Excellent Police Duty. [REDACTED]

He has no prior formal disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT JAVIER VALENTIN
TAX REGISTRY NO. 924576
DISCIPLINARY CASE NO. 2015-12960

Respondent was appointed to the Department on July 7, 1999. His last three annual performance evaluations were as follows: he received an overall rating of 4.5 "Highly Competent/Extremely Competent" in 2015, a 4.0 "Highly Competent" in 2014, and a 4.5 "Highly Competent/Extremely Competent" 2013. He has 10 medals for Excellent Police Duty and two medals for Meritorious Police Duty. [REDACTED]

He was served with charges and specifications in 2008 for engaging in an off-duty physical altercation. For this substantiated act of misconduct, he forfeited 20 vacation days.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials