



POLICE DEPARTMENT

March 28, 2024

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Sergio Martins :

Tax Registry No. 964146 :

63 Precinct :

Case No.

2022-27211

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

Before: Honorable Anne E. Stone  
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

To:

HONORABLE EDWARD A. CABAN  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

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## CHARGES AND SPECIFICATIONS

1. Police Officer Sergio Martins, on or about May 18, 2021, at approximately 2145 hours, while assigned to the 63 Precinct and on duty, in the vicinity of Northwest Corner Avenue H and East 48th Street, wrongfully used force, in that he punched Marcus Edward in his torso area without police necessity.

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

USE OF FORCE

2. Police Officer Sergio Martins, on or about February 23, 2022, at approximately 1050 hours, while assigned to the 63 Precinct and on duty, in the vicinity of 100 Church Street, 10<sup>th</sup> Floor, Kings County, provided a false official statement to the Civilian Complaint Review Board, in that he denied punching Marcus Edward.

P.G. 203-08

FALSE OR MISLEADING  
STATEMENTS

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 6, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Ms. Ciarah Richmond and Mr. Marcus Edward as witnesses, 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, I find Respondent Not Guilty of Specification 1, and Guilty of Specification 2. I recommend that he forfeit twenty (20) vacation days.

## ANALYSIS

This case arose out of a CCRB complaint made by Ciarah Richmond, alleging excessive force was used against her partner, Marcus Edward, by an officer who CCRB later determined was Respondent. Additionally, it is alleged that during his official interviews with CCRB, Respondent denied punching Mr. Edward.

The following is a summary of facts that are not in dispute. On the evening of May 18, 2021, at approximately 2130 hours, Police Officer Randi Knepper and Sergeant Paul Mallilo from the 63 Precinct stopped the car driven by Mr. [REDACTED]. Ms. Richmond and her partner, Marcus Edward, were walking by, on their way home from dinner. The couple stopped to observe the traffic stop. (Tr. 16)

After a few minutes, Mr. [REDACTED] stepped out of his vehicle; raised voices can be heard on Officer Knepper's body-worn camera. (CCRB Ex. 1) As the officers attempted to handcuff Mr. [REDACTED], a struggle ensued. Mr. Edward and Ms. Richmond can be seen on CCRB's Exhibit 1 at 07:24, standing near the front of Mr. [REDACTED]'s vehicle. As Mr. [REDACTED] protested verbally, other people also stopped to watch the interaction. The officers requested additional units for backup. (Tr. 86; CCRB Ex. 1 at 07:24-07:27) During the tussle, the keys to Mr. [REDACTED]'s car ended up on the ground and Ms. Richmond picked them up. (CCRB Ex. 1; Tr. 15-17, 52-53)

Respondent, Sergeant Leite, and Officer Diaz arrived in response to the "85" call for assistance. They approached the observers, including Mr. Edward, who was yelling at the officers arresting Mr. [REDACTED]. The officers asked them to move out of the street and onto the sidewalk, which they did. (Tr. 21, 53, 89) Sergeant Mallilo approached Mr. Edward, because the sergeant believed he had the keys to Mr. [REDACTED]'s car and wanted to retrieve them. Respondent then attempted to place Mr. Edward under arrest for Obstructing Governmental Administration. (Tr. 90) Respondent and several other officers took Mr. Edward to the ground and handcuffed him. (Tr. 21, 54, 75, 92-93) Ultimately, it was revealed that Mr. Edward did not possess the car keys; Ms. Richmond had them and she eventually gave them to an officer in a "white shirt." (Tr. 18-20, 57)

The following is a summary of the portion of the body-worn camera footage captured by Respondent's immediate supervisor, Sergeant Leite, which recorded the encounter between Mr. Edward and Respondent. (CCRB Ex. 2)

- 01:00-01:16: There is loud crosstalk amongst the observers who are not seen at this point. Sergeant Mallilo can be heard saying "get on the sidewalk."
- 01:58--02:10: Sergeant Leite, who had been near Mr. [REDACTED], runs across the street, where other officers, including Respondent (a dark-haired officer wearing a blue surgical mask), are struggling with Mr. Edward; an unidentified officer can be heard yelling, "You know what? Cuff him up." A different voice is heard saying "grab him, grab him, grab him, grab him...let go let go," as Mr. Edward is forcibly taken to the ground by Respondent. Respondent and the other officers also fall.
- 02:11-02:21: Respondent's arm moves up and down in a motion on the right side of Mr. Edward's body. At 2:13, an unidentified woman can be heard screaming in a shrill voice, "Are you fucking punching him in the head?" Respondent and Mr. Edward are both out of view briefly. When Respondent comes back into view, his arm moves up and down twice, in quick succession.
- 02:22-02:33: An unidentified voice can be heard saying, "Cuff him up, cuff him up, I got his arm." Mr. Edward is handcuffed.

CCRB's Exhibit 3 is a cell-phone video made by a bystander which offers a different view of the same interactions:

- 00:01-00:04: A woman is screaming, "Marcus, Marcus go on the sidewalk."
- 00:26-00:31: Mr. Edward, who is surrounded by multiple officers asks, "Why are you touching me?" Sergeant Mallilo can be heard telling Mr. Edward, "We need the keys, we need the keys," shortly before Respondent, and the other officers begin taking Mr. Edward, who is trying to pull away, into custody.
- 00:35-00:38: Respondent's body-worn camera is dislodged during the struggle with Mr. Edward and can be seen on the ground.

00:44-00:57: Mr. Edward and Respondent fall forward to the ground with several other officers around them. Respondent's arm moves in an up and down motion that appears to be touching Mr. Edward's right arm. Ten seconds later, Respondent's arm moves up and down twice, in quick succession near the right side of Mr. Edward's body.

In support of its case, CCRB called Marcus Edward to the stand. He testified that he and Ms. Richmond were walking home from dinner when they stopped to watch the traffic stop because the officers were getting "rowdy" with Mr. [REDACTED]. (Tr. 52-53) He acknowledged that he was in the street and "being loud." Mr. Edward explained that more officers arrived on scene and told the crowd that had formed to move to the sidewalk, which he did. (Tr. 57-58, 72) He testified that he did not see Mr. [REDACTED] toss his keys at anyone, nor did he ever have possession of Mr. [REDACTED]' car keys. (Tr. 57)

Mr. Edward described being "grabbed" by about six officers. He recalled repeatedly asking officers, "[W]hy are you touching me; what are you doing?" (Tr. 58, 77) Mr. Edward contended that none of the officers asked him for anything, nor did they say anything to him, elaborating, "[s]o nobody initially asked me to put my hands behind my back. Nobody said that I was being arrested or detained." (Tr. 77) Mr. Edward recalled being thrown on the ground by the officers and being punched and kicked repeatedly in various parts of his body, including his head and his chest. According to his recollection, the "beating" lasted, for several minutes. (Tr. 59-60, 76-77) Mr. Edward unequivocally responded, "No," when asked if he resisted the officers. (Tr. 59) At trial, he did not identify any of the officers who used force against him.

Ultimately, Mr. Edward was placed in handcuffs, an ambulance was called, and he was taken to the hospital. Mr. Edward suffered from a laceration to his head, which required stitches, and experienced pain in various parts of his body. (Tr. 58-62; CCRB Ex. 8)

Mr. Edward's partner, Ciarah Richmond also testified at trial. She recounted that they stopped to monitor Mr. [REDACTED]' interaction with Officer Knepper and Sergeant Mallilo. She wanted to observe because she knew Mr. [REDACTED] and because of "all of the things that were currently going on in the world." (Tr. 15) Ms. Richmond described the officers' behavior towards Mr. [REDACTED] as "aggressive." She and Mr. Edward moved closer in order to record. (Tr. 17)

Ms. Richmond recalled the officers asking Mr. [REDACTED] to turn off the car, which he did, and then he "threw the keys out [of] the window." (Tr. 17) Ms. Richmond picked up the keys. She stated that after she had the keys, officers told them to move onto the sidewalk, which they did. (Tr. 18) Ms. Richmond acknowledged that she and Mr. Edward were "yelling," which "antagonized" the officers. (Tr. 21) She denied hearing any of the officers ask Mr. Edward for the car keys. (Tr. 19) Ms. Richmond stated that the officers then "...dragged Marcus off the sidewalk that they told him to get on, and they forcibly took him down with excessive force." (Tr. 21) Ms. Richmond admitted that she did not see Respondent punch Mr. Edward, explaining "[t]here were a lot of people on top of him. I don't know who exactly did what. . ." (Tr. 23)

Respondent, who has over seven years with the Department, and has spent his entire career in the 63 Precinct, took the stand in his own defense. He provided a markedly different account of his interaction with Mr. Edward. He testified that on the date in question he heard Officer Knepper's radio call that a "police officer needs assistance." (Tr. 86) Respondent, Sergeant Leite, and Officer Diaz arrived there in "under a minute." Respondent recalled seeing approximately two other sectors when he got there. (Tr. 87) Respondent then observed that Officer Knepper and Sergeant Mallilo had an individual in custody and noticed "[a] crowd on the

south side of the street, some individuals in the street.” He approached and asked them to step onto the sidewalk. (Tr. 88-89)

At trial, Respondent stated that Sergeant Mallilo approached Mr. Edward, who was one of the people on the sidewalk. Respondent testified that Sergeant Mallilo then told him that, “he saw [Mr. Edward] pick up the keys -- he asked for the keys back. As he did so, [Mr. Edward] in sum and substance, refused.” (Tr. 90) Respondent explained that when he “grabbed [Mr. Edward’s] right arm” to place him under arrest, Mr. Edward “started pulling away.” (Tr. 90)

Respondent described struggling with Mr. Edward who “began to resist,” and recalled that approximately six other officers joined in. (Tr. 92) Respondent admitted that he forcibly took Mr. Edward to the ground by placing his leg in front of Mr. Edward in order to “prevent him from moving any further.” (Tr. 90) As he did so, Respondent, Mr. Edward, and the other officers all fell to the ground. (Tr. 92) Respondent said he then attempted to gain control of Mr. Edward’s right arm and, “[Mr. Edward] kept pulling [his arms] further underneath his body, underneath his chest and pulled up -- I went from his wrist area to his forearm area and tried pulling up on his arms. . .” (Tr. 101) Respondent explained that he had been trained in this maneuver, which he referred to as “grappling,” in the Police Academy. (Tr. 101, 103)

After approximately “45 seconds,” Respondent managed to handcuff Mr. Edward. He got Mr. Edward to his feet, observed blood on Mr. Edward’s face, and placed him into a police vehicle to wait for an ambulance. (Tr. 93-94, 116) Respondent denied punching Mr. Edward in the torso, or anywhere else, while attempting to gain control and handcuff him. (Tr. 93, 106) Later on during his tour, he prepared a Threat, Resistance, and Injury Report (“TRI”) regarding the incident, listing “forcible takedown and grappling” as the actions he had taken to place Mr. Edward into custody. (Tr. 102)

Specification 1: Excessive Force (Punch to Torso)

CCRB is not challenging the decision to arrest Mr. Edward. Respondent stands charged with wrongfully punching Mr. Edward in the torso without police necessity. While Respondent acknowledges using force to arrest Mr. Edward, he denies punching him. The question for the Tribunal is whether, under the circumstances, the force used was reasonable. There is an ancillary question of whether Respondent punched Mr. [REDACTED], as specifically charged. As the Tribunal will explain below, it is not possible to discern from the video whether Respondent's strike was in fact a punch, and there is no witness who corroborates Mr. Edward on that question. However, based on the totality of the credible evidence, I find that Respondent struck Mr. Edward twice to gain control of his right arm, and that, even if those strikes were punches, the use of force was reasonable.

Patrol Guide section 221-01 sets forth that "[f]orce may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life... or when it is reasonable to place a person in custody or to prevent escape from custody." Additionally, when determining whether the use of force was reasonable, P.G. 221-01 lists several factors to consider which include: the nature and severity of the crime, the duration of the action, whether the person is actively resisting custody, as well as, the number of officers in comparison to the number of suspects.

When reviewing the circumstances which led to the use of force, all of the witnesses testified that when officers, including Respondent, first approached Mr. Edward, he was in the street, yelling at the officers arresting Mr. [REDACTED]. When asked to move to the sidewalk, Mr. Edward complied. Video evidence of the incident supports Respondent's assertion that Mr. Edward was resisting being taken into custody. He can be seen strenuously pulling away from



the officers, so much so that Respondent's body-worn camera became dislodged. A woman can be heard in the videos repeatedly yelling, "Marcus, relax!" It is clear from the video that it took approximately six police officers almost a full minute to subdue Mr. Edward so that he could be handcuffed. (CCRB Ex. 2 at 01:57- 02:44, CCRB Ex. 3 at 00:25- 01:04)

Specification 1 explicitly alleges that Respondent "punched" Mr. Edward in the torso, which Respondent denies. Respondent, however, acknowledges using force to "gain control" of Mr. Edward's right arm in order to handcuff him. He described the force he used as "grappling", which consisted of, "[g]rabbing [Mr. Edward's] forearm and his elbow area, and [pulling] up." (Tr. 105)

Mr. Edward testified that he was "punched" all over his body, including his head, chest, arms and legs. I believe that Mr. Edward felt blows to his body and head, which is consistent with the video evidence, as well as the injuries noted in his medical records. It is not surprising that Mr. Edward did not identify Respondent, and was not able to attribute specific actions to him, given his position, face-down on the ground with several officers on top of and surrounding him. Ms. Richmond, when asked if she saw Respondent punch Mr. Edward, responded measuredly: "There were a lot of people on top of him. I don't know who did what..." (Tr. 23)

I have carefully reviewed the recordings of the incident in evidence, paying particular attention to the portions of the videos highlighted during the trial, and during Respondent's CCRB interviews. It appears that Respondent struck Mr. Edward twice in quick succession on his right arm, or the right side of his body. (CCRB Ex. 2 at 02:20-02:21, CCRB Ex. 3 at 00:56-00:57) Because of the number of officers surrounding Mr. Edward, and the location of the cameras, it is not possible to see which part of Mr. Edward's body is struck, nor can you clearly see whether Respondent's hand is in a fist or not.

However, in analyzing the blows in the context of this incident, I find that although punches are an escalated use of force, under these circumstances, the use of two quick punches would be reasonable. Respondent was attempting to place Mr. Edward, who was actively resisting, by moving about and tucking his arms under his body, into handcuffs. Patrol Guide section 221-02 “defines active resisting” as, “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” While trying to gain control of Mr. Edward’s right arm, Respondent utilized a “grappling” maneuver, as well as striking him twice on the arm or torso. Shortly after the hand strikes, Respondent was able to place Mr. Edward into handcuffs and get him to his feet.

Ultimately, whether Respondent hit Mr. Edward with a closed fist or an open hand, the use of force was a measured response to these specific circumstances, and achieved the desired outcome of gaining compliance from Mr. Edward. The limited extent of the force supports a finding that it was not a punitive response to an individual resisting arrest. For the foregoing reasons, I find Respondent Not Guilty of Specification 1.

*Specification 2: False/Misleading Statements*

Respondent was interviewed on two occasions, February 23, 2022, and May 27, 2022, by the CCRB regarding this incident<sup>1</sup>. Specification 2 alleges that during those interviews, Respondent denied punching Mr. Edward. CCRB alleges that this denial constituted a false statement. For the reasons set forth below, I find that Respondent’s statements were misleading rather than false, as defined in the Patrol Guide.

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<sup>1</sup> Specification 2 specifically charges that, during his February 23, 2022 interview with CCRB, Respondent denied punching Mr. Edward. However, the Bill of Particulars supplied by the CCRB before trial references statements from both interviews, giving Respondent sufficient notice of the allegations against him.

In support of this specification, CCRB directed the Tribunal's attention to the transcripts of Respondent's interviews, which were admitted into evidence as CCRB's Exhibits 4 and 6. I carefully reviewed the transcripts in their entirety, the accompanying audio recordings (CCRB Exs. 5 & 7), as well as, the body-worn camera and cell-phone footage in evidence. I find that CCRB has proven, by a preponderance of the credible, relevant evidence, that Respondent made statements which were intended to misdirect the fact finder, and materially alter the narrative in violation of Patrol Guide section 203-08. (Now encompassed by Administrative Guide section 304-10)

During his first interview with CCRB, on February 23, 2022, which occurred remotely, almost a year after the incident, Respondent described the force he used to subdue Mr. Edward as "grappling." (CCRB Ex. 4 at 22) When he was asked: "Specifically, [did] you issue any compliance strikes or punches to his rib area?" Respondent answered: "No." (*Id.* at 25) Respondent was then shown a clip of CCRB's Exhibit 2, Sergeant Leite's body-worn camera footage. The investigator slowed down and paused to ask questions about an arm that appears to "punch" Mr. Edward. The interviewer acknowledged that the face of the officer isn't visible in the clip of the video. She asked Respondent to identify the officer, which he was unable to do. (*Id.* at 31-32) After being shown a clip of the video from 02:18-02:25, Respondent stated that it did not refresh his recollection of "punching" an individual. (*Id.* at 33)

Prior to the second interview on May 27, 2022, Respondent listened to the recording of the February 23, 2023 interview and was shown CCRB's Exhibit 3, the bystander's cell-phone video. Respondent was asked, if after watching this video, his recollection of punching Mr. Edward had changed; Respondent stated, "No." (CCRB Ex. 6 at 7) Respondent was asked several times whether he "punched" Mr. Edward. Each time he responded, "No." (*Id.* at 11-13)

When asked what he was doing with his arm, Respondent replied, "Trying to grab his right arm."  
(*Id.* at 11)

Patrol Guide section 211-14, "Investigations by the Civilian Complaint Review Board," outlines the obligations for officers being interviewed by CCRB. It sets forth: "When interviewed by a Civilian Complaint Review Board investigator, or when appearing at the Civilian Complaint Review Board, as the subject of a complaint or as a witness, to an incident in connection with an official Civilian Complaint Review Board investigation, all pertinent information, facts, and observations shall be reported. All questions posed by the Civilian Complaint Review Board investigator, Board panel, or Board member in accordance with Civilian Complaint Review Board rules and regulations for the conduct of interviews shall be answered fully and truthfully."

This Tribunal, has found that Respondent struck Mr. Edward twice, which is a fact pertinent to the investigation of the complaint made against him. Respondent's repeated denial of striking Mr. Edward was contradicted by the video evidence and constitutes a misleading statement. Respondent, by referring to his actions as "grappling" and "grabbing," when the recordings of the incident clearly show him striking Mr. Edward, was attempting to misdirect the investigators and alter the narrative of the investigation in his favor. He was, in essence, attempting to minimize the scope of the force he used to subdue Mr. Edward. I note that Respondent answered all of the questions CCRB asked him. However, his denial of punching Mr. Edward did not constitute the full, truthful answers required by P.G. 211-14. For the foregoing reasons, I find Respondent Guilty of Specification 2.

## PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. See 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 5, 2017, and has no formal disciplinary history, has been found Guilty of providing a misleading statement during interviews with CCRB. The Disciplinary Guidelines set forth a presumptive penalty for intentionally making a misleading official statement of thirty (30) penalty days and one year dismissal probation. The mitigated penalty is the forfeiture of twenty (20) penalty days.

During summation, the CCRB recommended a penalty of twenty (20) vacation days, if Respondent was found guilty of both specifications. However, in light of the circumstances surrounding the misleading statement, I believe that a penalty of twenty (20) vacation days is appropriate to address this single specification.

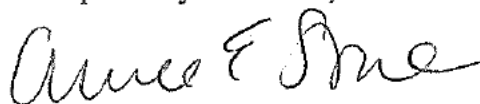
The Department, through Patrol Guide section 211-14, has emphasized the importance of officer cooperation and candor when being interviewed by CCRB; providing forthright narratives about civilian encounters, particularly those involving the use of force, to a civilian oversight entity is critical to building and maintaining public trust. Although Respondent answered all of CCRB's direct questions, he should have been more forthcoming with the investigators. He had more than one opportunity to course correct, and admit what was evident

from the videos. It is particularly concerning that Respondent wasn't more straightforward about a use of force that was reasonable under the circumstances.

In contemplating an appropriate penalty, the Tribunal considered a negotiated settlement, which was recently approved by the Police Commissioner. In that settlement, a 27-year detective, with no disciplinary history, originally charged with making a false statement, pled guilty to making a misleading statement, and forfeited twenty (20) vacation days. In that case, the detective, in spite of being presented with body-worn camera footage in which the discourteous statements could be heard, refused to acknowledge that it was his voice. The CCRB cited the chaotic nature of the scene and the detective's service record when recommending the mitigated penalty. *See Disciplinary Case 2022-25606* (Feb. 22, 2024)

Respondent's first interview about this matter took place almost a year after the incident, and was conducted remotely. The incident itself happened quickly, in somewhat confusing circumstances, with many officers involved and ended within approximately one minute. Respondent has had no formal disciplinary history during his almost seven years with the Department, has one medal for Meritorious Police Duty, and six medals for Excellent Police Duty. Luckily, Respondent's lack of candor did not impede the investigation into this matter. Indeed, CCRB was able to move forward with their prosecution, and Respondent has been found not guilty of the underlying allegation. The penalty proposed by CCRB is fair and appropriate. It balances the serious nature of the misconduct, the confusion of the underlying incident, and Respondent's overall history with the Department. Accordingly, I recommend that Respondent forfeit twenty (20) vacation days.

Respectfully submitted,



Anne E. Stone  
Assistant Deputy Commissioner Trials

**APPROVED**

APR 19 2024  
  
EDWARD A. CABAN  
POLICE COMMISSIONER



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER SERGIO MARTINS  
TAX REGISTRY NO. 964146  
DISCIPLINARY CASE NO. 2022-27211

Respondent was appointed to the Department on July 5, 2017. On his three most recent annual performance evaluations, he was rated “Exceptional” for 2021, 2022 and 2023. He has been awarded one medal for Meritorious Police Duty and six medals for Excellent Police Duty

Respondent has no formal disciplinary history.

For your consideration.

Anne E. Stone  
Assistant Deputy Commissioner Trials