



POLICE DEPARTMENT

March 13, 2020

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Julia Goldberg :

Tax Registry No. 956684 :

40th Precinct :

Case No.

2018-19321

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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:

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

For the Respondent:

Michael Martinez, Esq.
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To:

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

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CHARGES AND SPECIFICATIONS

1. Police Officer Julia Goldberg, on or about November 23, 2017, at approximately 1747, while assigned to the 040 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] wrongfully used force, in that she used a Taser against Person A without police necessity.

P.G. 221-08 USE OF CONDUCTED ELECTRICAL WEAPONS (CEW)

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 4, 2020. Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. The Civilian Complaint Review Board offered the hearsay statement of Person A, as well as other documentary evidence. Respondent testified on her 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.

ANALYSIS

The following is a summary of the facts which are not in dispute. On November 23, 2017, at approximately 1747 hours, Respondent and at least five other police officers responded to [REDACTED] to address two 911 calls: the first, an assault in progress, the second, a physical altercation. Respondent and the other officers entered an elevator on the ground floor in which there were already two occupants, Person A and Person B. The elevator was equipped with a motion-activated video camera which captured the events which are the subject of this proceeding (CCRB Exhibit 1).

During their transit to the fifth floor, Person A and the police officers had a verbal exchange. While the video recording did not capture sound, Person A made admissions in his hearsay statement which provided some of the details of the conversation (CCRB Exhibits 2,

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2A). As the police officers stepped off the elevator on the fifth floor, Person A called out to them that they were "fucking Keystone cops." Police Officer Habib, as well as Police Officers Periona and Martay, rushed back into the elevator and grabbed Person A. These three police officers engaged in a physical struggle with Person A for approximately 13 seconds before Respondent stepped into the view of the camera and looked through the open elevator door.

Respondent drew her Taser and eventually pulled the trigger four times (CCRB Exhibit 3). By the time she pulled the trigger, two additional police officers had entered the elevator and were struggling with Person A. Respondent's discharge of her Taser was ineffective in disabling Person A and she withdrew from the elevator. The five police officers' physical struggle with Person A, from its inception until he was handcuffed, lasted approximately one minute, 10 seconds.

At issue in this case is whether Respondent discharged her Taser without police necessity.

Respondent testified that she went to [REDACTED] with her partner, Police Officer Pruner, to back up other officers responding to two 911 calls -- an assault in progress and one for a physical altercation (T. 28-30). She had previously visited the location and described it as a residence for people who had aged out of foster care, suffered from mental illness, or had other issues which made it difficult to obtain permanent housing (T. 30). Upon her arrival, she went to the security station and asked them where to go; she recalled that she was directed to the fifth floor (T. 31). When Respondent arrived on the fifth floor, she went to an apartment and met with a civilian, whom she was about to interview regarding the "assault in progress" call (T. 32).

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While at the apartment door, Respondent heard yelling and what sounded like fighting “down the hall [and] around the corner” (*Id.*). She left the apartment and ran down the hallway, speculating that the assault, which was the subject of the 911 call, was still ongoing (*Id.*). As she turned the corner, she observed Police Officers Habib, Periona and Martay inside an elevator attempting to subdue a subject she later learned was Person A (T. 32-33, 67). Respondent observed that the aforementioned police officers were trying to grab the subject’s arms and legs but the subject had one of his arms wrapped around a bar in the elevator, which prevented him from being handcuffed (T. 33-34). She recalled hearing the police officers telling the subject to stop, as well as other shouting (T. 35). Respondent described the subject as “really big,” approximately 6’3”- 6’5” tall (*Id.*).

Respondent testified that she considered entering the elevator to assist but decided against doing so because the small space was already crowded with people (*Id.*). She later conceded that two additional police officers rushed past her into the elevator to struggle with Person A (T. 74-75). She considered using her asp to assist the other police officers but ruled out that option as one likely to injure innocent parties in such an enclosed space; for similar reasons, she decided against using pepper spray, which would likely affect everyone inside the elevator (T. 35). Respondent instead elected to deploy her Taser, which she believed was designed for “nonlethal situations where there’s somebody exhibiting aggression or to stop them from hurting themself[ves] or other people” (T. 35). Her reasoning was “the sooner that fight is over, the less likely anyone is getting injured” (*Id.*). Respondent noted that she had never deployed her Taser before that date (T. 37).

Respondent drew her Taser, then let the other police officers know that she had it out by saying, “I have my Taser ready.” She waited until she had “a clear shot,” aimed at Person A’s

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center chest, then pulled the trigger from approximately three to four feet away. She immediately discerned that the Taser did not work as she had intended. Respondent testified that when the Taser functions properly, it causes the body to constrict and the muscles stop normal function, resulting in "full body lock-up," which provides an opportunity for police officers to handcuff the subject (T. 37-38, 48-49, 75-77).

In this case, Respondent observed Person A continuing to struggle while observing no change in his body movement. As two more police officers entered the elevator to attempt to subdue Person A, Respondent pulled the trigger on the Taser "a couple of more times" before she was pushed from the elevator. Respondent fired the Taser once more, hoping that both prongs of the weapon had finally made contact with Person A's skin. Person A continued to struggle and Respondent left the building to call for a supervisor and an ambulance, asserting that this was the protocol she was trained to follow after deploying a Taser (T. 43-44, 49-51). She eventually vouchered the single barb which another police officer recovered from the floor of the elevator after Person A had been handcuffed and removed from it (T. 88).

Respondent testified that when she heard the commotion which caused her to run to the elevator, she had no idea what caused the police officers to engage in a physical struggle with Person A (T. 45, 85). She acknowledged that, according to her training, she was to take into account all of the surrounding circumstances before deploying a Taser against a person; these circumstances included the suspect's height and weight; whether they were behaving violently or nonviolently; their mental and physical health status; and whether there were bystanders or civilians in the vicinity (T. 56-59). Respondent also acknowledged that the location was a domicile for some people who had mental illness (T. 60-61). She asserted that she did not know whether Person A was suffering from mental illness or was under the influence of drugs or alcohol

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when she encountered him, although she completed a "Threat, Resistance or Injury Worksheet" after the incident in which she indicated that alcohol intoxication, drug use and being an emotionally disturbed person were suspected (T. 81-83; CCRB Ex. 4).

In response to questioning by the Tribunal, she explained:

"I know we all go with the intention of using the least amount of force possible to achieve our goal, which is why, you know, usually it takes four or five of us to handcuff somebody. Nobody is actually trying to hurt the person, but I just didn't think that – I thought that by my using my Taser, if I could give him five seconds of him not struggling, that they would easily accomplish handcuffing him and the situation would be over."

(T. 91).

Person A provided a sworn statement to CCRB on March 13, 2018, which was admitted into evidence (CCRB Ex. 1). In his statement, Person A asserted that on November 23, 2017, at approximately 1730 hours, he was asked by a friend of his, Person C, to assist her in calling for the police (CCRB Ex. 1 at 30). Person A went down to the lobby of the building and listened as she called 911 and asked for a person named Person D to be arrested (*Id.* at 3-4). Person C specified that Mitchell lived on the fifth floor (*Id.* at 4).

After Person C completed her call, Person A returned to his apartment¹ (*Id.*). When he arrived on his floor, he saw three police officers. Person A was annoyed that they were walking through the building unescorted; he asked Police Officer Habib who they were looking for.² According to Person A, he answered, "Mind your business." Person A and the three police officers entered the elevator, along with one of Person A's neighbors, Sue (*Id.*). Person A was returning to

¹ The floor Person A lived on was redacted from his statement.

² According to Person A, the building was managed by Volunteers of America and required any guest to leave a form of identification with the desk on the ground floor. Person A claimed this policy also required police officers to be escorted in the building by a VOA caseworker or security personnel.

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the ground floor and pressed the button for “G”; a police officer pushed the button for “5” (*Id.* at 5, 25).

Person A continued the discussion with the police officers, telling them that he was minding his business and asserted that as a resident of the building, he had the right to question anyone, including the police, if he had concerns about the safety of the residents. As Person A described it, he and the police had a confrontation, in which he told them that he was “old enough to be your father, so watch your mouth.” He continued, stating that he was also a taxpayer who paid their salaries, so he didn’t need “all that smart lippidy lip” (*Id.* at 5).

As the elevator arrived at the fifth floor, and the three police officers exited, Person A made a comment that they were “a bunch of Keystone cops” (*Id.* at 6, 25). In his statement, Person A asserted that Police Officer Habib turned around and said, “Alright; I’ve had enough of you” (*Id.* at 39, 42). Person A claimed that Police Officer Habib then stepped back into the elevator and punched him in his mouth³ (*Id.* at 6, 39, 42, 43). According to Person A, he then “defended himself,” before Respondent “came around the corner and shot me with the Taser” (*Id.* at 6-7).

Person A admitted that after Police Officer Habib punched him, he grabbed him and “slammed” him into the wall of the elevator, eventually pinning him in the corner (*Id.* at 43-44, 47). Person A then hooked his left hand under a metal bar in the elevator, reached around Police Officer Habib and grabbed his other hand, immobilizing Habib in the corner (*Id.* at 44-45, 49). He claimed that his body made contact with Police Officer Habib’s chest and throat area (*Id.* at 48).

³ The Tribunal did not make a finding on whether Police Officer Habib’s actions constituted misconduct, as such a determination was unnecessary to render findings with respect to Respondent’s alleged misconduct.

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Person A asserted that even after he had been shot with the Taser, he “didn’t feel it because [he was] still concentrating on [Police Officer Habib]” (*Id.* at 45). He acknowledged that the Taser barb struck him in his chest and saw “a long string coming out of me like spaghetti” (*Id.* at 46, 50; CCRB Exs. 5, 7, 8). Person A insisted that he never felt any electrical current from the Taser (*Id.* at 59).

Person A conceded that he had a criminal record, which he described as “very high profile” (*Id.* at 9, 40).

The following is a summary of the events recorded on CCRB Exhibit 1 in evidence

2:13-2:35	Three male MOS enter the elevator along with Person A and a female. Person A begins speaking to P.O. Habib. Person A appears to gesticulate with his right hand while Habib lifts his hands in a questioning gesture. Person A leans in with his head towards Habib who also leans slightly forward. Person A continues talking while Habib and the other MOS begin to leave.
2:35-2:48	MOS all return and Habib grabs Person A by his torso and tries to push him toward the wall of the elevator. Person A resists and Habib then tries to tackle him from behind. The two other officers join in. Habib has his arm up near Person A’s face.
2:48-3:04	Respondent enters the elevator at the moment when the three MOS are attempting to subdue Person A. As she pulls out her Taser, several additional MOS stand at the threshold of the elevator and begin to enter. There are now four MOS attempting to bring down Person A. Respondent appears to say something and then uses the Taser on Person A.
3:04-5:00	Several officers grab Person A by his arms and legs while Respondent stands outside the elevator. Person A is eventually taken to the ground, handcuffed and removed.

In a hearsay case of this nature, particular attention must be paid to the evidence. This Tribunal has held many times that while hearsay is admissible in administrative proceedings, and may be the sole basis for a finding of fact, it must be carefully evaluated before it is relied upon. The more important the evidence is to the case, the more critically it should be assessed (*Police*

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Department v. Acosta, OATH Index No. 464/00 [Jan. 7, 2000]). Factors such as corroboration, consistency, bias, logic and the degree to which an account comports with common sense and general human experience must be taken into account (*Maloney v. Suardy*, 202 A.D.2d 297, 609 N.Y.S.2d 179 [1st Dep't 1994]).

In this case, the material factual assertions in Person A's statement are corroborated by Respondent's testimony, as well as the video recording of the incident. While the Tribunal is mindful of his self-confessed bias, as well as more traditional blemishes upon his veracity, the elevator video depicts Person A doing exactly what he admits to doing. I therefore find his statement reliable.

I further find Respondent's testimony to be truthful and forthright. The factual assertions she made in her testimony were internally consistent, as well consistent with the other independent evidence in the case. In addition, her testimonial demeanor evinced a sincere desire to be candid with the Tribunal.

I find that CCRB has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent discharged her Taser four times without police necessity.

Respondent testified credibly that when she returned to the elevator after she heard noises that sounded like a scuffle, she saw three of her fellow police officers struggling with a suspect. At that point, she had the right to decide how she was going to assist them but did not have the option to remain a bystander. Members of Service have been disciplined for failure to render assistance to a colleague who is struggling with a suspect (*see, e.g., Disciplinary Case No. 2013-8780* [January 8, 2016]).

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I am not persuaded by CCRB's argument that Respondent was required to take into account facts of which she was unaware in her decision whether to use force. The observation she made of a suspect who was on his feet, struggling against three police officers is overwhelming evidence of the necessity for her assistance. Her decision to rule out the use of either an asp or her firearm as likely to cause unacceptable collateral damage to civilians or her fellow police officers was reasonable under the circumstances.

Similarly, Respondent's decision to deploy her Taser was reasonable and necessary. I note that by the time Respondent announced that she was about to deploy her Taser, two additional police officers had joined the first three and they collectively were still unable to subdue Person A. I further find that there were no factors present which should have caused Respondent to rule out the use of a Taser. CCRB's argument that she should have considered the possibility that Person A was mentally ill is without merit. Even if there were evidence that Person A was mentally ill, of which there is none in the record, such condition would not obviate the likelihood of injury to Members of Service or civilians in a prolonged struggle in such a confined space. It would also be difficult, as a practical matter, to make a reliable assessment of whether a suspect is mentally ill while in the midst of a physical struggle.

Accordingly, I find Respondent Not Guilty.

APPROVED

APR 15 2020

DERMOT SHEA
POLICE COMMISSIONER

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

