



POLICE DEPARTMENT

June 19, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Thomas Napolitano  
Tax Registry No. 940682  
Warrant Section  
Disciplinary Case Nos. 2013-9827

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The above-named member of the Department appeared before me on April 29 and April 30, 2015, charged with the following:

1. Said Police Officer Thomas Napolitano, on or about July 11, 2010, at approximately 2237 hours, while assigned to the 75<sup>th</sup> Precinct and on duty in the vicinity of Pennsylvania Avenue and Cozine Avenue, Kings County, wrongfully used force, in that he recklessly and without police necessity, caused physical injury to Rahiym Holmes when he charged Mr. Holmes and used his forearm to strike Mr. Holmes in the face.

P.G. 203-11 - USE OF FORCE  
P.L. §120.00 (2)

The Civilian Complaint Review Board (CCRB) was represented by Simone Manigo, Esq. and Ethan D'Angelo, Esq. Respondent was represented by John Tynan, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the charge. CCRB called Rahiym Holmes, Channelle Barber, Lyonel Rosemond and Terry Harrell as witnesses. Respondent called P.O. Craig Smith and Sergeant Matthew Menze as witnesses. 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.

COURTESY • PROFESSIONALISM • RESPECT

DECISION

Respondent is found Not Guilty.

FINDINGS AND ANALYSIS

The uncontested facts in this case are that on the evening of July 11, 2010, Rahiym Holmes was attending a large outdoor party at Canarsie Piers in Brooklyn. There were about 200 people there. (Tr. p. 34). Holmes left the party with some friends. As Holmes was near Rockaway Parkway and Flatlands Avenue, his friend started running. Holmes testified that he hid in that area and his next memory is that he woke up in a hospital. (Tr. p. 37).

Respondent and Sergeant Menze were assigned to patrol in the 75<sup>th</sup> Precinct that night. They were in uniform in a marked police car. As they were patrolling they received a radio transmission at about 10 PM that shots were fired in the 69 Precinct. (Tr. p. 246). They responded to the general vicinity of Williams St. or Louisiana St. and Flatlands Avenue and then received a second radio transmission to assist an officer in a foot pursuit in the vicinity of Corzine St. (Tr. pp. 247-48). When their car got to Corzine they saw two men running. Respondent got out of the car and began to chase after one of the men who was Holmes. Sergeant Menz stayed in the car and chased the other man who headed northbound.

Respondent was running behind Holmes when Holmes slowed down and turned around. Respondent collided with Holmes. Holmes fell to the pavement. Holmes was injured. Emergency medical personnel responded. Emergency Medical Technician Rosemond described observing an unresponsive Holmes laying in a pool of blood and vomit. (Tr. p. 101). Holmes was handcuffed and arrested at the scene (but was later

acquitted after a bench trial.) (Tr. p. 220). Holmes was transported to the hospital. (Tr. p. 110). Holmes was diagnosed with traumatic brain injury. (CCRB Exhibit 3B).

The contested facts concern the moments immediately preceding the collision between Respondent and Holmes. One witness, Terry Harrell, was working as a pizza delivery person for the Dominoes located across the street from where the collision occurred. Harrell heard a male voice yell "Stop." And he then saw a shirtless male with a T-shirt wrapped around, and hanging down from, his head running along Corzine. Harrell testified that this male was already slowing down and had his hands already raising to turn around and stop. (Tr. p. 145). Harrell testified that a cop was running about two sidewalk squares (Tr. p. 146) or eight and a half feet (Tr. p. 159) behind the male. He also described the officer as being three to five seconds behind the male at this point. (Tr. p. 169). As Harrell described it, as the male was turning around, this officer came full charge straight at the male, "with his left hand over his right hand ... with his right forearm up,"... "Basically like a football charge". (Tr. p. 144). Harrell saw the male go down. He waited for a moment and then went to deliver his pizzas. (Tr. p. 153).

Respondent also testified concerning the moments immediately preceding the collision. He testified that both he and Holmes were running at full speed as Respondent initially chased him. (Tr. p. 250, 253). Respondent at the time was 6' 3" tall and weighed about 240-245 pounds. (Tr. pp. 249-50). Respondent could tell that Holmes was getting winded during the chase. (Tr. p. 263). As he was running, Respondent was looking down periodically to make sure he didn't trip or lose his footing (Tr. pp. 252-53), and at one point when he looked up and was within feet of Holmes, Holmes "abruptly stopped and turned on me." (Tr. p. 253). Holmes had his fists in front of him and a white t-shirt in his

hand (Tr. p. 264). Respondent testified that he covered his own face just prior to the collision to protect himself. (Tr. p. 253), and that he had no time to slow down after Holmes turned around. (Tr. p. 269). Respondent further testified that his intention at the time was to apprehend Holmes. Respondent testified that when he saw Holmes stop his plan was:

To get him immediately on the ground. He -- I remember seeing the white shirt in his hand, which at that point my confusion was you don't know if there is a gun wrapped in there or whatever the case is. I was going to apprehend him [by] whatever means possible to get him on the ground so he couldn't shoot me if he had a gun. (Tr. p. 254).

After Respondent ran into Holmes, Holmes fell to the ground and Respondent handcuffed him. Respondent did not fall and was not injured. (Tr. pp. 254-55).

The CCRB's position is that Respondent knew when Holmes slowed down and turned around that he was surrendering and Respondent's decision to keep running at Holmes and to knock him to the ground was reckless. They argue that it was unreasonable for Respondent to put his arms in the football tackle position as described by Harrell before he collided with Holmes.

Respondent's position is that CCRB didn't prove the charges by a preponderance of the evidence in that they charged Respondent with recklessness and to act recklessly someone has to act in a way in which the circumstances described define an offense, and that the individual is aware and consciously disregards a substantial unjustifiable risk that such result will occur or that such circumstances exist. Respondent maintains that Respondent chased after someone who he in good faith believed had committed a crime. Rather than acting recklessly as charged, Respondent's position is that he acted intentionally in chasing after Holmes and apprehending him based on the radio

transmissions he had from the other officers. As he testified, he could not stop in the distance between himself and Holmes after he turned around.

Respondent in this case has not been charged with an improper stop of Holmes, but rather with an improper use of force in executing that stop. In the opinion of this tribunal, the issue in this case therefore revolves around what happened in the period of time immediately before Holmes and Respondent collided. The witness to this time period called by the CCRB, Harrell, did receive money from the attorney handling Holmes's civil suit so that he would appear in this case. He was paid \$140 to cover transportation and lost wages for the day. (Tr. p. 177). When a witness receives money to appear, it does lead the trier of fact to question the testimony provided by that witness.

In this case, however, Harrell's version of the facts is very similar to the Respondent's version. Harrell places Respondent very close to Holmes at the time Holmes turned around. Both Harrell and Respondent indicate that Holmes had his hands up, albeit at different heights, when Holmes turned around. Both Harrell and Respondent testified that Respondent had his arm up right before the collision. While Harrell describes the position as a football tackle type position, Respondent indicates his arm was up to protect his face. Harrell indicates that he thought Respondent could have stopped, but I am crediting Respondent's testimony that he could not stop. Respondent was a large man who was running at full speed at the time Holmes turned around. The distance as depicted by Harrell in the photo placed in evidence by CCRB (CCRB X 4) is most convincing that Respondent was not reckless in failing to stop in such a short distance while running at full speed, at night, to apprehend Holmes. As the CCRB has failed to

prove Respondent's guilt by a preponderance of the credible evidence, I find Respondent  
Not Guilty.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner - Trials

**APPROVED**

JUN 30 2019  
  
WILLIAM J. PRUTTON  
POLICE COMMISSIONER