



POLICE DEPARTMENT

February 13, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Keith Dsouza
Tax Registry No. 943193
108 Detective Squad
Disciplinary Case No. 2013-10851

The above-named member of the Department appeared before me on July 30, 2014, charged with the following:

1. Said Police Officer Keith Dsouza, on or about July 5, 2012, at approximately 00:50 hours while assigned to the 76th Precinct and on duty in the vicinity of the intersection of Van Brunt Street and Delavan Street, Kings County, did wrongfully use force against Ryan Scails, in that he struck Mr. Scails with an asp without police necessity.

P.G. 203-11 USE OF FORCE

The Civilian Complaint Review Board (CCRB) was represented by Heather Cook, Esq. and Raasheja Page, Esq., Respondent was represented by John Tynan, Esq.

Respondent through his counsel entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDIntroduction

It is not in dispute that on or about July 5, 2012 at about 12:50 a.m. in the vicinity [REDACTED], 24-year-old Ryan Scails was in that area. He had consumed anywhere between four and five beers that night and had just left a bar. On his way walking home, he decided to urinate on the side of a building located on Van Brunt Street. Scails, at some point observed a police vehicle pass by and he knew that he could be issued a summons for urinating in public. He decided to duck into a dark area to avoid being seen by the police. Having had previous unpleasant altercations with the police, Scails then decided to run from the police for "a few blocks," estimated to be about two to three blocks.

Eventually, Scails decided to stop running when the police car chasing him pulled up and cornered him. This was captured on video (Civilian Complaint Review Board Exhibit [CCRBX] 2 is video footage of the stop). Scails did not stop and raise his hands as if surrendering to the police. Instead, his right hand went to the right side of his pocket. The officer on the passenger side of the vehicle (later identified as Police Officer Fernando Lopes) rushed out of the vehicle toward Scails and the momentum caused Scails to fall to the ground and his back hit a wall. Lopes got on top of Scails in an effort to handcuff him. Respondent exited the vehicle; he bent down as if to assist Lopes handcuff Scails. Within ten seconds as shown on the video, Respondent removed his asp (baton) and began to strike Scails about the body. Respondent went around Scails as he lay on the ground with Lopes on top of him, and struck him with the asp on various parts of his body.

The issue before this Court is whether Respondent wrongfully used force against Scails in that he struck Scails with an asp without police necessity.

The CCRB's Case

CCRB called Ryan Scails as a witness and offered the 911 call of the incident (CCRBX 1), video footage of the incident (CCRBX 2) and the medical records for Scails (CCRBX 3) as evidence.

Ryan Scails

On July 5, 2012, at around 12:50 a.m., Scails was in the vicinity of [REDACTED]
[REDACTED]. He had consumed approximately four or five beers before going to a bar. He did not consume any more alcohol during the 45-60 minutes he was at the bar.

Scails left the bar then stopped to "pee on the side of Van Brunt." He saw what he believed to be a police car, slowing down. Scails was aware that there were people living across the street from where he urinated. He did not have a medical condition "requiring him to let loose and urinate wherever." When he saw the police, he knew he was doing something wrong, but did not know if the police knew what he had done.

Scails knew he could receive a summons for urinating in public. He decided to "duck into a dark area" where he could not be seen to avoid dealing with the police. Scails was scared because he had gotten into unpleasant altercations with the police before and felt it was hard to trust them. Then, he decided to run down the street. He ran back and forth down a street where he thought he could escape. He agreed it was

disrespectful to run from the police after committing a crime they were trying to stop him for. He ran for less than a minute, giving up after a few blocks. He was prepared to give himself up because he knew he could not outrun the police car.

Scails was standing by a wall when the police car reversed and came down the street. The marked vehicle did not have its sirens on. An officer (later identified as Lopes) came out of the car from the passenger side and in one movement pushed Scails to the wall and then to the ground. Lopes hit Scails very hard, knocking him into the wall. Scails described this officer as short, stocky, with dark hair, fair-skinned and had an object in his left hand. Scails did not see much of the driver of the car.

When Scails stopped running and the police approached, he did not have his hands up in the air. Scails had a key ring attached to his back right pants pocket at the time. Scails believes at the time he was pulling his pants up. He stuck his right hand towards his right side. His arm looked like it was bent backwards. When Lopes rushed towards him, Scails moved his arm back quickly.

After Scails crashed into the wall, he was pinned to the ground with his left side pressed down. His hands were underneath him and Lopes was kneeling on top of him. Scails felt force but it did not feel like it was coming from a hand. He did not believe Lopes had punched him. The officers were trying to get Scails' arms out from underneath him. Scails tried to listen and comply with what the officer was saying. He tried to get his hands out from underneath him, to give them to the officer. He felt blows from an object to the right side of his body, from his head down to his legs. He believed the object to be metal, consistent with a baton or an asp. Scails was trying to give the officer his hands but he was also trying to defend himself from being hit over and over.

When Scails was trying to get his arms out he was moving his upper body from side to side and moving his arms back and forth.

When told not to resist Scails said, "I'm not trying to." He was not sure if his head hit the wall at any time. After being held on the ground, Scails was eventually helped into a seated position after being handcuffed. An ambulance came and Scails was helped to a standing position. There was a lot of blood and the officers did not know where the injury was. Scails was accompanied to the hospital by Emergency Medical Service (EMS) and Respondent.

Respondent was the partner of Lopes who threw Scails to the ground. While in the ambulance with Respondent, Scails said, "I can't believe I did this, I screwed up." Respondent asked Scails a lot of questions at the hospital, as if he had not been present when the incident occurred. Scails received stitches in his leg and on his head behind his ear.

Scails identified CCRBX 2 as the surveillance video containing footage of the incident. Scails agreed he had walked towards the police as they were approaching him after he had just tried running from them. Scails understood the officers had to be concerned for their safety. On the night of the incident, Scails had not consumed any illegal substances and was not in possession of any illegal substances or weapons. He was arrested for the incident but all of the charges were later dropped.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent is a seven-year member of the Department currently assigned to the 108 Detective Bureau. On July 5, 2012 Respondent was assigned to the first platoon with his partner, Lopes. Respondent had never worked with Lopes before this day. While in the vicinity [REDACTED], he observed Scails urinating in public. He was driving when Lopes said over the microphone, "Stop peeing, stay right there." Scails took off running.

Respondent chased Scails by car for about a minute, attempting to stop him. Respondent drove two or three blocks until they caught up to Scails. Lopes kept telling Scails, "Stop, it's the police." Respondent had to reverse, drive forward and make a couple of U-turns during the chase. Scails stopped running on a commercial street that was well lit. Respondent was concerned Scails would go into a dark area and they would lose him. He feared for his safety and for the safety of others. He parked the car and Lopes stepped out of the car. Lopes asked Scails to see his hands. Scails had his hands up in a fist. Lopes tackled Scails to the ground.

Once Respondent got out of the vehicle, he tried to assist his partner in arresting Scails. Scails was not immediately cooperative. Scails was resisting and moving around making it difficult for the officers to grab his arms. Respondent told Scails to put his hands down when he had his hands up in a fist. Lopes told Scails to stop resisting but he never asked Respondent for help. Respondent could not use his mace because Lopes was

too close to Scails. In the Police Academy, Respondent was trained to use his baton if he could not use his mace. Respondent had an asp on him at the time of the incident. He was taught to use it to strike below the neck at the shoulders, body and legs.

Respondent hit Scails a few times in the shoulder, shin and leg. Respondent was trying to get Scails to stop resisting. Scails was kicking his legs while Lopes was holding him. Respondent struck the shoulders of Scails to get him to release his arms. He struck Scails in his arms and legs to get him to comply and to place his arms behind his back. Once Respondent got Scails' arms out from underneath him, Scails was placed under arrest.

Lopes never told Respondent that Scails had a weapon. At the time of the incident, Respondent did not see Scails grab his pants; Respondent only remembered this after watching the video (CCRBX 2). Respondent never saw Scails grabbing his waist for a weapon but Respondent did see him grab his pants. He did not say this precisely in his CCRB interview but that was what he meant to elaborate. Lopes never used mace or his asp. Respondent never took out his gun during the encounter. Respondent agreed that hitting someone on the head is considered deadly force and deadly force was not necessary to subdue Scails.

Respondent saw Scails was bleeding from his leg and saw keys next to Scails. The keys found near Scails' body had nothing to do with the injuries. Scails received medical attention and stitches behind his ear. The cut Scails sustained on his leg was from Respondent's asp. Respondent never touched Scails' head.

Respondent saw EMS pour water over Scails' body. Respondent traveled to the hospital with Scails in the ambulance. Scails kept apologizing for what he did, saying "I

shouldn't have ran, you know, I wasn't thinking, I had too many beers, I'm sorry for peeing on the street." After the hospital visit, Respondent and Lopes transported Scails back to the precinct.

FINDINGS AND ANALYSIS

Respondent stands charged with wrongfully using force against Ryan Scails in that he struck him with an asp without police necessity. CCRBX 2 shows Scails running and then coming to a complete stop when he sees the police vehicle pull up. Scails moves his right hand up by his pocket area. It is unknown whether the police officer in the driver's seat, Lopes, sees Scails' movements, but as Scails moves his right hand up by his pocket area, Lopes exits the vehicle and rushes Scails. The momentum caused Scails to hit his hands on the ground and fall back into a wall. His back appears to make contact with the wall. Lopes is later on top of Scails during the encounter. Respondent exits the RMP from the driver's side and proceeds over to Lopes and Scails. He initially bends down as if to aid in the apprehension of Scails. However, he then pulls out his asp and instead begins striking Scails about the body. Respondent does not appear to be striking Scails without thought and recklessly. Instead, he appears to calculate as he strikes him and walks around his person and strikes him in various parts of the body. The leg and arm of Scails appear to be struck by the asp. There also appears to be a point where Respondent is standing above Scails. At no point does the strikes from the asp by Respondent appear to assist Lopes in handcuffing Scails.

There is one point in the video where Lopes' body is over Scails. Scails' head was up near the wall. Respondent stands in front of the wall and strikes downward twice.

The video is grainy and one is unable to see what Respondent struck, but Scails' head was in the location of where Respondent aimed his strikes with the asp.

Scails sustains a one-inch laceration to the area behind the right ear. He also sustained a half inch laceration to the leg. According to testimony at trial, both injuries required sutures. This was corroborated by the medical records (CCRBX 3) in that the records note an irregular one-inch laceration behind the right ear and a half-inch laceration to the right shin. The 1.5 centimeter injury to the head was repaired.

Scails testified before this Court that it was a combination of trying to pull his hand out when the weight of a man's body was on top of him (Lopes) coupled with his movements to protect his body from the strikes of Respondent's asp that were making his encounter with the police difficult. In addition, an anonymous 911 call was made about the incident. (See CCRBX 1). A husband and wife made an anonymous call to 911 the night of the incident to report that two police officers were beating a man who was screaming and that the force used was "excessive" and "overboard." The female reported that the officers had their guns out, but there was no evidence of this watching the videotape of the incident. The female also reported that she had no idea what the male had done, but she still felt that the force being used was too much.

It is the belief of this Court that unnecessary force was used against Scails who ran from police after urinating in public; an offense which is a violation. Lopes had Scails on the ground, he had one hand and was trying to get Scails' other hand to handcuff him. Respondent bent down for a short moment, less than ten seconds. He did not attempt to pry Scails' hand out so it could be handcuffed. Instead he stood back up, used his asp and struck Scails multiple times about the leg, arms and body in a failed

attempt to free his arm. It seems illogical that Scails' hand would become free since the weight of Lopes' body was on top of his person and his hand. After the failed attempts with the asp around Scails' body, there is a point where Respondent goes to the top of Scails in the vicinity where his head is and strikes two times. The strikes, although are not clear because of the grainy nature of the video in evidence; it appears, however, that the asp did make contact with Scails' head. The Court notes that during the struggle with Scails, Lopes also punches Scails in an attempt to handcuff him. However, it is more likely than not that the two strikes with the asp in the vicinity of Scails' head made some contact given the head injury requiring sutures to close. It was the same asp that was used to strike Respondent about the leg that caused a laceration requiring treatment. It stands to reason that the asp could cause a laceration to the head requiring sutures if used there.

Although Respondent denied striking Scails in the head, the incident occurred rather quickly, the majority of Scails' body is covered by Lopes and the video footage is apparent with respect to the force used.

Accordingly, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974).

Respondent was appointed to the Department on January 10, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

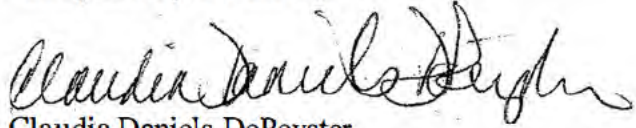
Respondent has been found Guilty of using unnecessary force in that he struck Scails about the head with an asp. While the CCRB argued that the strikes with the asp were full force, there is insufficient evidence in the record to support this notion. It is clear that the force used was more than a tap because a laceration requiring sutures resulted. Yet, the force used was not so severe as to require surgery to close, neither on the head or the leg. Scails was released from the hospital within hours.

What the Court will sustain is the use of unnecessary force where Scails was struck in the head. As Scails' hand was pinned underneath him by the weight of Lopes, striking him did nothing to alleviate this situation. It was not until Lopes changed his own body position and was able to free Scails' arm that he was able to handcuff him and sit Scails upright on the ground. It took a little over two minutes to accomplish this.

The CCRB asked for a penalty of the forfeiture of no less than seven vacation days. In Disciplinary Case No. 80347/04 (August 23, 2005), a ten-year sergeant with no prior disciplinary record forfeited ten vacation days for wrongfully using physical force in the course of effectuating an arrest. Respondent in that matter was alleged to have punched complainant in the spleen causing his spleen to shatter. The allegation was corroborated by medical evidence and expert testimony. In Disciplinary Case No. 2009-0483 (August 31, 2010), a 20-year police officer with no prior disciplinary record negotiated a penalty of 17 vacation days for causelessly striking a prisoner with an asp. As a result, the prisoner sustained a fractured arm.

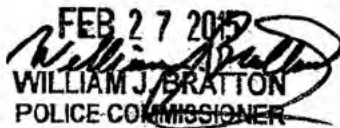
Based on the above and Respondent's service record, it is recommended that Respondent forfeit ten vacation days.

Respectfully submitted,



Claudia Daniels DePeyster
Assistant Deputy Commissioner – Trials

APPROVED

FEB 27 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KEITH DSOUZA
TAX REGISTRY NO. 943193
DISCIPLINARY CASE NO. 2013-10851

In 2011 and 2013, Respondent received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. In 2012, he received a rating of 4.5 "Above Highly Competent." Respondent has received six Excellent Police Duty medals, three Meritorious Police Duty medals and one Commendation in his career to date.

[REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials