



POLICE DEPARTMENT CITY OF NEW YORK

August 4, 2016

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Lanier Glenn
Tax Registry No. 923891
Housing Bronx/Queens
Disciplinary Case No. 2014-12806

Charges and Specifications:

1. Said Lieutenant Lanier Glenn, on or about November 1, 2013, at approximately 0354 hours, while assigned to the 90th Precinct and on duty, in the vicinity of [REDACTED] and [REDACTED], Kings County, did wrongfully use force against Person A in that he slammed Person A to the ground. *(As Amended)*

P.G. 203-11 - USE OF FORCE

2. Said Lieutenant Lanier Glenn, on or about November 1, 2013, at approximately 0354 hours, while assigned to the 90th Precinct and on duty, in the vicinity of [REDACTED] and [REDACTED], Kings County, did wrongfully use force against Person B, in that he swept Person B's feet from under him causing Person B to fall to the ground. *(As Amended)*

P.G. 203-11 - USE OF FORCE

3. Said Lieutenant Lanier Glenn, on or about November 1, 2013, at approximately 0354 hours, while assigned to the 90th Precinct and on duty, in the vicinity of [REDACTED] and [REDACTED], Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he arrested Person B without sufficient legal authority.

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

4. Said Lieutenant Lanier Glenn, on or about November 1, 2013, at approximately 0354 hours, while assigned to the 90th Precinct and on duty, in the vicinity of [REDACTED] and [REDACTED], Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he arrested Person A without sufficient legal authority.

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

Appearances:

For CCRB-APU: Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, New York 10007

For the Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway-Suite 2340
New York, New York 10279

Hearing Date:

May 25, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 25, 2016.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called CCRB Investigator Leanne Fomelli and Police Officer Benjamin Young as witnesses. Respondent called Sgt. Ivan Furda 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.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is undisputed that on November 1, 2013, at approximately 0354 hours, Respondent, while on duty and in uniform, was called to the [REDACTED] in the vicinity of [REDACTED] and [REDACTED] in Brooklyn. There had been disturbances inside the club, which spilled out

onto the surrounding streets. Person B, Person A and Person A's friend, Person C, had been inside the club. After they exited the club, Respondent arrested Person B and Person A. In the course of arresting them, Respondent first took Person B to the ground and then took Person A to the ground. They were handcuffed and taken to the 90 Precinct. During his arrest, Person B suffered abrasions to his face. Both men were charged with disorderly conduct, resisting arrest and obstruction of governmental administration.

The areas of dispute in this case concern what actions Person A and Person B engaged in on the street that night and how the two men came to be on the ground. None of the civilians testified in this case, despite being notified or subpoenaed to appear by CCRB. (Tr. 3-4) Transcripts and audios of their interviews with CCRB were admitted into evidence. (CCRB Exs. 2 A and B, 3 A and B, and 4 A and B) A transcript of the deposition of Person B taken in the course of his lawsuit against the City of New York, which arose out of this incident, was also admitted into evidence. (CCRB Ex. 5)

Person B, in his statement to CCRB, indicated that when he left the club that night, there was a big fight in the middle of the street and a couple of other fights broke out. He said that there were "cops everywhere." (CCRB Ex. 2A, 3, 18) When he and his friends got to the car they intended to leave in, there were about six females "dressed like males" and two boys sitting on the car and drinking. Person B stated that the women moved and "minor things were said." He also indicated that there was "a little scuffle." (CCRB Ex. 2A, 4-5, 19) The Respondent, whom he described as having first gone into the club, was walking everywhere on the block and "trying to clear the premises." (CCRB Ex. 2A, 4, 21) Person B stated that the women who were on the car were getting loud so the cops turned them away. The Respondent told the people to clear the corners or he is going to lock people up. (CCRB Ex. 2A, 4-5, 21) Person B further

stated that the Respondent got into an altercation with one of Person B's friends when he was telling him to go his own way. (CCRB Ex. 2A, 4-5) Person B described what happened next as follows:

"As I look back, I go to say something to my friends I guess he thought that I was saying something towards him and basically, I guess he wasn't trying to hear nothing because the situation that was going on and he just grab me up and he tried to manhandle me, that's what I would call it. So he goes to me and I'm like what you're doing? And before I could say anything, I'm face down on the floor. He put a knee on my head and I see him doing that as an officer coming to help him. My friend pulled out his phone to record, he attack my friend also." (CCRB Ex. 2A, 5)

Person B further described Respondent's actions by stating that, "he did that trip maneuver like you put your feet under somebody and you grab them by the shoulders." (CCRB Ex. 2A, 22) Respondent then grabbed him by his boxers and had his leg in front of him and just scooped him up. Person B's face hit the ground first. (CCRB Ex. 2A, 24-25) Person B described the Respondent as moving his knee while it was on his head causing his face to move on the pavement. (CCRB Ex. 2A, 28) He stated that his face was bleeding and that two other officers then came over to him and handcuffed him. He was brought to the Precinct. He rejected an offer to go to the hospital because he thought it would delay his arrest processing. (CCRB Ex. 2A, 7) He took pictures of his face that same day. (CCRB 6 A, B, C)

In Person A's statement to CCRB, he describes leaving the club and seeing a fight that his group was not involved in. He stated that as he was walking to the car the police came up to his group and started asking questions and then, "they immediately like grabbed him [Person B] like thinking the tension was on him and slammed him on the floor..." (CCRB Ex. 3A, 4) Upon further questioning, Person A said the Respondent came up behind Person B and without saying anything to him, "just slammed him." (CCRB Ex. 3A, 23) Prior to this Person B, "was not arguing but he was discussing," with a male and a female. (CCRB Ex. 3A, 20) As soon as he

was "slammed," Person B's face started bleeding from the right side. (CCRB Ex. 3A, 26) Person A also stated that after Person B was handcuffed he tried to move his face and there were rocks and glass on the sidewalk. (CCRB Ex. 3A, 31) Person A stated that Person B was handcuffed right away by the Respondent and then three police officers hit him again when he tried to move. (CCRB Ex. 3A, 31, 38)

Person A further stated that he asked Respondent why Person B was getting arrested. Person A used his cell phone to take a picture of the scene when he was about two feet away from Person B. (CCRB Ex. 3A, 34; CCRB Ex. 6D) Person A approached Respondent at this point who was, "just saying go home ..." (CCRB Ex. 3A, 36) Person A stated that he did not want to leave and when he asked the Respondent why he was going to arrest Person B, the Respondent, "did the same move," of placing one hand on his neck and one hand on his back and slamming him on the floor. (CCRB Ex. 3A, 37) Person B was already in the police car at this time. (CCRB Ex. 3A, 40-41) While Person A was on the ground, the Respondent restrained him and immediately put handcuffs on him. (CCRB Ex. 3A, 38, 48) Person A said he sustained scratches but did not go to a doctor. (CCRB Ex. 3A, 43) No photographs of any scratches were offered as evidence.

Person C, a friend of Person A, gave her account of what happened outside the SDQ club in her interview with CCRB. Person C stated that a fight broke out inside the club and everyone was being told to leave by the police. A fight then broke out outside the club. She was walking towards a car with her friends when one of the boys in her group [Person B] began arguing and got into a "confrontation" with a group of girls who were drunk. She stated that, "once the police officers heard down the corner all those yelling and screaming and cursing, they came running down the block to see what was happening." She described the officers who came

running as Respondent and an Asian officer. She further stated that the police knocked Person B to the ground and arrested him. She described the police actions as coming face to face with Person B while he was still arguing with the females and just grabbing his arms and immediately shoving him to the floor. In response to questioning, she stated that Respondent was around the side of Person B, towards his back. After Person B was on the ground, the Asian police officer put handcuffs on Person B. Later at the Precinct, Person C noticed scratches on Person B's face "from the concrete". (CCRB Ex. 4A, 3-4, 9, 13-14, 19-21, 25)

The people Person C were with started to record the police with their cell phones. The people who were recording put their cell phones away. A "big group" of people including Person C and Person A followed the police as they brought Person B to the police car. Respondent started to aggressively push Person A and another person who previously had a cell phone. He pushed Person A five or six times. Person C stated that it was both Respondent and an Asian officer who shoved Person A to the floor. The Asian officer got on top of Person A and handcuffed him in seconds while Person A was just lying there. (CCRB Ex. 4A, 23-31, 39-41, 48, 50)

Three officers, PO Benjamin Young (called by CCRB), Sergeant Ivan Furda and Respondent also provided accounts, through sworn testimony at the hearing, of what they observed during the incident. Officer Young was the arresting officer for both Person B and Person A. His supervisor, Respondent, provided him with the information he placed in the criminal complaints. (Tr. 49-50)

According to Officer Young, they responded to the scene that night after a call for assistance came from Respondent. When he arrived at the scene he saw people on both sides of the block involved in a big verbal dispute and he observed other officers trying to disperse the

crowd. (Tr. 51-52) He first testified that he didn't see Respondent have any interaction with Person B but then testified that he saw Person B being placed under arrest. (Tr. 52) Officer Young stated that he started to disperse the crowd and several individuals started walking away. He further testified that as he was pushing this crowd back, Respondent came from behind and took down Person B. He described Respondent as grabbing Person B by the waist, lifting him up and then taking him down to the ground. He couldn't see how Person B was positioned on the ground but saw Respondent on top of Person B holding him down. (Tr. 54-55) There was a small struggle to get Person B's hands behind his back. (Tr. 66) Officer Young testified that at the time he observed Person B he did not believe he should have been arrested. (Tr. 55)

On cross-examination, Officer Young testified that it appeared the large group of 10-15 people, which included Person B, was engaged in some sort of argument and were yelling at another group of people across the street from them. The words exchanged included threats. (Tr. 58-59, 76) At this point in time, Officer Young had only been on the scene for less than a minute. (Tr. 59-60) Officer Young was pushing the group down the street because he was concerned, from their overall demeanor and agitation level, that the conflict could lead to violence. (Tr. 60) At least some members of the group, including Person B, appeared to be intoxicated. (Tr. 62) There were several people who were not compliant with Officer Young's direction to clear the block. (Tr. 61)

On cross-examination, Officer Young also initially testified that he had no physical contact with Person B at all, but reversed himself when shown the picture of him handcuffing Person B. (Tr. 68-69) Officer Young did not see Respondent put his knee on Person B's head. (Tr. 68) He acknowledged there were several individuals within several feet of Respondent as he was attempting to arrest Person B. (Tr. 71)

Sergeant Furda also responded to the scene that night after hearing a call from Respondent for additional units to respond. He was familiar with the scene from having previously responded to disturbances there approximately 10 times. (Tr. 89) On this night when he arrived he observed a large group of people in the area outside the club. He saw multiple fights going on. He described the scene as "chaotic" and "out of control." (Tr. 92) He exited his car and arrested a male he saw fighting. He ordered an officer to handcuff another individual who was fighting. (Tr. 89-90) He then went to look for Respondent who had put out the call for help. At the end of the block he saw 10 to 15 people and Respondent, who was kneeling down. He approached and saw the Respondent had a male face down on the ground with one hand cuffed while he was trying to cuff the other hand. (Tr. 92-93) He does not remember if there were other officers there at this time. (Tr. 101) He did not see Respondent's knee at any time holding down the male's head or neck. (Tr. 93) The male's head could freely move. (Tr. 105) He observed 10 to 15 people standing in close proximity to the area where the arrest was taking place. (Tr. 94) Sergeant Furda said he reached down and grabbed the male's other hand and they were finally able to handcuff him. (Tr. 94) At that point Sergeant Furda left to return to the two other males who had been placed under arrest. He testified that there were other officers near Respondent at the time he left. (Tr. 102)

Respondent testified that on November 1, 2013, he was the midnight platoon commander in the 90 Precinct. He received a call from the security manager of the SDQ club asking him to respond to the club since there was a large fight going on inside and outside the club. (Tr. 113-14) Respondent had been called to this same club previously approximately 30 to 35 times, primarily to respond to fights. (Tr. 114) When Respondent arrived on the scene he observed people fighting and he tried to stop the fights and disperse the crowd. He was concerned that the

situation was going to escalate if he didn't clear the block as soon as possible. As a member of the Department for seventeen years, he had previously experienced shootings and stabbings in similar situations. (Tr. 112, 116-18) On this night, he gave verbal commands for the people to leave the block. (Tr. 116)

Respondent interacted with Person B approximately three or four times that evening. He testified that Person B's group was fighting. He observed pushing, shoving and punching. On cross-examination he acknowledged he can't recall if he specifically saw Person A or Person B fighting, but he does recall they were part of the large group that was fighting. (Tr. 135-36) When he told them to disperse, the group walked down the block and continued to fight there. He described the scene as "chaotic". (Tr. 117, 131-33) When Person B refused to disperse after four or five instructions to do so, Respondent decided to place him under arrest for disorderly conduct. (Tr. 117)

When Respondent went to grab Person B's wrist, he "flailed" and pulled his arm back. Respondent grabbed him and pulled him down to the ground. (Tr. 119) Respondent further testified that while he was effecting the arrest of Person B, another male [Person A] was trying to grab Person B before he went down to the ground to prevent the police from making the arrest. After Person B was on the ground, Person A was standing very close to Respondent and refused to move back after being commanded to do so. Respondent arrested Person A for obstructing governmental administration. (Tr. 120-21, 141-42)

Respondent described the manner in which he brought Person B to the ground. He testified that he used a tactic he learned at the Police Academy in that he grabbed Person B by the upper arm and shoulder area and then pushed him while sweeping his legs out from underneath him. (Tr. 121) He kept his hands on him to guide him to the ground. (Tr. 122-23)

Respondent further testified that once Person B was on the ground he had to pull his arms from underneath him, but Person B resisted his efforts. He testified that he never put his knee anywhere on Person B's body. (Tr. 123) Respondent doesn't recall if any other officers assisted him in arresting Person B, nor does he remember seeing Sergeant Furda until after Person B and Person A were arrested. (Tr. 124-25)

Respondent also described how he arrested Person A. He went to grab Person A but he moved back, so Respondent took him to the ground using the same maneuver he used with Person B. (Tr. 125)

Respondent explained his reasons for taking both Person B and Person A to the ground by stating that, "...there were fights going on, there was a melee, it was very disorderly, and I felt at that time that those two individuals were the ones causing the disturbance so I wanted to - I wanted them to leave, they wouldn't leave, so I had to place them under arrest." He testified that he used the minimum force possible in order to arrest both of them. (Tr. 127)

There are four charges in this case. Respondent is charged with wrongfully using force in slamming Person A to the ground and arresting him without sufficient legal authority and is also charged with wrongfully using force against Person B in sweeping his feet from under him causing him to fall to the ground and arresting him without sufficient legal authority.

In addressing the question of the legal authority to arrest Person B and Person A, by all accounts, both the hearsay statements and the testimony at trial, it is clear that there was a chaotic situation involving fighting going on outside the club that night. Person B and Person A distanced themselves from any involvement in these fights in their statements. Both men described seeing fights but stated they were not involved in them.

As with all hearsay statements it is very difficult to evaluate the content of the statement without the benefit of seeing the witness's demeanor while making the statement and without having the content of the statement put to the test of cross-examination. In the case of Person B, who had filed a civil action against Respondent based on the incident, which could possibly give him a reason to minimize any wrongful actions on his part, there are indications in his own statement that he was actually involved in the fighting that evening. He admitted that he had an exchange of words and "a little scuffle" with females he saw on the block. Person C in her hearsay statement adds support to the conclusion that Person B was involved in disorderly conduct that evening. She states that Person B got into a "confrontation" with the group of girls which involved yelling screaming and cursing which caused the police to come running to him. According to her account, Person B was arrested while he was involved in this confrontation.

With regard to Person A according to his own account he acknowledged being told by Respondent to just go home. He admits he did not follow this direction because, as he stated, he did not want to leave. He acknowledged that he approached Respondent who was saying to just go home. Under Person C's account she also provides evidence that Person A did not disperse as directed. She stated that Person A followed Respondent down the block after he arrested Person B and she saw Respondent pushing Person A away from the area five or six times before he went to arrest him.

Based on the hearsay statements alone there is evidence that Person B was involved in a scuffle which constituted disorderly conduct, and is therefore a sufficient legal basis for his arrest. There is also evidence in the hearsay statements that Person A did not disperse as ordered, which is also sufficient legal grounds for an arrest for disorderly conduct. But beyond

the hearsay statements, we also have the testimony from Respondent at trial which supports the conclusion that he had sufficient legal authority to arrest both Person B and Person A.

I find that Respondent testified in a credible manner based on his demeanor and responses to questions on both direct and cross-examination. An example of Respondent's candor and the absence of any embellishment in his testimony can be seen in his response on cross-examination that he did not actually see either Person B or Person A fighting but simply saw them as part of the group that was fighting. Respondent's testimony that the group refused to disperse as ordered is also supported by the statements of Person B, Person A and Person C. Person B stated that Respondent had told the people to clear the area or he was going to arrest them. Person C made a statement that everyone was being told to leave by the police. Person A stated that Respondent was saying to just go home.

According to Respondent he had observed Person B on several occasions that evening. Prior to making his decision to arrest Person B, he had seen him in a group that was involved in the fighting and Person B had refused to disperse after Respondent had directed him four or five times to do so. While Officer Young testified that he would not have arrested Person B at the time he saw him, I do not find this dispositive since Officer Young acknowledged he had only been on the scene for less than a minute at that time. Officer Young did not have either the depth of experience that Respondent had in similar situations, nor was he on the scene for a sufficient period of time to have observed the actions of Person B and the interactions of Person B and Respondent prior to his arrival. I note that Officer Young's testimony in general is also called into question, and as such has not been relied on, since he initially testified he never even touched Person B when in fact he is pictured helping to hold him down. Officer Young's descriptions of who was present at various times also conflicted with other evidence in the case.

Based on all the credible evidence in the case I therefore find that CCRB did not prove by a preponderance of the evidence that Respondent arrested Person B without sufficient legal authority. I find Respondent Not Guilty of Specification 3.

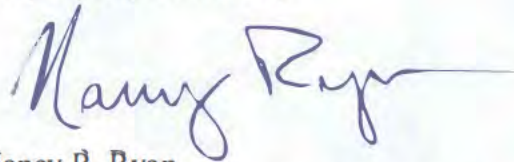
With regard to the arrest of Person A, Respondent credibly testified that Person A tried to grab Person B as he was going to arrest him and also that Person A refused to move away from Respondent after being ordered to do so. While there is no specific corroboration for the portion of his testimony that Person A tried to grab Person B, there is corroboration from the hearsay statements that Person A refused to leave the scene as ordered. This alone constituted disorderly conduct and provided sufficient legal authority for Respondent to arrest Person A. I therefore find that based on the credible evidence in the case, CCRB has not met their burden of proof with regard to Specification 4 and Respondent is Not Guilty of this charge.

The other two charges in this case concern the amount of force used to arrest Person B and Person A. The specifications only concern the manner in which Person B and Person A were taken down to the ground. Under Patrol Guide Section 203-11, as in effect on the date of this incident, all members of the service at the scene of a police incident must use minimum necessary force. For the reasons indicated above, I have found Respondent to be credible. He testified that he only took both men to the ground after they pulled away from him as he was going to place them under arrest. He demonstrated the maneuver he used in the courtroom and testified that he held the men to guide them down to the ground. Person A did not have any documented injuries from the tactic used by Respondent. Person B did provide photographs of the scrapes on his face, but as he also stated he did not request to be seen at a hospital for these scrapes despite being given the opportunity to do so. While it is clear Person B did incur the scrapes as the result of contact with the ground, these appear to be incidental to the way his face

landed on the ground, as described by Person B himself, or were caused by his movement on the sidewalk as described by Person A. I do not find that they were intentionally caused by the Respondent. Nor were Person B's injuries inconsistent with the testimony of the Respondent.

With regard to Specification 1, I find that CCRB has not proven by a preponderance of the credible evidence that Respondent wrongfully used force to "slam" Person A to the ground. With regard to Specification 2, while I find that Respondent did sweep Person B's feet from under him, I find that CCRB did not prove by a preponderance of the evidence that this maneuver was a wrongful use of force. Rather, it was an application of a technique necessary to control Person B in order to effectuate an arrest. The maneuver was used by Respondent only after Person B went to pull away from him. I therefore find Respondent Not Guilty of Specifications 1 and 2.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

OCT 14 2016

JAMES P. O'NEILL
POLICE COMMISSIONER