



POLICE DEPARTMENT CITY OF NEW YORK

June 9, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Richard Danese  
Tax Registry No. 934715  
79 Precinct  
Disciplinary Case No. 2015-14926  
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**Charges and Specifications:**

1. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he threatened Darrell Dennis with the use of force without sufficient legal authority.  
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
2. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he threatened Deaquan Halsey with the use of force without sufficient legal authority.  
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT – PROHIBITED CONDUCT
3. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty in the vicinity of [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he threatened Person A with the use of force without sufficient legal authority.  
P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT – PROHIBITED CONDUCT
4. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to 079 PCT and on duty, in the vicinity of [REDACTED], Kings County, used excessive force against Darrell Dennis in that he grabbed Darrell Dennis by the neck without police necessity.  
P.G. 203-11 - USE OF FORCE

5. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, en route to 79th Precinct stationhouse, Kings County, used excessive force against Darrell Dennis, in that he placed his knee against Darrell Dennis' back without police necessity.  
P.G. 203-11 - USE OF FORCE
6. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, en route to 79th Precinct stationhouse, Kings County, used excessive force against Darrell Dennis, in that he punched Darrell Dennis in the face without police necessity.  
P.G. 203-11 - USE OF FORCE
7. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, en route to 79th Precinct stationhouse, Kings County, used excessive force against Darrell Dennis, in that he punched Darrell Dennis about the body, without police necessity  
P.G. 203-11 - USE OF FORCE
8. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, in the vicinity of [REDACTED], Kings County, used excessive force, in that he struck Darrell Dennis with a blunt instrument without police necessity.  
P.G. 203-11 - USE OF FORCE
9. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, in the vicinity of [REDACTED], Kings County, placed Darrell Dennis into a chokehold.  
P.G. 203-11 - USE OF FORCE
10. Said Police Officer Richard Danese, on or about July 28, 2015, at approximately 2225 hours, while assigned to the 079 PCT and on duty, in the vicinity of [REDACTED], Kings County, obstructed the breathing of Dennis Darrell.  
P.G. 203-11 - USE OF FORCE

**Appearances:**

For CCRB-APU: Jonathan Fogel, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> floor  
New York, NY 10007

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

**Hearing Date:** April 24, 2017

**Decision:**  
Not Guilty

**Trial Commissioner:**  
ADCT Nancy R. Ryan

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 24, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Darrell Dennis and Deaquan Halsey 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.

## 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

This case arises out of multiple allegations of threats made and force used against Darrell Dennis during the course of his arrest on July 28, 2015. Though Respondent denies all allegations of misconduct, the following underlying facts are not in dispute. On the evening in question, Respondent, assigned to the 79 precinct in Brooklyn, was working Conditions, addressing quality-of-life issues and 311 complaints. (Tr. 134-35) At approximately 2215 hours, a 311 complaint came in regarding [REDACTED]. Respondent and his partners, Officers Ramos and Hughes, responded to the location and observed a group of about ten to fifteen people congregating around or near the stoop, including Darrell Dennis and his friends, Deaquan Halsey and Person A. (Tr. 17 20, 135-39) Though witnesses differed on the sequence of what was said in the resulting conversation, all concurred that at some point

Respondent asked Darrell Dennis whether he lived in the area and to produce identification, which he stated he did not have. It is also not contested that Dennis told Respondent "suck my dick," and that Respondent made a comment that more rookie officers would arrive at the scene. (Tr. 20-22, 67, 104-05, 141-44, 196)

Ultimately, Respondent opted to place Dennis under arrest for disorderly conduct. Dennis did not resist being handcuffed but refused to get into the police van, insisting that he wanted his mother to come to the scene. Respondent called for an additional unit to respond and with the help of other officers, lifted Dennis into the third row of the police van and remained with him there for the duration of the five minute ride to the precinct. (Tr. 24-25, 85, 105-06, 145-49, 152, 196)

During this time, Mr. Halsey made a recording on his cell phone that was entered into evidence as CCRB's Exhibit 2. At the outset of the one minute video, Dennis can be heard saying, "No . . . Call my mother...what are you touching me for? Get off me. No." Simultaneously, another voice can be heard saying, "DJ, shut up. DJ. Don't argue," and "calm down." At 0:28 on the video, Dennis, who is wearing a gray shirt, is lifted from behind into the van. Two other voices can be heard saying "the legs," and "around the neck" between 0:30 and 0:36 seconds. This is followed by someone asking, "Why you all grabbing him like that?" as a female officer implores those gathered to "stay back." At 0:52 seconds, the voices in the crowd become more excited as the van door closes. At least two discernible voices, a male and female, can be heard saying, "he's hitting him" and "he just hit him," and at 1:02 seconds, the same male voice cries out multiple times, "he got his knee on him." At this point, the video becomes very shaky, as though the person holding the cell phone was moving. The last thing that can be heard

as the van lights are activated at 1:12 seconds is another male voice yelling, "Yo, don't hit my fucking brother." (Tr. 40-42, 115-16, 126-27, 210)

What transpired during that ride is the central issue in this case but once at the stationhouse, Dennis complained of swelling to the left side of his face. He was not transported to the hospital but Respondent filled out a Medical Treatment of Prisoner Form, noting the swelling and checking boxes indicating that Dennis had refused medical aid both in the field and at the command. (CCRB Ex. 5; Tr. 169-73, 177-81)

The next afternoon, following his release, Dennis went to [REDACTED] complaining of a headache, neck pain, back pain and a bruise on his face. According to hospital records in evidence, he told medical personnel that police had beaten him up the day before in the back of a van. He denied any loss of consciousness, confusion, dizziness, numbness, tingling or changes in vision. An exam noted that he had an abrasion on his head over the right temporofrontal region and ecchymosis (discoloration) as well as an abrasion to his left brow. The bruising was described as "mild." The report noted cervical (neck) pain on the left side but he was found to have no jugular vein distention, no midline tenderness and normal range of motion. The Emergency Department resident also noted that Dennis had lumbar paraspinal tenderness. He was given a prescription for [REDACTED] and [REDACTED] and was discharged the same day and directed to follow up in a week with his primary doctor. (CCRB Ex. 3)

Dennis represented that the disorderly conduct charge was dismissed and Respondent presented no contrary information or evidence. He also filed a civil lawsuit in connection with this incident which was settled for \$77,500. (Tr. 16-17)

Respondent stands charged with threatening Dennis, Halsey and Person A with the use of force; grabbing Dennis by the neck without police necessity; placing his knee on Dennis' back without police necessity; punching Dennis in the face without police necessity; punching Dennis "about the body" without police necessity; striking Dennis without a blunt instrument without police necessity; placing Dennis in a prohibited chokehold and obstructing his breathing. Respondent denies all allegations and maintains the only physical contact he had with the noncompliant Dennis was that which was necessary to effectuate his arrest and transport. Dennis, conversely, does not admit to resisting arrest or any wrongdoing beyond a few uncouth comments and contends that he was beaten and choked by Respondent with such force that he believed Respondent was trying to kill him.

Dennis recounted that on the evening of July 28, 2015, he returned to his home on [REDACTED] [REDACTED] after work at 2140 hours and proceeded to get dressed and walk toward a nearby store. On the way there, he stopped outside a multifamily residential building to speak with two friends. He estimated that about 25 other individuals were also outside the residence in nearby vicinity. A minute or two into the conversation, a police van, which he had not seen previously, pulled up. Respondent exited the vehicle, approached the group and asked what they were doing. Dennis was silent but recalled that Halsey responded, "chilling with my dogs off the rip," a reference to a song lyric. (Tr. 18-20, 62-65) Dennis smirked "a little," finding Halsey's response funny. Respondent, he alleged, retorted, "I can get some rookie officers out here and you know what they would do to you." Dennis interpreted this as a "physical threat that he was threatening to get some cops to attack me." Respondent then left the group and approached other civilians who were outside before returning and asking who lived on the block. When Dennis confirmed that he resided on the block, Respondent asked for ID, which he explained he did not have.

Respondent told him, “[y]ou could get arrested for not having ID,” to which he responded, “No you cannot. You can get detained and a ticket but you cannot get arrested.” At that point, Respondent, who had not asked anyone else for ID, put him in handcuffs. (Tr. 20-22)

Dennis acknowledged that as Respondent walked him toward the van, he said, “Suck my dick.” He explained he made this comment because “he was being ignorant because he couldn’t arrest me, and I felt that since he only knew ignorance to get ignorant with him also.” (Tr. 22) Dennis contended that Respondent pushed him toward the van and replied “that he would beat a little pussy bitch ass like mine.” On cross, he suggested that this comment could not be heard on the video because Respondent whispered it in his ear. (Tr. 23, 67) He replied, “If you didn’t have that badge...I would beat your little ass.” He estimated that their verbal exchange outside the van went on for about five minutes. Feeling scared, Dennis told Respondent, “I won’t get in the van until my mother comes.” He explained that his mother is vice president of the block association and has a “very good relationship” with the precinct. However, as his mother walked up the block, two other officers arrived and, with Respondent, “threw [him] in the van.” (Tr. 22-24, 48) Specifically, Dennis detailed that Respondent put his arms underneath his shoulder and his forearm by his throat toward his Adam’s apple. He confirmed, however, that there was “no pressure at all” applied to his neck at this point. He landed in the van face first between the seats and remembered thinking, “Oh my god, I learned my lesson. I will never tell a cop [suck my dick] again.” (Tr. 24-25)

Dennis next recalled feeling Respondent’s “sharp knee” in his lower back, limiting his movement, and then saw Respondent’s fists “flying towards” his face. He alleged that Respondent first struck the right side of his face with a closed fist and then the left side, continuing to punch him “a lot of times” and causing his vision to “slightly” blur. He believed

Respondent was hitting him with a ring on the left side and a metal object on the right side.<sup>1</sup> He had "no clue" what the metal object actually was.<sup>2</sup> (Tr. 26-28, 69-70, 83)

After the first punch, he began to scream and kick as the van doors closed. As the van started moving, Dennis alleged that Respondent put him in "the tightest chokehold I ever felt in my life." He detailed, "he put his whole [forearm] bicep under my throat area, my Adam's apple area, and then he just kept turning his arm fully around to where his elbow was almost vertical with his shoulder so it was pretty much upward . . . and my whole head was turned. . . ." Dennis explained he was face down at the time and Respondent lifted his upper body or chest area as he was choking him as he tried to tell Respondent that he had asthma. The chokehold, he recounted, was so tight that he believed Respondent "was trying to kill [him]." As the choking continued, Dennis, who was handcuffed for the entire alleged assault, asserted that Respondent also began punching his rib area and continued to do so until they arrived at the precinct approximately four minutes after the choking began. On cross, Dennis denied spitting on Respondent at any point during the encounter. (Tr. 28-32, 70-71, 83-86)

When they arrived at the precinct, Respondent lifted him up and Dennis asked, "What the hell is wrong with you? You just beat my ass. Eric Garner just got 5 million for this. I'm going to be the next Eric Garner." Respondent replied, "You're alright, it's not that bad." Inside the precinct, Dennis advised an officer in a white shirt at the desk that Respondent "beat his ass" and asked, "This is what you allow your officers to do, beat people's asses?" That officer was "completely unmoved," and did "absolutely nothing" to address his allegation or assist him. On

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<sup>1</sup> Dennis testified that his own keys were in his pocket during the entire encounter. (Tr. 66, 89)

<sup>2</sup> Dennis contended he had an "open wound" to the left side of his face where Respondent struck him. He suggested the bleeding was not reflected in his photo taken at Central Booking because he had wiped his face with his shirt and noted on redirect that his booking photo showed discoloration on the collar of his shirt. He also noted "not too many punches" landed on the center of his face because he turned his head. (Tr. 72-75, 88-89)

cross examination, he denied telling the officer, "I wish I had gotten beat," but acquiesced he might have said, "My mom would get paid like Eric Garner's mom got paid." (Tr. 31-32, 75-77).

Once inside a holding cell, Dennis realized that part of his face was bleeding and began screaming for an EMT. Respondent, he contended, left him in the cell and accused him of providing a false name. He testified that Respondent later came back and told him his mother had verified his identity, gave him water and said "if you want to go to the hospital, you can go . . . but it'll take longer. You can go to Bookings where they have EMT's available and they'll take care of you." Since he wanted the process to be shorter, Dennis indicated he did not want to go to the hospital and agreed to proceed to Bookings. (Tr. 32-34)

Dennis testified that he saw Respondent just once following this incident in the spring of 2016 when Respondent approached him at [REDACTED] and "bother[ed]" him about his CCRB complaint and a pending arrest, saying "Good luck with your case." He recalled feeling scared and calling his mother saying repeatedly, "Oh my god, he's going to kill me." He explained that he did not report this incident to the Department because "the police can't really police the police. It's been proven. I've seen it all over. Police don't have control over the police." He noted he later advised the CCRB and had avoided going outside late at night following the encounter. (Tr. 43-49)<sup>3</sup>

On cross-examination, Dennis acknowledged that he had a prior conviction for "fraudulent instrument," or using a fake credit card and explained that he had created six fake cards. (Tr. 16, 52)

Deaquan Halsey, a longtime friend of Dennis, also testified, corroborating some of his friend's version of events. He recalled that they were "chilling on the steps" on the evening in

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<sup>3</sup> The APU prosecutor conceded that there was no documentation of any call with CCRB regarding this alleged encounter. (Tr. 51)

question when, two minutes after Dennis arrived, police officers appeared at the location. (Tr. 98-99) Respondent, he remembered, asked what they were doing outside and whether they had seen a group of kids fighting. He said there were no kids outside and Respondent began asking everyone where they lived. Halsey told him, "I don't live over here," then stopped "paying him any mind" and began singing a song with the lyrics, "I'ma ride with my dogs off the rip." Dennis, he remembered, began laughing, and Respondent stated, "I hope you have that mouth when I come back around with these rookie cops." He then asked Dennis for ID and when he could not produce it, announced he was under arrest and handcuffed him. Halsey began recording on his phone from the sidewalk and watching the video on cross examination, acknowledged hearing himself implore Dennis to calm down, explaining that he was "upset that he was being arrested for nothing" and was "standing his ground." Specifically, he recalled Dennis telling the officers "I'm not going anywhere," though he contended that "he didn't resist at all." As Dennis called for someone to get his mother, Respondent and other officers "picked him up...grabbed him from his neck and feet area and . . . put him in the van face down." (Tr. 101-06, 115-17)

Halsey, who maintained he had a clear vantage point even though detectives on the scene made him back up, heard someone say, "[h]e's grabbing his neck." Once Respondent entered the van, he observed "movements in the back of the van and it couldn't have been Mr. Dennis because he was face down in the van with hands behind his back. So I believe he was hitting him." When prodded as to whether he saw Respondent's knee, he replied "Definitely. That was the first thing he did." He did not specifically recall seeing punches thrown, explaining, "it was a while ago. But...I saw lots of things happening. I just can't give you the details because I don't remember it as clearly." He remembered though, observing Respondent's arm go down one time.

as the "lights cut out really fast" and the van sped off. He believed this "definitely" looked like a punch and, watching the video, pointed out when he heard himself and others saying, "he's hitting him" as the camera went astray. (Tr. 106-09, 125, 129)

Dennis' other friend who was present at the scene, Person A, did not testify at trial but spoke to a CCRB investigator by phone six days after the incident. The call, however, was ended by Person A prematurely due to another incoming call. Like Dennis and Halsey, he recalled that they were walking to a store on Dennis' block but stopped to talk with other individuals they knew who were outside when "police [officers] jump[ed] out" of a blue and white car, asking Dennis if he lived on the block and for his ID. When Dennis told the officers that he did not need to show ID and asked what the reason was for the stop, an officer warned, "Are you really going to do this to me? Do you want to show me your ID or I can have some rookie cops come back here and beat your ass because they're not going to be as polite as me." (CCERB Ex. 4-A at 3-4, 14) Person A proceeded to start walking away as the officer told Dennis he was going to "lock him up."

He recalled that the officer then "grabb[ed] DJ up real strong...aggressive, like he's mad or something." Dennis, he remembered, asked why he was grabbing him and then said "suck my dick" twice. Person A continued, "Next thing you know, they're grabbing DJ up, slamming him in the car. And while they're putting him in the car, you could see the officer like his arm is going up and down, like he's punching him or whatever." He noted that when he saw Dennis the next day after his release from the precinct, he observed bruises on his neck and he "definitely was bleeding." When asked what could have caused those bruises, he responded, "because he was punching him. DJ was in handcuffs. They slammed him on his back in the car . . . into the van or whatever. And you just see the guy get on top of him and you see his arms going up and

down . . . so it's obvious that he's punching him." (*Id.* at 5-6) Like Halsey, he contended that Dennis had not resisted physically, explaining, "walking to the car, he walked with them . . . then he was like, 'No I'm not getting in a car . . .'" (*Id.* at 7)

Respondent provided a markedly different account where he used only the minimum force needed to place Dennis into the police van. At the outset of his testimony, he described [REDACTED] as a "chronic location" for quality-of-life offenses like gambling, alcohol, marijuana and noise violations. On the night in question, he received a complaint regarding a "disorderly group" at 2215 hours and when he arrived, having previously driven by the location twice that night, he saw a group of about ten people congregating around the stoop and a "marijuana cloud." He further noted that the "whole place smelled like weed." (Tr. 136-38) As he approached, most of the group dispersed with the exception of an older gentleman. Respondent recalled verifying that he lived in the building and the man being understanding when he explained the noise issue.<sup>4</sup> Dennis, however, who was standing 10 feet away, directed "an extreme amount of profanity" toward Respondent, repeating "shit, motherfucker, suck my dick, fuck these motherfuckers." Respondent recounted that he approached and asked Dennis, "what's going on today" and whether he lived on the block, to which Dennis replied, "I'm just singing a song, that's my favorite song." He then responded that he lived "somewhere" on the block but refused to tell Respondent where or present identification. Respondent agreed on cross-examination that he told Dennis something to the effect of "50 rookie cops that look and dress like me are going to show up on this block and this whole scene is going to turn into something you don't want." (Tr. 140-43, 193-96)

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<sup>4</sup> On cross, Respondent agreed, "that sounds like me." when asked if he had told this man, "I don't want to be here like you don't want me here." (Tr. 192)

Having already made up his mind that Dennis would be receiving a disorderly conduct summons, Respondent warned that if he did not present ID, he would have to place him under arrest and take him back to the precinct. Dennis retorted, "You can't arrest me," and Respondent asked him to turn and place his hands behind his back. He acknowledged that Dennis complied and after placing him in cuffs, Respondent asked one more time whether he had identification, explaining, "I did not want to arrest Mr. Dennis." (Tr. 143-45)

Dennis then asked Respondent to get his mother. Respondent informed him "that's not how this works," grabbing him by the elbow and walking him toward the van. Dennis did not resist as they walked but when Respondent opened the door and directed him to get inside, he again told him "suck my dick" in addition to "a few other colorful verses," possibly including a threat to "fuck [Respondent] up." Respondent testified that he tried repeatedly explaining that if Dennis had no active warrants, he would receive the summons at the precinct and be released but Dennis "continued to [in my opinion] . . . show off in front of his friends," who by this point had formed a small crowd. (Tr. 145-48)<sup>5</sup>

Respondent requested backup and opted to wait for other officers to arrive before attempting to place Dennis, who was "passively resisting," in the vehicle. He explained that from his training, he knew that he had no right to assault the passively resisting Dennis to gain compliance, but that he could be taken into custody by multiple officers picking him up by the arms and legs. Once his supervisor responded and verified the arrest and backup arrived, Respondent moved behind Dennis and using his right arm, lifted underneath Dennis' right armpit

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<sup>5</sup> Though he did not recall this at trial, he acquiesced on cross when presented with his interview transcript that he told CCRB that he warned Dennis again, "I'm not calling your mom. Get in the van right now; otherwise I'm going to push this button. 50 cops that look and dress like me are going to show up on this block and this whole scene is going to turn into something that you don't want." (Tr. 197-98) On redirect, it was established that he recounted following up that comment up by imploring Dennis, "Don't do this. I'm begging you, pleading with you, just get in the van. Call it a day." Dennis, he told investigators, responded, "No. No. No. Get my mom. Fuck you. Call all your faggot ass cops you want." (Tr. 212-13)

and pulled him up into the van as other officers grabbed his legs and body. As he was being placed in the van, Dennis was flailing, "kind of" kicking and squirming his body. Even though Respondent had "the best grip that I possibly could underneath his armpit," Dennis still landed in between the seats face down between the second and third row of seats in the van. On cross, Respondent clarified that he landed "on his side. I wouldn't say all the way directly on his face." (Tr. 146-49, 185-86) As the vehicle began moving, Respondent, who was hovering above a flailing Dennis, again lifted him up from underneath his armpit and sat him upright against the seat. (Tr. 149-50)<sup>6</sup>

Respondent denied kneeling Dennis before picking him up, stating "that wouldn't [have been] an advantage at all." He further denied kicking, punching or choking Dennis<sup>7</sup>, detailing that the only physical contact they had inside the van was his picking Dennis up by the armpit then trying to pull a shoulder harness seatbelt over him. As he attempted to belt him, Dennis, who had been cursing, began spitting. Respondent placed his left hand on Dennis' right shoulder "and pushed him up against the side of the vehicle" for the rest of the ride to the precinct. He later clarified that he did not push Dennis, but simply "braced him up against the vehicle as to make sure he kept his mouth as far away from my body as possible." (Tr. 150-54, 208-10)<sup>8</sup> Dennis, he recalled, "wasn't happy" and began to go on about Eric Garner. Refreshing his

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<sup>6</sup> Respondent sat in the same row of the van as Mr. Dennis for the entire ride; he testified that he did not recall a Patrol Guide provision that officers should be seated a row ahead of prisoners. (Tr. 208-09) While it is true that Patrol Guide procedure 208-06, addressing "Transporting Prisoners in Department Vehicles," contains photo seating plans indicating that officers in vans are to sit in the row ahead of prisoners, Respondent is not charged with any violation with regard to the seating. He also testified that he was trying sit up and seat belt Dennis, who had fallen between the seats, as the van quickly pulled away from the crowd that had formed. Taking all of this into account, the tribunal is unconcerned with any uncharged technical violation of a seating plan and does not find that this issue in any way sheds light on whether Respondent engaged in the misconduct that is actually charged.

<sup>7</sup> Respondent did not believe the particular van he was driving that day had tinted windows, which meant it was possible to see inside. He estimated the crowd was roughly less than ten feet from the van but agreed there were officers in between the crowd and the van. (Tr. 151, 164, 209)

<sup>8</sup> Respondent entered into evidence a photo of the left side of his uniform, taken upon his return to the precinct, which he asserted showed discoloration from Dennis' spit on the shoulder area of his shirt. (Tr. 152-56, Res. Ex. B)

memory with his memo book, where he had documented the comments, Respondent testified that Dennis taunted, "I'm going to be like Eric Garner. I'm going to get paid. Beat my ass, you faggot cop. Eric Garner, Eric Garner, Eric Garner." (Tr. 154, 156-57)

Upon arriving back at the precinct, Respondent took Dennis out of the van and was able to wrest his keys, which Respondent testified were cupped in his hand the entire time, away. At that point, he noticed a laceration on his left arm, which he contended was from Dennis' keys "slic[ing] my left arm." (Tr. 157)<sup>9</sup> Respondent explained on cross that he had tried to take the keys but Dennis would not unclench his hands and Respondent had not wanted to use additional force. (Tr. 198-208) Respondent denied carrying any metal objects, including rings, and further denied hitting Dennis with his radio or asp. (Tr. 157-58)

Respondent testified that he never observed any swelling or injury to Dennis and that the desk sergeant, who would have been required to commence an investigation if a prisoner was visibly injured, made no inquiries regarding any injury.<sup>10</sup> Respondent did, however, ask Dennis at the desk if he needed medical attention because "we have to ask everybody." He then called EMS to have his arm checked while Dennis was brought to the holding cell. He testified that he did not hear him on the phone with his mother; however, he told CCRB in 2015, "Gave him his phone call. He wanted to call his mother saying he was beaten by the police. He was assaulted. He has massive bruises. He needs an ambulance." He had no further contact with Dennis other than going to the cell to try to obtain his date of birth and the proper spelling of his name. (Tr. 159-61, 165-69, 188-89) At that time, Dennis told him, "look at my face, it's swollen," and

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<sup>9</sup> The line-of-duty injury report, which Respondent read from on cross-examination, indicated that Dennis struck Respondent's "right hand, causing a laceration" to his left hand. (Tr. 207-08)

<sup>10</sup> Respondent did not recall Dennis stating at the desk, "You fucked me up." However, when confronted with his CCRB transcript, he conceded he told an investigator, "He just kept saying over and over again, 'You all fucked me up.'" (Tr. 188-90)

Respondent filled out a medical treatment of prisoner form because "if he wants to say he has an injury, I have to document it." He specifically denied asking Dennis if wanted medical attention but acknowledged he checked on the form that Dennis refused medical attention. Dennis, he stated, never gave a reason for the refusal. (Tr. 169-74, 177)

Respondent contended he did not observe anything that might have caused Dennis to suffer an injury to his face. He testified, "Mr. Dennis wasn't compliant in getting in the van but as far as anything that would have caused the documented injuries such as this to his face or any other part of his body...I'm going to give a solid no." (Tr. 181-82)

Finally, Respondent denied threatening Dennis in the spring of 2016 but agreed he saw him once briefly when he was issuing a summons to a double parked car on [REDACTED]. He believed Dennis may have muttered something but no words were exchanged. (Tr. 162-64)

The accounts provided by Respondent and by CCRB's witnesses stand in diametric contradiction to one another. Accordingly, it is left to this tribunal to assess which version is closest to the truth. Few things are more difficult for a trier of fact than discerning the truth where witnesses provide differing accounts on key factual issues. When this occurs, the factfinder may take into account a wide range of factors, including but not limited to, witness demeanor, corroborating evidence, the consistency of a witness account both at trial and over time, the degree to which the witness is interested in the outcome of a case, the potential prejudice or bias of the witness, and perhaps most basically the degree to which the witness accounts are logical and comport with common sense and general human experience. After carefully weighing all of the testimony, and considering various factors that speak to the credibility of each witness, this tribunal finds the testimony and narrative offered by Respondent to be more credible than that of the CCRB witnesses.

Respondent, while not impeccable in his recollections, testified in a logical manner about the physical contact he had with a noncompliant Dennis in order to place him in the van and then into a seated position when he landed in between the seats. His explanation that after being spit on, he placed his hand on Dennis' shoulder in order to keep his mouth as far away as possible also had the ring of truth, especially given the photo in evidence showing what appeared to be saliva on Respondent's uniform. I note that Respondent also admitted, potentially against his own interest, to warning Dennis and his friends that "50 rookie cops" would respond to the scene if they did not comply. He also acquiesced on cross with regard to multiple statements made at his CCRB interview, indicating that some of his inability to recall might simply have been the result of the passage of time. In sum, I found his recounting of the facts, though not perfect, to be straightforward and plausible.

At the same time, there are serious issues undercutting the credibility of Mr. Dennis. The tribunal notes preliminarily that he admitted to a prior conviction for falsifying credit cards. While a prior conviction in no way automatically renders an individual not credible, it cannot be ignored that his specific crime speaks directly to his veracity and his admission that he falsified not one but six credit cards indicates a pattern of dishonesty. His testimony also evinced some degree of bias against police officers when he stated generally, "The police can't really police the police . . . It's been proven . . . Police don't have control over the police." (Tr. 45) Finally and most significantly, his allegations were not corroborated in any significant way. His friends, who would be expected to be inclined to back up his account, were not in the van and had, at best, an obstructed view of what was happening behind closed doors. Moreover, the medical records do not denote injuries of the kind one would expect as a result of the severe beating and choking Mr. Dennis alleged. It further strains credulity that he would have refused medical

treatment, even for the sake of expediting his processing, if he was brutalized and choked in the manner he alleged. Taking all of these factors into account, it seems that Mr. Dennis, at the very least, embellished the degree of physical contact he had with Respondent as a basis for his civil lawsuit in the hopes of, in Mr. Dennis' own words, "get[ting] paid" "like Eric Garner" and then reiterated those embellished allegations at this proceeding.

It is true that Mr. Dennis appeared to suffer some minor injuries and that Respondent prepared a Medical Treatment of Prisoner Form indicating that Dennis had swelling to his face. It is not, however, Respondent's burden to explain how these injuries were caused.<sup>11</sup> That onus lies with the CCRB and for the reasons set forth below, I find CCRB failed to prove any of the allegations by a preponderance of the credible evidence.

*Specifications 1, 2 and 3- Threatening Use of Force*

The APU prosecutor contends that Respondent made a gratuitous threat of force when he told Mr. Dennis and his friends, "I'm going to get 50 rookie cops and you know what they'll do to you." (Tr. 230) Preliminarily, it should be noted that the statements Dennis and his friends claim Respondent made all vary somewhat significantly. For example, Mr. Halsey alleged that Respondent stated, "I hope you have that mouth when I come back around with these rookie cops," after Dennis laughed at him singing a rap song, whereas Person A told CCRB that Respondent said, "Do you want to show me your ID or I can have some rookie cops come back here and beat your ass..." (Tr. 104; CCRB Ex. 4A at 4) None of their statements actually

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The APU prosecutor cited Case Nos. 67716/93 & 67719/93 (April 20, 1994) for the proposition that "when a person suffers unexplained injuries in an officer's custody, that is enough to find him guilty . . ." (Tr. 229) What that case actually provides, however, is "[A]n unexplained injury to a person in custody raises an inference of misconduct by the officer in charge of the prisoner." In no way does this case hold or even imply that an officer is automatically guilty because an injury to a prisoner in his custody is not definitively explained. Indeed, in CCRB's cited case, the officer was found Not Guilty and the trial commissioner noted that the "complaint of [the] beating . . . [was] uncorroborated by objective evidence and possibly motivated by civil litigation." I find the same to be true here. Even accepting that Dennis' injuries give rise to an inference of misconduct, the objective evidence before this tribunal does not support such a finding.

specified a number of officers. Respondent admitted both at trial and at his CCRB interview to warning Dennis both when he was refused to show ID and when he would not get in the van that "50 rookie cops that look and dress like me are going to show up on this block and this whole scene is going to turn into something you don't want." (Tr. 196-98, 212)

In the context of this incident, I do not find that the comments Respondent admitted to making were threats of force. Respondent, trying to implore the noncompliant Mr. Dennis to cooperate, took, in the view of this tribunal, the reasonable step of verbally warning him that if he did not cooperate, more officers would respond and the incident, which Respondent testified he wanted to end with a summons, would escalate into something far more serious. The fact that Respondent admitted to making any comment to this effect when he could have easily offered an outright denial also bolsters his credibility as to the specifics of what he said. Moreover, CCRB's live witnesses alleged only a veiled threat of force at best and there is no video or audio evidence corroborating their allegations. As such, I find CCRB has failed to meet its burden of establishing that Respondent threatened Mr. Dennis, Mr. Halsey and Person A with the use of force. Accordingly, Respondent is Not Guilty of Specifications 1, 2 and 3.

*Specifications 5, 6, 7, 8- Kneeing and Punching Without Police Necessity*

In this case where all allegations of force are controverted, the tribunal is not satisfied that CCRB has shown by a preponderance of the credible evidence that Respondent engaged in the charged misconduct. For the reasons set forth above, I did not find Mr. Dennis to be credible in his recounting of what transpired. If Respondent had truly punched him "a lot of times" in the facial area with blunt, metal objects as Dennis alleged, it seems highly probable that his injuries would have been far more pronounced and serious than those depicted in the photographs and described in the medical records as "mild bruising." I am also unpersuaded that the Medical

Treatment of Prisoner form indicating that Dennis had swelling to one side of his face gives any credence to the fact that Respondent caused this swelling; Respondent simply documented the injury that Dennis complained of. Finally, the resident emergency room doctor's report noted that Dennis was evaluated for multiple complaints involving the head and body but indicated Dennis had no "specific laceration or hematoma" to his face. In sum, the record simply does not support a finding that Respondent punched Dennis in the face or that he did so with blunt instruments. As such, I find Respondent Not Guilty of Specifications 6 and 8.

The medical records also do not significantly corroborate Mr. Dennis' allegations that he was kneed in the back or punched in the ribs. While lumbar paraspinal tenderness or lower back pain is noted, this does not prove that Dennis was in fact kneed by Respondent. It seems equally plausible that this pain could be the result of his struggling with the officers in his attempt not to be placed in the van, which resulted in his landing in between the seats, a fact that all witnesses agree on. Similarly, the medical records make no reference to rib or pain and noted that Dennis' abdomen had no distention and no tenderness.

Further, the tribunal is unconvinced that simply because voices on the video can be heard saying, "He's hitting him" and "He's got a knee on him," it follows that Respondent actually did those things. No witnesses were actually in the van with Respondent and Dennis. It is impossible to know definitively who is speaking on the video and what their view was. It is, however, clear from the video that the scene became increasingly frenzied and loud as Dennis made clear that he did not want to be placed in the van and officers can be heard imploring the crowd to back up. As such, these statements made during this hectic point in the encounter by individuals whose specific vantage points are unknown are of little probative value. With no substantial and reliable corroboration for the allegations that Dennis was kneed and "punched . . .

about the body.” I find CCRB has failed to meet its burden of proving Specifications 5 and 7.

Accordingly, Respondent is found Not Guilty.

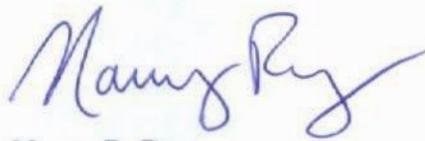
*Specification 4, 9 and 10- Grabbing of Neck and Chokehold*

Finally, there is a similar lack of substantial and reliable corroboration regarding the allegations that Respondent grabbed Dennis’ neck, placed him in a chokehold and obstructed his breathing. The photos and injury noted in the medical records in evidence do not confirm that Respondent engaged in the charged misconduct—Respondent did not deny using force to pick Dennis up from underneath his armpit and pull him into the van and then again to pull him up from the floor of the vehicle. It is wholly believable that that type of force might lead to cervical (neck) tenderness, especially given that Dennis admitted that he did not want to be placed in the van. Conversely, if Dennis were grabbed by his neck and choked for multiple minutes so tightly that he believed Respondent was trying to kill him, it seems that the medical records would likely not indicate, as they do, that the neck was supple with normal range of motion and no midline tenderness, jugular vein distention (JVD) or lymphadenopathy and that there was “no respiratory distress.” The medical records, if anything, undermine the allegations of being grabbed by the neck and then suffering prolonged choking.

No witness corroborates the chokehold allegations, which is logical given that no witness was in the van. As to the neck grabbing allegation, for the reasons outlined above, neither the testimony of Mr. Halsey nor the video, which is both blurry and jerky at times, corroborates that Respondent grabbed Dennis’ neck. I acknowledge that a voice can be heard saying “around the neck, around the neck” at 0:32 in the video but without a clear image to provide further context, the comment alone is unenlightening. Finally, I note that in a tense and fast-moving arrest scene, Respondent’s pulling Dennis up by his armpit from behind could very easily be misconstrued as

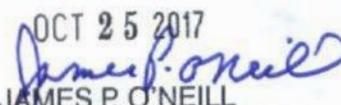
grabbing his neck. As with the other force-related specifications, CCRB has not provided substantial or reliable corroboration of these allegations. Given the credibility concerns with Mr. Dennis, the tribunal cannot find Respondent engaged in the charged misconduct based on his allegations alone. As such, the tribunal finds Respondent Not Guilty of Specifications 4, 9, and 10.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

OCT 25 2017  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER