

201407447
Colin McGuire

This case involves the well-publicized arrest of Ronald Johns in the 125th Street subway station. Officers suspected Mr. Johns of theft of services, and in the subsequent arrest he was held in a chokehold, as captured by a witness video and later replayed in news stories.

<https://www.nbcnewyork.com/news/local/nypd-chokehold-video-subway-farebeater-police-custody/685404/>

During his CCRB interview, PO McGuire stated that his arm never made contact with Mr. Johns's neck, despite the fact that his arm is clearly around Mr. Johns's neck in the video and despite the fact that PO McGuire had confirmed in his IAB interview that the video showed his arm around Mr. Johns's neck).

The CCRB found that PO McGuire had used an illegal chokehold and had made a false statement when he stated his arm was not around Mr. Johns's neck.

After a trial, an NYPD administrative law judge recommended that PO McGuire be forced to forfeit 20 vacation days. Police Commissioner O'Neill lowered that punishment to 15 days.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Squad #6	CCRB Case #: 201407447	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Mon, 07/14/2014 4:34 PM	Location of Incident: [REDACTED]	Precinct: 25	18 Mo. SOL 01/14/2016	EO SOL 1/14/2016	
Date/Time CV Reported Wed, 07/23/2014 3:37 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 07/23/2014 3:37 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Colin Mcguire	15518	§ 87(2)(b)	TB DT04
2. POM Wayne Roach	04775	§ 87(2)(b)	TB DT04

Officer(s)	Allegation	Investigator Recommendation
A . POM Colin Mcguire	Force: PO Colin McGuire used physical force against § 87(2)(b).	A . § 87(2)(g)
B . POM Wayne Roach	Force: PO Wayne Roach used physical force against § 87(2)(b).	B . § 87(2)(g)
C . POM Colin Mcguire	Force: PO Colin McGuire used a chokehold against § 87(2)(b).	C . § 87(2)(g)
D . POM Colin Mcguire	Other: PO Colin McGuire intentionally provided a false official statement to the CCRB.	D . § 87(2)(g)

Case Summary

This case was deemed sensitive and has received extensive news coverage (encl. A1-A54). At approximately 4:34 p.m. on July 14, 2014, § 87(2)(b) was stopped by PO Colin McGuire and PO Wayne Roach for entering the 125th Street 4/5/6 Subway Station in Manhattan without paying his fare. Video footage of the subsequent struggle was obtained and shows PO McGuire and PO Roach using physical force against § 87(2)(b) (**Allegations A and B**) and PO McGuire placing § 87(2)(b) in a chokehold (**Allegation C**). Additionally, the investigation determined that PO McGuire intentionally provided a false official statement to the CCRB (**Allegation D**).

Mediation, Civil and Criminal Histories

This case was not mediation eligible. Neither § 87(2)(b) nor § 87(2)(b) have filed a Notice of Claim with the City of New York as of December 23, 2014, more than two months past the filing deadline, with regard to this incident. § 87(2)(b) court case regarding this incident remains open. As per the Manhattan criminal clerk's office, a still active bench warrant was issued for him on § 87(2)(b). § 87(2)(b) has no prior convictions within the past 10 years (encl. H1-H6).

Civilian and Officer CCRB Histories

- § 87(2)(b) and § 87(2)(b) have no prior CCRB histories (encl. D2).
- PO McGuire, a seven-year-member-of-the-service, has two prior cases, each with one truncated allegation, but no substantiated allegations against him (encl. C1). In CCRB case number 201309280, as per the IAB log and witness phone statements, PO McGuire and PO Roach ejected an allegedly intoxicated homeless man from the 125th Street 4/5/6 Subway Station. When the man walked toward the side of PO McGuire where he holstered his gun, PO McGuire allegedly "body slammed" him and PO McGuire and PO Roach each allegedly punched him in the face multiple times. The man became unconscious and sustained a head contusion and possible bleeding to the brain.
- PO Roach, an eight-year-member-of-the-service, has two prior cases, including the one mentioned above and one with a substantiated physical force allegation against him (encl. C2). In CCRB case number 201107052, it was determined that PO Roach forcefully ejected a man from the 125th Street 4/5/6 Subway Station by pushing him through a turnstile as the man offered no physical resistance. That investigation was unable to determine whether PO Roach punched the man in the face multiple times as alleged. The Board recommended that PO Roach receive charges, but the NYPD declined to prosecute the case.

Civilian Statements

Video Footage (encl. F5-F7).

Video footage of this incident was provided to the CCRB by § 87(2)(g), § 87(2)(b) (a 54-second-cell phone video), and obtained via numerous media outlets (a two-minute-and-thirty five-second video). Pertinent aspects of the videos, which were taken from different vantage points, are noted below:

- § 87(2)(b) resists arrest by tensing his arms and body and by protecting his head from PO McGuire's blows with his arms. As PO McGuire maintains hold near and on § 87(2)(b) neck, § 87(2)(b) tries to pull PO McGuire's arm/hand off of him. Throughout the struggle, § 87(2)(b) is given multiple orders to stop resisting and to place his hands behind his back.
- PO Roach pulls one of § 87(2)(b) legs back with his hands and "leg sweeps" § 87(2)(b) other leg to bring him to the floor. § 87(2)(b) places his right leg on top of PO Roach's foot and PO Roach steps on § 87(2)(b) leg with his free foot. PO Roach places his body weight against § 87(2)(b) as he removes his handcuffs. After handcuffing § 87(2)(b) right arm, and

in response to § 87(2)(b) seemingly tensing his arm and keeping it in front of his body, PO Roach pulls the arm back via his grip on the handcuffs.

- PO McGuire knees § 87(2)(b) twice near his lower torso and as PO Roach brings § 87(2)(b) legs back, PO McGuire maintains a not-visible hold on § 87(2)(b) upper torso/neck area. Once on the floor, PO McGuire knees § 87(2)(b) in his head three times and punches him four times near his head. It is unclear where the first punch lands because § 87(2)(b) head is not visible, but the second punch hits PO McGuire's own hand as he holds the bottom of § 87(2)(b) chin with his open palm. The last two punches hit § 87(2)(b) head. For a total of over one-and-a-half-minutes over the course of the struggle, PO McGuire has his arm wrapped around the front of § 87(2)(b) neck. After the punching stops, PO McGuire clasps his hands together, tightening the chokehold. In this position, PO McGuire leans forward to bring § 87(2)(b) upper body to the floor. § 87(2)(b) is ordered to place his free hand behind his back as PO McGuire holds it flat on the floor in front of § 87(2)(b).
- The crowd yells throughout the struggle, but no one attempts to physically interfere. Toward the conclusion of the longer video, an unidentified female voice states, "You gotta get off his neck in order for him to get [off or up]."

Civilian Statements Witnesses

§ 87(2)(b) (encl. F9-F19)

§ 87(2)(b) entered the subway station and approached the platform, where he saw § 87(2)(b) on the floor with PO McGuire and PO Roach on either side of him. Approximately eight unidentified civilians were nearby. § 87(2)(b) began recording the incident on his cell phone as soon as he arrived and did not stop until the doors of the train he stepped onto closed. He did not see anything more than what is visible on the video footage that he recorded. § 87(2)(b) described the struggle as PO McGuire placing § 87(2)(b) in a chokehold, so that his arm was completely wrapped around § 87(2)(b) neck, releasing the chokehold, punching § 87(2)(b) in the face, again placing him in a chokehold and repeating these motions several times.

§ 87(2)(b) (encl. F21-F28)

§ 87(2)(b) was working as § 87(2)(b) when he heard PO McGuire talking to § 87(2)(b). § 87(2)(b) had not seen § 87(2)(b) enter the station and had not spoken with PO McGuire about whether § 87(2)(b) had evaded his fare. § 87(2)(b) corroborated PO McGuire's assertion that § 87(2)(b) was initially non-compliant in producing identification. § 87(2)(b) appeared aggravated and upset, tensing his shoulders. PO McGuire repeatedly asked § 87(2)(b) if he was going to be a problem, but § 87(2)(b) did not reply. PO McGuire told § 87(2)(b) to put his hands behind his back and § 87(2)(b) asked why. PO McGuire repeated the order and told § 87(2)(b) that he had to handcuff him. § 87(2)(b) returned to his job responsibilities but 5 to 10 minutes later, he heard a crowd and returned to see § 87(2)(b) and PO McGuire struggling.

PO McGuire and § 87(2)(b) were bent forward with their arms wrapped around each other's torsos. § 87(2)(b) arms were underneath PO McGuire's § 87(2)(b). § 87(2)(b) believed § 87(2)(b) was trying to flip PO McGuire over his shoulders as a wrestler would do. PO Roach approached and ordered § 87(2)(b) to settle down, but § 87(2)(b) did not comply. PO McGuire maintained his hold on § 87(2)(b) who kicked several times, although § 87(2)(b) could not estimate how many times and never saw § 87(2)(b) actually kick an officer. PO Roach held § 87(2)(b) legs down. § 87(2)(b) turned his attention to the more than 20 commuters inside the station who had gathered. When § 87(2)(b) turned back 5 to 10 minutes later, § 87(2)(b) was handcuffed.

§ 87(2)(b) never saw PO McGuire knee or punch § 87(2)(b) and he never saw PO McGuire place his hands or arms near § 87(2)(b) neck. § 87(2)(b) was unaware of pepper spray being used. He noted that PO McGuire did what he was supposed to do and that his experience with friends and family who are/were members of the service has taught him that some officers get “bad reps.”

§ 87(2)(b) **(encl. F30-F38)**

§ 87(2)(b) § 87(2)(b) arrived to relieve § 87(2)(b) for lunch as PO McGuire had § 87(2)(b) stopped inside the station. PO McGuire asked § 87(2)(b) “Are you going to fight me when I cuff you?” multiple times and ordered him to turn around, but § 87(2)(b) looked away, fumbled with his hands, and muttered something inaudible. § 87(2)(b) saw that a crowd of at least 25 people had formed, so he turned towards the crowd and attempted to clear the area. When he looked back less than a minute later, § 87(2)(b) and PO McGuire were fighting. § 87(2)(b) saw a pepper spray canister on the ground. He bent down, picked it up, smelled pepper spray in the air and began coughing. He observed that § 87(2)(b) had a bloody/runny nose, which § 87(2)(b) deduced was from being pepper sprayed, although he did not witness pepper spray be expelled.

§ 87(2)(b) was twisting and turning his body while on all fours with his chest close to the floor. § 87(2)(b) believed § 87(2)(b) was either trying to stand up and get away from PO McGuire or hit him, although he never saw § 87(2)(b) hit or kick either officer. PO McGuire’s body was against § 87(2)(b) back. PO McGuire extended his right arm from behind § 87(2)(b) and wrapped it around the front of § 87(2)(b) neck/chest area in an attempt to grab § 87(2)(b) left arm. § 87(2)(b) and PO McGuire were in this position for about three minutes. § 87(2)(b) entered the toll booth and called over the loudspeaker for any available officer in the station to assist PO McGuire. When § 87(2)(b) returned, § 87(2)(b) and PO McGuire were in the same positions.

PO Roach arrived and handcuffed § 87(2)(b) right wrist, but § 87(2)(b) continued struggling and kept his left hand wrapped around PO McGuire. PO Roach pulled § 87(2)(b) right arm behind his back by the loose handcuff. At this point § 87(2)(b) believed the situation was under control and he entered the toll booth. § 87(2)(b) did not see PO McGuire knee or punch § 87(2)(b) but he knew that this occurred because he has since watched video footage of the incident. § 87(2)(b) later saw § 87(2)(b) handcuffed and standing near the toll booth door. During and after the struggle, § 87(2)(b) screamed to PO McGuire, “If it’s the last thing I do, I’m going to get you. I’ll get your family even if I have to wait my entire life.”

Attempts to Contact Victim/Additional Witness

- On August 27, 2014, § 87(2)(b) was called, but stated that the CCRB should not investigate this incident. When asked why, § 87(2)(b) stumbled over his words and then said he just did not want it investigated. He added that he had already gone to the doctor. When asked for his contact information, § 87(2)(b) hung up the phone.
- Attempts were made to contact § 87(2)(b) but § 87(2)(b) failed to contact the CCRB in response.

NYPD Statements

Subject Officer: PO COLIN MCGUIRE (encl. G1-G10)

PO McGuire was interviewed at IAB on October 7, 2014 (encl. G4-G5) and at the CCRB on November 13, 2014 (encl. G6-G10). § 87(2)(g)

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Squad #6	CCRB Case #: 201407447	<input checked="" type="checkbox"/> Force Abuse	Discourt. O.L.	U.S. Injury
Incident Date(s) Mon, 07/14/2014 4:34 PM	Location of Incident: [REDACTED]	Precinct: 25	18 Mo. SOL 01/14/2016	EO SOL 1/14/2016	
Date/Time CV Reported Wed, 07/23/2014 3:37 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 07/23/2014 3:37 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Colin Mcguire	15518	944793	TB DT04
2. POM Wayne Roach	04775	940645	TB DT04

Officer(s)	Allegation	Investigator Recommendation
A . POM Colin Mcguire	Force: PO Colin McGuire used physical force against Ronald Johns	A . Substantiated
B . POM Wayne Roach	Force: PO Wayne Roach used physical force against Ronald Johns	B . Exonerated
C . POM Colin Mcguire	Force: PO Colin McGuire used a chokehold against Ronald Johns	C . Substantiated
D . POM Colin Mcguire	Other: PO Colin McGuire intentionally provided a false official statement to the CCRB.	D . Other Misconduct

Case Summary

This case was deemed sensitive and has received extensive news coverage (encl. A1-A54). At approximately 4:34 p.m. on July 14, 2014, § 87(2)(b) was stopped by PO Colin McGuire and PO Wayne Roach for entering the 125th Street 4/5/6 Subway Station in Manhattan without paying his fare. Video footage of the subsequent struggle was obtained and shows PO McGuire and PO Roach using physical force against § 87(2)(b) (**Allegations A and B**) and PO McGuire placing § 87(2)(b) in a chokehold (**Allegation C**). Additionally, the investigation determined that PO McGuire intentionally provided a false official statement to the CCRB (**Allegation D**).

Mediation, Civil and Criminal Histories

This case was not mediation eligible. Neither § 87(2)(b) nor § 87(2)(b) have filed a Notice of Claim with the City of New York as of December 23, 2014, more than two months past the filing deadline, with regard to this incident. § 87(2)(b) court case regarding this incident remains open. As per the Manhattan criminal clerk's office, a still active bench warrant was issued for him on **November 18, 2014**. § 87(2)(b) has no prior convictions within the past 10 years (encl. H1-H6).

Civilian and Officer CCRB Histories

- § 87(2)(b) and § 87(2)(b) have no prior CCRB histories (encl. D2).
- PO McGuire, a seven-year-member-of-the-service, has two prior cases, each with one truncated allegation, but no substantiated allegations against him (encl. C1). In CCRB case number 201309280, as per the IAB log and witness phone statements, PO McGuire and PO Roach ejected an allegedly intoxicated homeless man from the 125th Street 4/5/6 Subway Station. When the man walked toward the side of PO McGuire where he holstered his gun, PO McGuire allegedly "body slammed" him and PO McGuire and PO Roach each allegedly punched him in the face multiple times. The man became unconscious and sustained a head contusion and possible bleeding to the brain.
- PO Roach, an eight-year-member-of-the-service, has two prior cases, including the one mentioned above and one with a substantiated physical force allegation against him (encl. C2). In CCRB case number 201107052, it was determined that PO Roach forcefully ejected a man from the 125th Street 4/5/6 Subway Station by pushing him through a turnstile as the man offered no physical resistance. That investigation was unable to determine whether PO Roach punched the man in the face multiple times as alleged. The Board recommended that PO Roach receive charges, but the NYPD declined to prosecute the case.

Civilian Statements

Video Footage (encl. F5-F7).

Video footage of this incident was provided to the CCRB by **an independent witness**, § 87(2)(b) (a 54-second-cell phone video), and obtained via numerous media outlets (a two-minute-and-thirty five-second video). Pertinent aspects of the videos, which were taken from different vantage points, are noted below:

- § 87(2)(b) resists arrest by tensing his arms and body and by protecting his head from PO McGuire's blows with his arms. As PO McGuire maintains hold near and on § 87(2)(b) neck, § 87(2)(b) tries to pull PO McGuire's arm/hand off of him. Throughout the struggle, § 87(2)(b) is given multiple orders to stop resisting and to place his hands behind his back.
- PO Roach pulls one of § 87(2)(b) legs back with his hands and "leg sweeps" § 87(2)(b) other leg to bring him to the floor. § 87(2)(b) places his right leg on top of PO Roach's foot and PO Roach steps on § 87(2)(b) leg with his free foot. PO Roach places his body weight against § 87(2)(b) as he removes his handcuffs. After handcuffing § 87(2)(b) right arm, and

in response to § 87(2)(b) seemingly tensing his arm and keeping it in front of his body, PO Roach pulls the arm back via his grip on the handcuffs.

- PO McGuire knees § 87(2)(b) twice near his lower torso and as PO Roach brings § 87(2)(b) legs back, PO McGuire maintains a not-visible hold on § 87(2)(b) upper torso/neck area. Once on the floor, PO McGuire knees § 87(2)(b) in his head three times and punches him four times near his head. It is unclear where the first punch lands because § 87(2)(b) head is not visible, but the second punch hits PO McGuire's own hand as he holds the bottom of § 87(2)(b) chin with his open palm. The last two punches hit § 87(2)(b) head. For a total of over one-and-a-half-minutes over the course of the struggle, PO McGuire has his arm wrapped around the front of § 87(2)(b) neck. After the punching stops, PO McGuire clasps his hands together, tightening the chokehold. In this position, PO McGuire leans forward to bring § 87(2)(b) upper body to the floor. § 87(2)(b) is ordered to place his free hand behind his back as PO McGuire holds it flat on the floor in front of § 87(2)(b).
- The crowd yells throughout the struggle, but no one attempts to physically interfere. Toward the conclusion of the longer video, an unidentified female voice states, "You gotta get off his neck in order for him to get [off or up]."

Civilian Statements

Witnesses

§ 87(2)(b) (encl. F9-F19)

§ 87(2)(b) entered the subway station and approached the platform, where he saw § 87(2)(b) on the floor with PO McGuire and PO Roach on either side of him. Approximately eight unidentified civilians were nearby. § 87(2)(b) began recording the incident on his cell phone as soon as he arrived and did not stop until the doors of the train he stepped onto closed. He did not see anything more than what is visible on the video footage that he recorded. § 87(2)(b) described the struggle as PO McGuire placing § 87(2)(b) in a chokehold, so that his arm was completely wrapped around § 87(2)(b) neck, releasing the chokehold, punching § 87(2)(b) in the face, again placing him in a chokehold and repeating these motions several times.

§ 87(2)(b) (encl. F21-F28)

§ 87(2)(b) Bertli was working as an MTA employee in a nearby toll booth when he heard PO McGuire talking to § 87(2)(b). Bertli had not seen § 87(2)(b) enter the station and had not spoken with PO McGuire about whether § 87(2)(b) had evaded his fare. § 87(2)(b) Bertli corroborated PO McGuire's assertion that § 87(2)(b) was initially non-compliant in producing identification. § 87(2)(b) appeared aggravated and upset, tensing his shoulders. PO McGuire repeatedly asked § 87(2)(b) if he was going to be a problem, but § 87(2)(b) did not reply. PO McGuire told § 87(2)(b) to put his hands behind his back and § 87(2)(b) asked why. PO McGuire repeated the order and told § 87(2)(b) that he had to handcuff him. § 87(2)(b) Bertli returned to his job responsibilities but 5 to 10 minutes later, he heard a crowd and returned to see § 87(2)(b) and PO McGuire struggling.

PO McGuire and § 87(2)(b) were bent forward with their arms wrapped around each other's torsos. § 87(2)(b) arms were underneath PO McGuire's § 87(2)(b). Bertli believed § 87(2)(b) was trying to flip PO McGuire over his shoulders as a wrestler would do. PO Roach approached and ordered § 87(2)(b) to settle down, but § 87(2)(b) did not comply. PO McGuire maintained his hold on § 87(2)(b) who kicked several times, although § 87(2)(b) Bertli could not estimate how many times and never saw § 87(2)(b) actually kick an officer. PO Roach held § 87(2)(b) legs down. § 87(2)(b) Bertli turned his attention to the more than 20 commuters inside the station who had gathered. When § 87(2)(b) Bertli turned back 5 to 10 minutes later, § 87(2)(b) was handcuffed.

§ 87(2) **Berth** never saw PO McGuire knee or punch § 87(2)(b) and he never saw PO McGuire place his hands or arms near § 87(2)(b) neck. § 87(2) **Berth** was unaware of pepper spray being used. He noted that PO McGuire did what he was supposed to do and that his experience with friends and family who are/were members of the service has taught him that some officers get “bad reps.”

§ 87(2)(b) (encl. F30-F38)
§ 87(2)(b) **an MTA employee** arrived to relieve § 87(2) **Berth** for lunch as PO McGuire had § 87(2)(b) stopped inside the station. PO McGuire asked § 87(2)(b) “Are you going to fight me when I cuff you?” multiple times and ordered him to turn around, but § 87(2)(b) looked away, § 87(2)(b) fumbled with his hands, and muttered something inaudible. § 87(2)(b) saw that a crowd of at least 25 people had formed, so he turned towards the crowd and attempted to clear the area. When he looked back less than a minute later, § 87(2)(b) and PO McGuire were fighting. § 87(2) § 87(2)(b) saw a pepper spray canister on the ground. He bent down, picked it up, smelled pepper spray in the air and began coughing. He observed that § 87(2)(b) had a bloody/runny nose, which § 87(2)(b) deduced was from being pepper sprayed, although he did not witness pepper spray be expelled.

§ 87(2)(b) was twisting and turning his body while on all fours with his chest close to the floor. § 87(2)(b) believed § 87(2)(b) was either trying to stand up and get away from PO McGuire or hit him, although he never saw § 87(2)(b) hit or kick either officer. PO McGuire’s body was against § 87(2)(b) back. PO McGuire extended his right arm from behind § 87(2)(b) and wrapped it around the front of § 87(2)(b) neck/chest area in an attempt to grab § 87(2)(b) left arm. § 87(2)(b) and PO McGuire were in this position for about three minutes. § 87(2)(b) entered the toll booth and called over the loudspeaker for any available officer in the station to assist PO McGuire. When § 87(2)(b) returned, § 87(2)(b) and PO McGuire were in the same positions.

PO Roach arrived and handcuffed § 87(2)(b) right wrist, but § 87(2)(b) continued struggling and kept his left hand wrapped around PO McGuire. PO Roach pulled § 87(2) **John’s** right arm behind his back by the loose handcuff. At this point § 87(2)(b) believed the situation was under control and he entered the toll booth. § 87(2)(b) did not see PO McGuire knee or punch § 87(2)(b) but he knew that this occurred because he has since watched video footage of the incident. § 87(2)(b) later saw § 87(2)(b) handcuffed and standing near the toll booth door. During and after the struggle, § 87(2)(b) screamed to PO McGuire, “If it’s the last thing I do, I’m going to get you. I’ll get your family even if I have to wait my entire life.”

Attempts to Contact Victim/Additional Witness

- On August 27, 2014, § 87(2)(b) was called, but stated that the CCRB should not investigate this incident. When asked why, § 87(2)(b) stumbled over his words and then said he just did not want it investigated. He added that he had already gone to the doctor. When asked for his contact information, § 87(2)(b) hung up the phone.
- Attempts were made to contact § 87(2)(b) a witness to this incident identified via **media coverage**, but § 87(2)(b) failed to contact the CCRB in response.

NYPD Statements

Subject Officer: PO COLIN MCGUIRE (encl. G1-G10)

PO McGuire was interviewed at IAB on October 7, 2014 (encl. G4-G5) and at the CCRB on November 13, 2014 (encl. G6-G10). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) walked through the emergency entrance gate of the subway station without paying his fare. PO McGuire and his partner, PO Roach, stopped him to run a warrant search and summons him. § 87(2)(b) who appeared rushed, said the toll booth clerk had allowed him in. PO McGuire and § 87(2)(b) walked to the toll booth to verify this, but the clerk denied allowing § 87(2)(b) entry. PO Roach left the area and PO McGuire did not know where he went.

PO McGuire ordered § 87(2)(b) to put his back against the nearby wall numerous times, but § 87(2)(b) refused to comply. PO McGuire asked him to produce identification approximately four or five times before § 87(2)(b) complied. PO McGuire did not have a chance to run the warrant check because § 87(2)(b) then said he had to leave and began walking toward PO McGuire, although he did not make contact with him. PO McGuire said § 87(2)(b) was too close to him and ordered him to place his back against the wall behind him approximately five to seven times. Instead, § 87(2)(b) placed his hands around his own shirt collar and said, "Hold up one second. Let me take my shirt off because it's way too hot in here." PO McGuire ordered § 87(2)(b) to keep his hands to his sides, said he was too close to him, again asked him to put his back against the wall and ordered him to put his hands behind his back twice. § 87(2)(b) still refused to comply.

Approximately five to seven minutes into the incident, PO McGuire pepper sprayed § 87(2)(b) using a short burst that lasted one or two seconds from about three or four feet away. § 87(2)(b) turned his head and PO McGuire could not recall if he followed § 87(2)(b) head with the pepper spray or if § 87(2)(b) was affected by it. PO McGuire had made no physical contact with § 87(2)(b) and had not warned him that he would be pepper sprayed prior to expelling the spray.

PO McGuire approached to handcuff § 87(2)(b) and § 87(2)(b) grabbed PO McGuire's shoulders, near his uniform collar, with his § 87(2)(b) [PO McGuire told IAB that § 87(2)(b) pulled him in this position.] PO McGuire grabbed § 87(2)(b) shoulders. § 87(2)(b) tensed his body, preventing PO McGuire from positioning him to be handcuffed. [PO McGuire told IAB that § 87(2)(b) also hunched over to cover himself.] PO McGuire said he first tried to perform a "hip toss" to gain control and bring § 87(2)(b) to the floor as he was trained to do, but "that was not happening," so he used what he described as a "takedown." In performing a "takedown," he wrapped his right arm around the front of § 87(2)(b) head and the top of his shoulders and maintained this hold for three to five seconds, which allowed him to bring § 87(2)(b) to the floor. PO McGuire denied making contact with § 87(2)(b) neck. Upon reviewing the video footage, PO McGuire acknowledged that PO Roach returned and used a "leg sweep" to bring § 87(2)(b) to the floor.

While still standing, PO McGuire used two or three knee strikes and two or three punches against § 87(2)(b) although he could not recall precisely when these actions occurred. PO McGuire explained that knee strikes are when one aims to knee someone in their torso, but said it gets complicated when the person is moving around. § 87(2)(b) was moving around, so PO McGuire did not know where his knee made contact with § 87(2)(b) body, despite reviewing the video footage. PO McGuire said the punches "maybe" made contact with § 87(2)(b) face.

PO McGuire got on the floor and § 87(2)(b) who twisted and turned his body, tried to stand up and use his torso to flip PO McGuire onto his back. [PO McGuire told IAB that § 87(2)(b) tried to get up by pushing off the floor and almost rolled PO McGuire onto the floor, which PO McGuire noted could not happen, since he carries a firearm. He said § 87(2)(b) was "maybe

trying to hurt me or my partner or someone else or trying to flee the situation." He did not know § 87(2)(b) intentions.] PO McGuire held one of § 87(2)(b) hands and kept his other arm on § 87(2)(b) head to maintain control. PO McGuire's bicep and forearm were under § 87(2)(b) chin and on his shoulder area. PO Roach handcuffed one of § 87(2)(b) wrists, but § 87(2)(b) kept his free hand in front of him and tensed up. Upon reviewing the video, PO McGuire noted that § 87(2)(b) was grabbing onto him and that as an officer, he carries a firearm on his right side. When asked if § 87(2)(b) ever reached for his firearm, PO McGuire said, "Not that I could tell, but he [was] way too close in the vicinity of [it] if indeed he was trying to grab my firearm."

PO McGuire initially said he used knee strikes and punches against § 87(2)(b) while on the floor, but later said he could not recall if knee strikes were used on the floor. PO McGuire estimated that he punched § 87(2)(b) four to five times in total, [he told IAB that he punched § 87(2)(b) approximately three times], but initially said he could not recall where he struck § 87(2)(b). After reviewing the longer video, PO McGuire said § 87(2)(b) was covering his head with his hand, so his punches possibly made contact with § 87(2)(b) hand, but that he was not aiming his strikes at a particular body part. After reviewing the shorter video, PO McGuire reaffirmed that the punches made contact with § 87(2)(b) hand, which he noted § 87(2)(b) held at the side of his face to cover up. Eventually, § 87(2)(b) relaxed his body. [During his IAB interview, PO McGuire denied that pressure to § 87(2)(b) neck caused § 87(2)(b) to relax his body.] PO McGuire stood up and helped PO Roach handcuff § 87(2)(b) free wrist.

PO McGuire stated that at no point did he ever make contact with § 87(2)(b) neck. [During his IAB interview, when asked if PO McGuire had his "hand or arm or anything" wrapped around § 87(2)(b) neck at any point, PO McGuire said, "Around his head, yes." When directly prompted by IAB, PO McGuire denied intentionally using a chokehold against § 87(2)(b) and said he had to use the acknowledged hold to try and gain control of § 87(2)(b) as § 87(2)(b) tried to get up. PO McGuire said that he never intentionally obstructed § 87(2)(b) breathing and § 87(2)(b) never seemed to have difficulty breathing.]

Throughout the struggle, PO McGuire had ordered § 87(2)(b) to put his hands behind his back and stop resisting 5 to 10 times. § 87(2)(b) who was arrested for resisting arrest, theft of service and criminal trespass, appeared uninjured. There was blood on the floor, but PO McGuire stated that he did not know where it came from. PO McGuire called an ambulance because pepper spray was used, but § 87(2)(b) refused medical attention. The struggle left PO McGuire with pain and swelling to his right knee. [He told IAB that he was diagnosed with a deep bone contusion to his knee.] PO McGuire went on Line of Duty leave for approximately two weeks following incident.

Upon reviewing the video footage, PO McGuire described the hold visible at the 00:01 second mark of the shorter video as a "headlock," and said he was making contact with § 87(2)(b) chin/shoulder areas. [During his IAB interview, PO McGuire was told by IAB interviewers that on the video of this incident, it appears that his arm was around § 87(2)(b) neck. When asked if that statement was correct, PO McGuire said "yes." PO McGuire was simultaneously asked whether he intended for what is seen on video to be a chokehold and if he thought what was seen on video was a chokehold and he replied "no." PO McGuire told IAB that he used the visible hold because at the time, he did not feel that he had any other options at his disposal.] After watching both videos, PO McGuire still maintained that he never made contact with § 87(2)(b) neck.

Subject Officer: PO WAYNE ROACH (encl. G11-G20)

PO Roach was interviewed at IAB on September 7, 2014 (encl. G14-G15) and at the CCRB on November 12, 2014 (encl. G16-G20). § 87(2)(g)

PO Roach told PO McGuire that he had to take care of something and would be a few minutes. [PO Roach told IAB that he left PO McGuire to conduct an observation of the turnstile area.] He saw § 87(2)(b) enter through the emergency exit gate and asked if § 87(2)(b) had paid his fare. § 87(2)(b) said the toll booth clerk had allowed him entry and PO McGuire told § 87(2)(b) to come with him to speak with the clerk. PO Roach continued on his way. When he returned about five minutes later, a crowd of about 20 to 30 people had formed and a struggle had commenced.

PO McGuire and § 87(2)(b) had their arms around each other's torsos and were tugging and grappling as if they were trying to wrestle each other to the floor. PO Roach acknowledged grabbing one of § 87(2)(b) feet with his hands and leg sweeping § 87(2)(b) other foot to bring him to the floor. He also acknowledged placing his left hip, and possibly his knee, against § 87(2)(b) hip to prevent him from moving his legs. PO Roach did not recall stepping on § 87(2)(b) leg, but said his foot got stuck between § 87(2)(b) legs, which were moving around freely and that he suspected § 87(2)(b) intentionally did this in an attempt to immobilize him.

PO Roach handcuffed one of § 87(2)(b) wrists, but the struggle continued as he tried to handcuff § 87(2)(b) free wrist. § 87(2)(b) crossed his hands over his chest and PO Roach "really had to use force" to pull § 87(2)(b) arm behind his back. When asked what PO McGuire did once § 87(2)(b) was on the ground, PO Roach paused for about four seconds, then said, "From what I saw, just having him in a 'shoulder lock' if anything." PO Roach said that from his angle, it appeared that PO McGuire wrapped his arm around § 87(2)(b) shoulder and that PO McGuire held the position for about one minute. § 87(2)(b) appeared angry and said, "I'm going to get you McGuire," but otherwise remained silent and did nothing else to physically resist.

As PO McGuire focused on § 87(2)(b) upper body and PO Roach focused on his lower body, the officers waited for § 87(2)(b) energy to deplete. Once that occurred, PO Roach handcuffed him. PO Roach never saw PO McGuire punch or knee § 87(2)(b) and never saw him make contact with § 87(2)(b) neck. PO Roach sustained a hand abrasion from the loose handcuff that was open during the struggle and dug into his skin. [He told IAB that he also sustained a sprained middle finger.] PO Roach went on Line of Duty leave as a result.

Upon reviewing the video footage, PO Roach maintained that he never witnessed PO McGuire strike § 87(2)(b) with his knee or make contact with § 87(2)(b) neck. [Upon viewing PO McGuire punch § 87(2)(b) in the longer video and PO Roach being asked whether after watching the video, he recalled seeing PO McGuire punch § 87(2)(b) PBA Rep. Florence Friedman interjected to note that she thought it was "very obvious" that PO Roach was facing the wall and not in a position to see what was going on. She did not allow PO Roach to answer the question.]

Findings and Recommendations

Allegations Not Pleaded

- **Stop:** Both officer statements as well as § 87(2)(b) arrest report consistently confirm that § 87(2)(b) was arrested for entering the subway station without paying his fare and for criminal trespass. § 87(2)(b) refused to provide a statement about this incident, but none of the participating civilians disputed this fact.
- **Force – Pepper Spray:** Although circumstances indicate that § 87(2)(b) was pepper sprayed, he requested that this incident not be investigated and none of the civilians who were

available to the investigation could speak to this allegation or the actions leading up to it.

Findings and Recommendations

Allegation A – Force: PO Colin McGuire used physical force against § 87(2)(b)

Allegation B – Force: PO Wayne Roach used physical force against § 87(2)(b)

Allegation C – Force: PO Colin McGuire used a chokehold against § 87(2)(b)

It is undisputed that § 87(2)(b) resisted arrest and that PO McGuire and PO Roach used physical force against him. A preponderance of evidence (video footage, civilian and officer statements) indicates that § 87(2)(b) failed to comply with multiple orders, tensed his body, refused to produce his hands to be rear handcuffed and tried to pull PO McGuire's arm and hand off of him. § 87(2)(b) arrest photo depicts small red markings in the center of his forehead and on his right cheek, but it is unclear whether they are newly obtained injuries or preexisting marks (encl. F27).

A preponderance of evidence (video footage and PO Roach's statement) further indicates that in response to § 87(2)(b) resistance, PO Roach pulled § 87(2)(b) to the floor by his legs, stepped on his leg to keep it down, placed his hip against § 87(2)(b) and pulled § 87(2)(b) handcuffed arm behind him. The video footage indicates that PO McGuire kned § 87(2)(b) twice near his lower torso, kned him three times in his head, and punched him twice in his head, although he attempted to do so at least four times. Additionally, the video footage indicates that PO McGuire held § 87(2)(b) near and on his neck for a total of over one-and-a-half-minutes, at one point clasping his hands together to tighten his grip around § 87(2)(b) neck, and violently pulling § 87(2)(b) upper body toward the floor while in this position.

An officer at the scene of a police incident must use minimum necessary force. Officers will not use chokeholds, defined as acts that include any pressure to the throat or windpipe that may prevent or hinder breathing or reduce intake of air. NYPD Patrol Guide, Section 203-11 (encl. B1-B2).

§ 87(2)(g)

Once § 87(2)(b) was on the floor, both officers were present and the sole focus was trying to bring § 87(2)(b) arms behind his back in order to handcuff him. § 87(2)(g)

§ 87(2)(g)

In the video, an

unidentified female civilian is heard telling PO McGuire, “You gotta get off his neck in order for him to get [off or up]” and although § 87(2)(b) denied witnessing PO McGuire place § 87(2)(b) in a chokehold firsthand, he acknowledged seeing this in the video. PO McGuire maintained multiple holds near and on § 87(2)(b) neck, which lasted more than half the length of the struggle that was captured on video. He maintained and even tightened his grip around § 87(2)(b) neck (visible in the shorter video from 00:33 through 00:40 and in the longer video from 01:25 through 01:31, 01:33 through 01:36 and 01:33 through 01:36) through § 87(2)(b) resistance as well as his cessation of resistance.

§ 87(2)(g) § 87(2)(b) was not throwing punches or offensively resisting in any other way. In fact, the video indicates that he was allowing PO Roach to hold his arm behind his back until PO McGuire reverted back to punching him, at which point § 87(2)(b) pulled his arm back towards the front of his body to protect his face (visible in the shorter video from 00:11 through 00:19 and in the longer video from 01:00 through 01:12).

PO McGuire suggested that § 87(2)(b) may have been trying to reach for his firearm at the point in the video where § 87(2)(b) is seen reaching along PO McGuire’s left arm. However, PO McGuire said he saw nothing that led him to believe that § 87(2)(b) was doing so during the struggle and the circumstances visible in the video suggest that § 87(2)(b) was actually trying to pull PO McGuire’s arm in an attempt to get his hand off of the area beneath § 87(2)(b) chin. Even still, the video clearly shows that § 87(2)(b) was touching PO McGuire’s left arm, not the right side of PO McGuire’s body, which is where PO McGuire indicated he keeps his firearm.

§ 87(2)(g) § 87(2)(b)

Allegation D – Force: PO Colin McGuire intentionally provided a false official statement to the CCRB.

During his CCRB statement, PO McGuire said that the hold he maintained against § 87(2)(b) encompassed him placing his bicep and forearm under § 87(2)(b) chin and on his shoulder area. He denied ever making contact with § 87(2)(b) neck.

The intentional making of a false official statement is prohibited and will be subject to disciplinary action. NYPD Patrol Guide, Section 203-08 (encl. B3). The statement must be proven to have been made, material, and intentionally false. Dep’t of Correction v. Centeno, OATH Index No. 2031/04, p.4 (2005) (encl. B4-B10).

§ 87(2)(g) § 87(2)(b)

§ 87(2)(g) Although at some points in the videos, PO McGuire's arm is seen to be wrapped over § 87(2)(b) chin, consistent with PO McGuire's description, the bend of his arm is underneath § 87(2)(b) chin at other points, unmistakably making contact with the front of § 87(2)(b) neck. PO McGuire told IAB that he never intentionally obstructed § 87(2)(b) breathing and he denied that pressure to § 87(2)(b) neck caused § 87(2)(b) to relax his body. However, toward the end of the struggle, PO McGuire can be seen in video footage clasping his hands together as his arm is wrapped around § 87(2)(b) neck (see the shorter video from 00:33 through 0:40), § 87(2)(g)

§ 87(2)(g)

Team: _____

Investigator: _____
Signature _____ Print _____ Date _____

Supervisor: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

September 20, 2016

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Colin McGuire**
Tax Registry No. 944793
Transit Bureau District 4
Disciplinary Case No. 2015-13121

The above named members of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on March 21, 2016, charged with the following:

DISCIPLINARY CASE NO. 2015-13121

1. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he placed his hand around Person A's throat, thereby causing him to be held in a chokehold.

P.G. 203-11

USE OF FORCE

2. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he placed his forearm around Person A's throat, thereby causing him to be held in a chokehold.

P.G. 203-11

USE OF FORCE

3. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he kned Person A about the head.

P.G. 203-11

USE OF FORCE

4. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he repeatedly punched Person A about the head.

P.G. 203-11

USE OF FORCE

STANDARD ASSIGNMENTS
STAGE

2019 SEP 20 A 12:10

RECEIVED

POLICE OFFICER COLIN MCGUIRE

DISCIPLINARY CASE NO. 2015-13121

In a Memorandum dated April 29, 2016, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Colin McGuire Guilty of Specification No. 2 and Not Guilty of Specification Nos. 1, 3 and 4, in Disciplinary Case No. 2015-13121. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Police Officer McGuire.

I have considered the totality of the issues and circumstances in this matter, and deem that a lesser penalty is warranted. Therefore, Police Officer McGuire is to forfeit fifteen (15) vacation days, as a disciplinary penalty.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

April 29, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Colin McGuire
Tax Registry No. 944793
Transit Bureau District 4
Disciplinary Case No. 2015-13121

Charges and Specifications:

1. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he placed his hand around Person A's throat, thereby causing him to be held in a chokehold.

P.G. 203-11 - USE OF FORCE

2. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he placed his forearm around Person A's throat, thereby causing him to be held in a chokehold.

P.G. 203-11 - USE OF FORCE

3. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he kned Person A about the head.

P.G. 203-11 - USE OF FORCE

4. Said Police Officer Colin McGuire, on or about July 14, 2014, at approximately 1630 hours while assigned to the Transit Bureau District 4 Command and on duty in the vicinity of the 125th Street 4, 5, 6 Subway Station, New York County, wrongfully used force in that he repeatedly punched Person A about the head.

P.G. 203-11 - USE OF FORCE

Appearances:

For CCRB-APU: Nichole Junior, Esq.
Civilian Complaint Review Board
100 Church Street, 10th 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:

March 21, 2016

Decision:

Specification 1: Not Guilty
Specification 2: Guilty
Specification 3: Not Guilty
Specification 4: Not Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 21, 2016. Respondent, through his counsel, entered a plea of not guilty to the subject charges. CCRB called David Griffith as a witness and introduced video footage of the incident. 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 guilty of Specification 2 for using his forearm to place an individual in a chokehold, and not guilty of the remaining specifications.

FINDINGS AND ANALYSIS

At about 1630 hours on July 14, 2014, Respondent observed Person A enter the 125th Street Lexington Avenue subway station through the emergency gate without paying the fare. Respondent approached Person A and asked him why he had gone through the gate; Person A responded that the female token booth clerk had given him permission. Respondent had Person A accompany him to the booth in an attempt to verify Person A's story. However, there was no female clerk there, and the male clerk on duty informed Respondent that he had not given Person A permission to go through the gate without paying.

Based on this information, Respondent asked Person A for his identification, with the intention of issuing him a summons for theft of services, a misdemeanor. A physical altercation between Respondent and Person A ensued, a portion of which was captured on videotape by a bystander, David Griffith. At issue is whether Respondent used his hand and his forearm to place Person A in chokeholds, and whether Respondent also wrongfully used force by kneeling and punching Person A about the head.

Person A did not appear at the trial, and no explanation was offered for his absence. A 54-second video showing a portion of the incident (CCRB Ex. 1), and 11 still photographs taken from that video (CCRB Ex. 1A-1K), were admitted into evidence. A BCI photograph of Person A, showing swelling to his left eye area, also was admitted (CCRB Ex. 2).

Griffith, who recorded the video with his phone and later filed a complaint with CCRB, testified that he was on his way home when he came upon the altercation. At that time, he did not know any of the parties involved. According to Griffith, he saw Person A sitting on the ground crouched forward, while Respondent had his left bicep and forearm underneath Person A's neck. Respondent's partner was to the side, holding Person A's right wrist which was handcuffed. (Tr. 23-

24) Griffith testified that he heard Respondent repeatedly tell Person A to place his arm behind his back and stop resisting. (Tr. 25) Griffith also saw Respondent strike Person A in the face several times with a closed fist, as Person A used his left hand to try to block his face from being struck. (Tr. 26) Five drops of Person A's blood could be seen on the ground following these punches. (Tr. 38)

According to Griffith, he initially observed Respondent's left forearm and bicep around Person A's neck in what appeared to be a tight grip. He also saw Respondent's left hand grab Person A's throat. Respondent later placed his right forearm around Person A's throat. At no point did Griffith see Person A physically strike or verbally threaten either Respondent or his partner. (Tr. 27-29, 36) Before the altercation was concluded, Griffith got on a train and left the location.

Griffith, a 44-year old pedestrian safety manager, was noticeably nervous at the start of his testimony, but settled in and was generally straight-forward in his account. He did become slightly combative, though, when answering questions about his 2015 conviction for Driving While Intoxicated and Resisting Arrest; he claimed that he pled guilty to the resisting charge even though he wasn't really guilty. (Tr. 45) He acknowledged that he did not see the beginning of the incident, and so he lacked some context for his observations. (Tr. 51) Griffith was unsure as to which station the altercation occurred, and mistakenly described it as occurring on the platform rather than the mezzanine. (Tr. 21, 40) But for the most part, Griffith's testimony was corroborated by the video footage.

Respondent testified that he initially explained to Person A that he intended to give him a summons for the farebeat and send him on his way. However, he had to ask five or six times before Person A finally responded to his request for identification. Respondent informed Person A that he just needed to do a name check, but Person A said he had somewhere to go and started to walk toward Respondent. Respondent placed his hand on Person A's chest to hold him against the wall.

(Tr. 72-74) Person A placed his hands on his own collar and said that he wanted to take his shirt off, which Respondent perceived as a threat; Respondent explained that a shirtless Person A would have a tactical advantage if they were to have a physical altercation, since Respondent would not have anything to grab onto. Respondent then pointed his OC spray toward Person A's facial area and sprayed, but Person A turned his face. Respondent dropped the canister, they grabbed onto each other, and a struggle ensued. (Tr. 75-76)

According to Respondent, he placed Person A in a headlock for the purpose of taking him to the ground with a move he described as a headlock takedown, since "where the head goes, the body goes." (Tr. 77) Respondent repeatedly told Person A to place his hands behind his back so that he could be handcuffed, but Person A resisted, by tensing up his body and by twisting and turning. (Tr. 78) Respondent acknowledged that he did punch and knee Person A, explaining that he did so in order to get Person A's body to untense so the officer could get the other arm and hand behind his back. (Tr. 80) Person A initially had only one arm handcuffed, and Respondent was concerned that the handcuff could be used as a sharp weapon by Person A. (Tr. 79)

When shown photograph 1A (taken from .01 mark of video), Respondent denied that his left arm was around Person A's neck, explaining that his forearm and bicep were actually around Person A's chin. (Tr. 108-110) Respondent denied that he put his hand around Person A's throat at the .16 mark (photograph 1B), explaining that he had placed his hand on Person A's chin area. (Tr. 110-111) Respondent did acknowledge, though, that beginning around the .36 mark of the video (photograph 1H) he did have his arm around Person A's neck. (Tr. 120-121) Respondent also admitted to kneeling Person A at some point during the altercation, not in the head but in the upper torso area. (Tr. 122)

Throughout his testimony, Respondent willingly answered questions about the incident, including extensive questioning about his training. He candidly acknowledged placing his arm around Person A's neck at one point during the altercation. None of Respondent's testimony was contradicted by what appears on the video, and this tribunal credits his account of what transpired.

Section 203-11 of the Patrol Guide, which deals with the use of force by members of the service, emphatically declares that EXCESSIVE FORCE WILL NOT BE TOLERATED. All members of the service at the scene of a police incident are required to "use minimum necessary force." The section provides further guidance by stating that members of the Department will NOT use chokeholds. A chokehold "shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air."

This definition of what constitutes a chokehold focuses on the conduct itself rather than the intention of the officer. If an officer exerts pressure on a person's throat area in the manner proscribed, that officer will have run afoul of the guidelines, and be subject to discipline. Here, after considering the testimony of Griffith, the video footage, and Respondent's own testimony including certain admissions, this tribunal is persuaded that the record established by a preponderance of the credible evidence that Respondent used his forearm to place Person A in a chokehold. However, the evidence did not prove that Respondent placed his hand around Person A's throat in a chokehold, or that Respondent used excessive force in kneeling and punching Person A.

The opening seconds of the video, as depicted in photograph 1A, are ambiguous as to whether a chokehold is being used against Person A. Although Griffith testified that he believed Respondent's left bicep was wrapped around Person A's neck, Respondent explained that at that point his arm was around Person A's chin, not throat. Given the way Respondent's arm is positioned,

the video evidence is inconclusive as to whether Respondent was exerting pressure on Person A's throat at that early point.

About a half minute later, the evidence of a chokehold becomes more compelling. Griffith testified that he saw Respondent place his arm around Person A's throat. By Respondent's own admission, he placed his arm around Person A's neck while the two of them were down on the ground. At about the .36 mark of the video, Respondent appears to wrap his right arm around Person A's throat area as he maneuvers Person A's upper torso further to the ground; Respondent maintains that hold for at least the next 16 seconds. Respondent's right hand is clasped around his own left wrist, as if to secure his grip on Person A. Even without any testimony as to the effect this grip had on Person A's ability to breathe, it was evident from the video that this hold may have prevented or hindered Person A's breathing or reduced his intake of air. Although the length of time of the hold is not dispositive, the 16-second duration here makes it even more likely that Person A's ability to breathe may have been impeded. The record has established, by a preponderance of the evidence, that Respondent used his forearm to place Person A in a chokehold, and I find him guilty of Specification 2.

The evidence is less persuasive with respect to the allegation that Respondent also placed his hand around Person A's throat in a chokehold, particularly without testimony from the victim himself. Although Griffith testified that he saw Respondent use his left hand to grab Person A's throat, Respondent explained that his hand actually was on Person A's chin area. Respondent's contention is not contradicted by the video evidence: at the .16 mark, as also depicted in photograph 1B, Respondent's hand may very well be on Person A's chin, rather than his throat; the video footage certainly isn't conclusive on this point. As such, Griffith could easily have been mistaken in concluding that Respondent was choking Person A at that point. Given the lack of

credible evidence to sustain the allegation that Respondent choked Person A with his hand, I find Respondent not guilty of Specification 1.

Respondent acknowledged punching Person A in the face and kneeling him in the upper torso. Resolution of the remaining two allegations involves a determination as to whether this conduct constituted excessive force under the totality of the circumstances. Those circumstances began when Respondent saw Person A enter the subway system through the emergency gate, without paying the lawful fare. Rather than rush to judgment, Respondent checked to see if the token booth clerk would verify Person A's story that he had been given permission; the clerk did not confirm Person A's story. Having determined that Person A's excuse was a lie, Respondent sought to deal with the situation by issuing Person A a summons. Respondent specifically informed Person A that if he cooperated, he could go on his way momentarily. However, Person A chose not to cooperate, delaying the production of his identification and expressing his intention to walk away before the summons was issued. When Person A started coming toward him, Respondent put his hand to Person A's chest to keep him against the wall. Person A then stated his intention to take off his shirt and made a motion as if to do so, which in this context Respondent reasonably perceived to be a threatening gesture, believing that Person A was preparing to fight and looking to gain a tactical edge. It is in this context that the physical altercation began.

In order to prevent Person A from taking off his shirt and coming back toward him, Respondent tried to spray him in the face with OC spray, but Person A turned his face. With the goal of getting Person A into a position where he could be handcuffed, Respondent took him to the ground. However, Person A ignored Respondent's repeated requests to put his hands behind his back and stop resisting, and continued to thwart efforts to handcuff him, by twisting and turning his torso and stiffening his body. Respondent then punched Person A several times about the face,

causing a small amount of bleeding. This tribunal credits Respondent's explanation that these punches were not gratuitous, but rather were designed to get Person A to comply so that he and his partner could handcuff him. Respondent was in a vulnerable position as he attempted to gain control of the uncooperative Person A. Only that amount of force necessary to overcome resistance and secure the individual was used, and I find Respondent not guilty of Specification 4.

The record is unclear as to when exactly Respondent kned Person A in the upper torso. Respondent made a general admission that he did, indeed, knee Person A in the upper torso area, explaining that he did so in an attempt to get his body to untense. Other than that, there was no video evidence of how or when this kneeling occurred, and no testimony from Griffith that provides any illumination on this point. In the absence of any such evidence, and again taking into account how Person A was resisting a lawful arrest, I find Respondent not guilty of Specification 3.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 9, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB recommends that Respondent forfeit thirty (30) vacation days and be placed on one (1) year dismissal probation. Under the totality of the circumstances presented here, that recommendation is excessive. On the one hand, this tribunal remains mindful of the serious nature of chokehold offenses, which is underscored by the Patrol Guide's emphatic prohibition against their use. There needs to be some accountability here, but the penalty must be a

measured one, taking into account Respondent's history as well as the particular circumstances in which the chokehold was used.

The chokehold in this case was used against an individual who was resisting a lawful arrest. Person A was twisting and turning his body, and tensing up in an attempt to avoid being handcuffed. Although there was no evidence that Person A punched or kicked Respondent at any point during the altercation, Respondent had no assurance that the resisting individual wouldn't do so at any moment. As Respondent testified, he was unsure whether Person A "was trying to get up to try and fight or I don't know what he was trying to do." (Tr. 79) Respondent was on the ground in a somewhat vulnerable position: his partner was preoccupied with holding onto Person A's handcuffed hand, and wasn't able to provide much additional help in getting Person A under control. Also, a crowd of people hovered nearby. Although Respondent was unaware at the time exactly how close the crowd was, and there was no indication that anyone in the crowd interjected themselves physically during the altercation, several of them were shouting complaints at Respondent during the incident. None of these surrounding circumstances justify Respondent's use of a chokehold, but they do provide important context for assessing the officer's conduct.

In *Disciplinary Case No. 12925/14* (February 16, 2016), a 21-year officer with two prior disciplinary cases forfeited fifteen (15) vacation days for using a chokehold on an individual. There, like here, the individual was resisting arrest, though in that case there were other people physically intervening in the officer's attempt to handcuff the individual. In *Disciplinary Case No. 73100/98* (February 17, 2000), a highly decorated lieutenant with 15 years on the force forfeited fifteen (15) vacation days where he approached a man he suspected of possessing a firearm and grabbed him by the throat; the lieutenant also unholstered his firearm and threatened

the individual. This tribunal is mindful that Respondent does not have the same track record as the lieutenant in that case, and that the arrest here was for a farebeat.

Respondent, who has been with the Department for eight years, has no prior disciplinary history. He used a prohibited chokehold for approximately 16 seconds, but did so while he was on the ground struggling to secure a resisting individual. Having considered the totality of circumstances and issues presented in this matter, I recommend that Respondent forfeit twenty (20) vacation days as an appropriate penalty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

DISAPPROVED
SEP 28 2016
James P. Conell
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER COLIN MCGUIRE
TAX REGISTRY NO. 944793
DISCIPLINARY CASE NO. 2015-13121

On his last three annual performance evaluations, Respondent twice received an overall rating of 3.0 "Competent" and once received an overall rating of 3.5 "Highly Competent/Competent." [REDACTED]

He has no prior formal disciplinary history.

Jeff S. Adler
Assistant Deputy Commissioner Trials