

201509964
Mandeep Singh

On November 13, 2015 PO Singh responded to a call for a stabbing. While police were arresting a man, his fourteen year-old sister (who stood , was present. PO Singh struck the girl with his baton numerous times. Security video showed that he struck her in back and legs, and appeared to show him striking her in the head.. The blows were captured on video.

In his CCRB interview, POM Singh first testified first that he had struck the girl in the neck with his baton. Then later in the interview, POM Singh stated he only struck the girl in the legs. When confronted with the inconsistency between the two statements, PO Singh denied that he stated that he struck the girl in the neck.

After a break with his representative, PO Singh stated that he didn't mean to say neck initially, he probably meant to say knee. He then further testified he only hit the lower part of her body. Video footage and eyewitness account confirmed PO Singh hitting the girl in the neck and head area. POM Singh didn't change his statement upon viewing the video.

The CCRB found that the force was unnecessary and that PO Singh lied when he denied he had hit the girl in the head. The case was brought by the CCRB to the NYPD trial room.

Assistant Deputy Commissioner Jeffrey Adler oversaw the administrative trial. Adler ruled that because the situation was chaotic and there had a been a stabbing, the force of multiple strikes with a baton was "reasonable." At his administrative trial, PO Singh testified that he had not hit the girl in the head and neck, and that his testimony in his CCRB interview that he did so was a "misstatement." Deputy Commissioner Adler chose to credit this statement and, despite the video evidence and witness testimony, concluded that PO Singh, who has been the subject officer in 8 complaints comprising 27 allegations 10 of which were substantiated, including an allegation he struck a civilian with his gun, did not strike the girl in the head and that he indeed made a "misstatement" when he testified to the CCRB.

The NYPD did not issue PO Singh any discipline for this incident.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Raquel Velasquez	Team: Squad #12	CCRB Case #: 201509964	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 11/13/2015 7:00 AM	Location of Incident: [REDACTED]	Precinct: 41	18 Mo. SOL 5/13/2017	EO SOL 5/13/2017	
Date/Time CV Reported Fri, 11/13/2015 7:47 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/23/2015 11:06 AM		

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

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Mandeep Singh	01166	§ 87(2)(b)	041 PCT
2. An officer			041 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Eric Smith	25541	§ 87(2)(b)	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Mandeep Singh	Force: PO Mandeep Singh struck § 87(2)(b) with an asp.	A . § 87(2)(g)
B . POM Mandeep Singh	Abuse of Authority: PO Mandeep Singh threatened § 87(2)(b) and individuals with the use of force.	B . § 87(2)(g)
C . An officer	Abuse of Authority: An officer did not obtain medical treatment for § 87(2)(b).	C . § 87(2)(g)
D . POM Mandeep Singh	Other: There is evidence suggesting PO Mandeep Singh provided a false official statement in violation of Patrol Guide Procedure 203-08.	D . § 87(2)(g)

Case Summary

On November 13, 2015, § 87(2)(b) called IAB and filed this complaint on behalf of his 14-year-old daughter, § 87(2)(b).

On November 13, 2015, at approximately 7:00 a.m., multiple officers from the 41st Precinct, including PO Mandeep Singh, responded to a call for a stabbing at § 87(2)(b) in the Bronx. PO Singh struck § 87(2)(b) with an asp in the head, back, and legs and threatened § 87(2)(b) and other unknown individuals with the use of force by holding his asp up in a ready stance (**Allegations A and B**). An unidentified officer did not obtain medical treatment for § 87(2)(b) (**Allegation C**). The CCRB found evidence suggesting that PO Singh provided a false official statement regarding this incident (**Allegation D**), which was referred to IAB as a spin-off case on February 25, 2016.

§ 87(2)(b) was the only civilian who participated in this investigation.

§ 87(2)(b) who was not one of the perpetrators associated with the stabbing, was arrested for obstructing governmental administration (**Board Review 1**).

This case is being submitted after the 90-day benchmark because of delays in identifying and locating civilians and gathering video evidence.

Independent of the aforementioned IAB Spin-off for a false official statement, IAB Group 54 is also investigating this incident. As of February 25, 2016, IAB has not interviewed any officers and the case remains open.

Video footage of this incident was obtained from a surveillance camera at

§ 87(2)(b). The video does not have audio (**Board Review 2; Board Review 3**).



2016-02-26_9-42-59.mp4

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- A Notice of Claim regarding this incident was filed on § 87(2)(b)'s behalf on December 23, 2015, claiming personal, physical and emotional injuries, negligence, assault, battery, false arrest and false imprisonment. Compensation has not yet been determined. A50h hearing is scheduled for March 17, 2016 (**Board Review 4**).
- OCA has no criminal conviction history for § 87(2)(b) because she is a minor. OCA has no criminal conviction history for § 87(2)(b) (**Board Review 5**).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint regarding § 87(2)(b) and § 87(2)(b) (**Board Review 6**).

- PO Mandeep Singh has been a member of the service for four years and there are no substantiated CCRB allegations against him. PO Singh has one prior allegation regarding the use of an asp, in case number 201306714, which was exonerated.

Findings and Recommendations

Allegation A: Force- PO Mandeep Singh struck § 87(2)(b) with an asp.

It is undisputed that there was a stabbing involving multiple suspects and that there were multiple individuals present during the arrests.

The video footage shows § 87(2)(b) approaching officers and § 87(2)(b) while he is being apprehended. § 87(2)(b) pushes past one of the officers who stretched his arm out in an attempt to block § 87(2)(b) moves past the officer's arm and punches towards an officer on the ground. Two of the officers then pull § 87(2)(b) back by her arms, away from the officer and § 87(2)(b) PO Singh approaches, grabs § 87(2)(b)'s left shoulder, and strikes § 87(2)(b) with an asp once in the back of the head; § 87(2)(b)'s body lowers towards the ground. PO Singh strikes § 87(2)(b) again in the back and § 87(2)(b) falls to the ground with her legs bent. PO Singh then strikes § 87(2)(b) approximately two more times in the legs. Another officer pulls § 87(2)(b) up by her arm and pushes her up against the wall while a third officer handcuffs § 87(2)(b) **(Board Review 2; Board Review 3).**

§ 87(2)(b) who is a resident on the second floor of § 87(2)(b) stated that she came to the first floor after hearing a lot of screaming. § 87(2)(b) then saw 3 to 4 uniformed male officers on top of § 87(2)(b) who was lying on her stomach and saw PO Singh hit § 87(2)(b) in the head and back with an asp at least three times. § 87(2)(b) was handcuffed and was crying and limping. § 87(2)(b) saw § 87(2)(b) several hours after the incident, in crutches and wearing a cast **(Board Review 7).**

After apprehending one of the suspects wanted for the stabbing, PO Singh heard a radio run put out by PO Sanchez screaming for help. PO Singh ran into § 87(2)(b) and saw PO Sanchez and one or two other officers struggling to handcuff § 87(2)(b) PO Singh also saw § 87(2)(b) leaning her body on PO Sanchez's back. PO Singh did not know if § 87(2)(b) was a suspect of the stabbing and he also did not know what § 87(2)(b) was doing to PO Sanchez, but she was obstructing PO Sanchez from handcuffing § 87(2)(b) PO Singh ran towards them and pulled § 87(2)(b) away from PO Sanchez by her arm. § 87(2)(b) resisted by pulling her body towards PO Sanchez. PO Singh initially stated that he struck § 87(2)(b) once or twice with an asp around her neck area. Later in his interview, PO Singh clarified that he did not hit § 87(2)(b) in the neck area and that he meant to say that he hit § 87(2)(b) with the baton in the knee and lower part of her body. PO Singh denied hitting § 87(2)(b) in the head with the baton and he did not recall striking § 87(2)(b) in the back. PO Singh struck § 87(2)(b) with the baton because § 87(2)(b) was preventing PO Sanchez from performing his duty of arresting someone who could possibly be armed with a knife. PO Singh did not recall if § 87(2)(b) made any statements, PO Singh did not recall if he gave § 87(2)(b) any commands, and he could not estimate how much time elapsed from the moment he grabbed § 87(2)(b) until he struck her with the baton. § 87(2)(b) was handcuffed and was removed from the building. PO Singh did not know if § 87(2)(b) had any injuries. There were between 20 and 30 civilians who were

standing in close proximity, PO Singh could not estimate how close, who were yelling at the officers (**Board Review 8**).

§ 87(2)(g)

According to Patrol Guide Procedure 203-11, officers are required to use the minimum amount of force necessary to overcome resistance when placing a person under arrest. Patrol Guide Procedure 203-12 forbids officers from using deadly physical force unless they have “probable cause to believe they must protect themselves or another person present from imminent death or serious physical injury.” (**Board Review 9**)

The video footage shows § 87(2)(b) attempt to punch PO Sanchez while he is effecting an arrest. Two officers immediately grabbed § 87(2)(b) and move her away. PO Singh approached and did not make any physical attempt to restrain § 87(2)(b) but instead struck § 87(2)(b) in the head/area with his baton. § 87(2)(b) did not make any movements or attempts to strike PO Singh or the officers that pulled her away. § 87(2)(g)

Allegation B: Abuse of Authority: PO Mandeep Singh threatened § 87(2)(b) and individuals with the use of force.

It is undisputed that PO Singh threatened § 87(2)(b) and other unknown individuals with force by holding his asp up in a ready stance.

§ 87(2)(b) stated that she and unknown individuals yelled at PO Singh for striking § 87(2)(b). PO Singh approached § 87(2)(b) and the unknown individuals and swung his asp (**Board Review 7**).

The video footage shows § 87(2)(b) attempting to talk to the officers following the incident between PO Singh and § 87(2)(b)'s mother, runs up the stairs towards § 87(2)(b). An unidentified officer pulls § 87(2)(b) by her arm, away from § 87(2)(b). PO Singh runs down the stairs, pushes § 87(2)(b) back, and removes his asp from his right side and holds it up with his right hand above his head at a 45 degree angle. § 87(2)(b) stands in place as the officers escort § 87(2)(b) down the stairs. PO Singh points at § 87(2)(b) and signals her to move to the side. § 87(2)(b) and PO Singh then move out of the camera angle (**Board Review 2; Board Review 3**).

PO Singh stated that, to avoid having § 87(2)(b) and the unknown individuals get closer, he held his asp in his right hand with his arm folded up and said, “Do not come close to me.” PO Singh did not know if he swung his asp at any of the civilians (**Board Review 8**).

According to Patrol Guide Procedure 203-11, officers are required to use the minimum amount of force necessary to overcome resistance when placing a person under arrest (**Board Review 9**).

According to PO Singh, his stance was an act of precaution for crowd control. § 87(2)(b) the only civilian who attempted to get near the officers, was pulled away from § 87(2)(b) and the rest of the officers at the time of PO Singh's threat of force, and she did not resist. Of the seven officers present, only PO Singh had his asp out. § 87(2)(g)

§ 87(2)(g)

Allegation C: Abuse of Authority-An officer did not obtain medical treatment for § 87(2)(b)

In his initial complaint, § 87(2)(b) alleged that officers did not obtain medical treatment for § 87(2)(b). Due to a pending civil lawsuit, § 87(2)(b)'s parents did not participate and did not allow § 87(2)(b) to participate in this investigation. Additionally, because § 87(2)(b) was a minor, without her and her parents' participation, the investigation was also unable to obtain any police documents related to her arrest. § 87(2)(g)

§ 87(2)(g)

Allegation D: Other Misconduct- There is evidence suggesting Mandeep Singh provided a false official statement in violation of Patrol Guide Procedure 203-08.

The CCRB found evidence suggesting that PO Singh provided a false official statement regarding this incident. A spin-off case was referred to IAB in regards, under CCRB case number 201601514. The evidence is as follows:

On February 5, 2016, PO Singh provided a statement to the CCRB regarding this incident. PO Singh initially stated that he struck § 87(2)(b) in the neck with his asp. Later in his interview, PO Singh stated that he only struck her in the legs with his asp. His attention was drawn to the inconsistency between the two statements and PO Singh denied that he stated that he struck § 87(2)(b) in the neck with his asp. PO Singh denied striking § 87(2)(b) in any area other than her legs with his asp. PO Singh took a break with his representative and when he returned, he stated, "Just to be clear, if I had mistakenly said neck, I probably meant to say knee, but it was definitely her lower part of the body." PO Singh denied hitting her in the head with his asp. PO Singh was shown the above mentioned video where he is depicted striking § 87(2)(b) in the neck/head area with his asp. PO Singh did not amend his statement upon viewing the video.

Patrol Guide Procedure 203-08 states that an officer is prohibited from making a false official statement and that an officer found to have made such a statement will be subject to disciplinary action. According to Correction v. Centeno OATH Index No. 2031/04 (2005), the statement must be proven to have been made, material, and intentionally false (**Board Review 10**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad: **12**

Investigator:	_____	_____	_____
	Signature	Print	Date

Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date



POLICE DEPARTMENT CITY OF NEW YORK

April 18, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Mandeep Singh
Tax Registry No. 952245
41 Precinct
Disciplinary Case No. 2016-15614

Charges and Specifications:

1. Police Officer Mandeep Singh, on or about November 13, 2015, at approximately 0700 hours, while assigned to the 41st Precinct and on duty, in the vicinity of [REDACTED], wrongfully used force, in that he struck Person B with an asp without police necessity. *(As amended)*
P.G. 203-11 – USE OF FORCE
2. Police Officer Mandeep Singh, on or about November 13, 2015, at approximately 0700 hours, while assigned to the 41st Precinct and on duty, in the vicinity of [REDACTED], engaged in conduct prejudicial to the good order, efficiency, or discipline 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

Appearances:

For CCRB-APU: Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

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

Hearing Date:
February 28, 2017

Decision:
Not Guilty

Trial Commissioner:
ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 28, 2017.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB introduced the hearsay statement of eyewitness Person A, as well as a videotaped recording 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 not guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The two charges in this case stem from an incident that occurred at approximately 0700 hours on November 13, 2015 [REDACTED]. Respondent and other officers were responding to a stabbing at that location. The primary issue is whether Respondent wrongfully struck a 14-year old female, Person B, with his baton while she was interfering with the arrest of her brother. Also at issue is whether Respondent unlawfully threatened an onlooker, Person A, who was in the immediate vicinity of the arrest.

Person B did not appear to testify, and no exhibit of any prior interview with her was offered. Person B's medical records [REDACTED], where she was treated and released on November 13, were admitted as CCRB Ex. 4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Person A informed CCRB that she would not appear to testify. A recording of her CCRB phone interview of January 15, 2016, along with the accompanying transcript, were admitted as CCRB Exs. 1 and 1A, respectively. Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence, provided it is found to be sufficiently reliable and probative on the issues to be determined. See *Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *In the Matter of 125 Bar Corp. v. State Liquor Authority of the State of New York*, 24 N.Y.2d 174 (1969). To be sure, it is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witness. In the absence of such live testimony here, this tribunal listened carefully to the prior recorded statement of Person A, and reviewed the accompanying transcript.

In her statement, Person A stated that she heard shouting and screaming, and came downstairs to the lobby area. She observed three or four officers on this one little girl. One of the officers struck the girl three times with his baton while she already was lying on her stomach. Person A claimed that she saw the officer strike the girl with the baton in the head and back. According to Person A, the girl was scared, red, nervous, and throwing up. Person A stated that “maybe basically half of the building came downstairs,” and “a lot of people did not agree what was going on.” Person A and others yelled at the officer to stop. The officer with the baton then turned toward them “and tried to come swinging at everybody else,” though no one else was struck. The officers yelled at the crowd to back up and move back, and the girl was brought out in handcuffs. (CCRB Ex. 1A at 4-5, 7, 11-12, 14)

Video footage from a camera inside the lobby area of the building was admitted into evidence (CCRB Ex. 2). That footage shows both portions of the incident, the interaction between Respondent and Person B, as well as Respondent's alleged threat of Person A afterward. At about the 7:14 time stamp, Person B's brother goes inside an apartment as three police officers can be seen approaching. Person B walks past the police toward the exit, visibly agitated. At 7:14:21, Respondent's partner, Officer Sanchez, with the help of other officers, pulls the brother from the apartment and tackles him to the floor. Person B rushes back toward where the officers are trying to handcuff her brother, and a fourth officer who has arrived pushes her aside. At 7:14:27, Person B again moves determinedly into the fray. She leans in and appears to throw a punch with her right hand toward Officer Sanchez, just as Respondent runs into the building holding his baton extended. As one of the officers is trying to pull Person B away, Respondent grabs for Person B with his left hand as the momentum of the struggle backs him into the wall. Respondent is standing precariously close at the top of four stairs. Respondent then swings his baton several times at Person B with his right hand. It is unclear precisely where the baton strikes Person B, though it appears the last strikes make contact with her lower body around her legs. An additional officer rushes in and grabs hold of Person B, lifting her off the floor and putting her against the wall where she is handcuffed.

At about 7:15:03, a female rushes up the steps toward where the officers are holding Person B. Other people can be seen congregating close by in the hallway, as well as on the staircase. Several of the people are gesturing, and they appear to be partially blocking the path of the officers who are trying to escort Person B out of the building. At about 7:15:09, Respondent holds his baton up in his hand as he faces the crowd. Seconds later, Respondent pushes one woman away and the crowd backs off, allowing the officers to walk Person B out of the building.

Respondent testified that he and Officer Sanchez initially responded to a call of a past assault [REDACTED]. They met with a female complainant and her eyewitness daughter, and took them on a canvass with negative results. After dropping off the women back at the location, the officers were en route to the precinct when they heard an additional call for a stabbing of a female at the same building. They returned to the location, where Respondent saw the eyewitness they had previously interviewed pointing in the direction of a fleeing female. Respondent's partner went inside [REDACTED], while Respondent chased and apprehended the female, and brought her to the RMP in handcuffs. It was confirmed that a female had been stabbed, there was blood on the street, and EMS was on the scene. Respondent also heard his partner "screaming for help" over the radio, and Respondent rushed back to the building. (Tr. 34-37)

Respondent entered the building with his baton already deployed because of the dangerous nature of the stabbing incident and his partner's call for assistance. He observed his partner on the floor apprehending a suspect. There was a teenage female on top of Officer Sanchez's back, "preventing him from doing his duty." Although he did not see a weapon in her possession, Respondent was alert for the presence of a knife since there had just been a stabbing. Respondent testified that aside from this overall safety concern, his goal was to prevent the female from assaulting his partner and to stop her from interfering with the apprehension of the suspect on the floor. Respondent explained his mindset:

The seriousness of the crime or the call that I responded to. It's a stabbing call. It's not – it's not a dispute. It's somebody's hurt, somebody's stabbed. At that point the level of seriousness and how – what precaution to have to take and make sure that everybody is safe is really high. (Tr. 39 40, 61, 87)

Toward that end, Respondent tried to grab her to get her under control, as did another officer. According to Respondent, the female resisted, and Respondent was pushed back against

the wall, with the female bent over near his gun belt. Respondent stated that he struck the female with his baton in the lower part of her body, in her leg area, once or twice, though things were happening so fast that he may have struck her more times than that. Respondent intended to avoid her head and neck area, and he insisted he did not strike the female in the head or neck. However, in his CCRB interview on February 5, 2016, he initially stated that he struck her “around her neck area”, before explaining later in the interview that if he did say that he must have misspoke. Once she stopped resisting, Respondent stopped striking her and she was handcuffed by another officer. (Tr. 41-45, 49-58, 64, 67) Respondent did not observe any visible injuries on the female, nor did she complain of any injuries. (Tr. 48-49)

As the officers were removing the female from the hallway, several civilians ran toward them and prevented the officers from leaving. The civilians were aggressive, screaming and yelling at the officers. Respondent had his baton raised up in his right hand, while he held out his left hand and told the people to “get back”, in order to prevent them from aiding the suspects in custody. The officers were able to leave the location with the two suspects without further incident. (Tr. 46-48, 82)¹

Specification 1 charges Respondent with wrongfully using force against Person B by striking her with his baton without police necessity. Section 203-11 of the Patrol Guide, which governed the use of force at the time of the incident, requires an officer to use “minimum necessary force.” The Patrol Guide emphasizes that EXCESSIVE FORCE WILL NOT BE

¹ Also entered into evidence as part of Respondent’s case was a stipulation between the parties that after watching the video footage of the incident, the Department’s “use of force review board” found that Respondent’s actions were within Department guidelines. As I indicated to the parties during the trial, this is a de novo hearing on the merits, where an independent determination is made regarding each of the two specifications based on the record presented by the parties. (Tr. 20, 27-29)

TOLERATED. At issue here is whether under the circumstances that Respondent encountered on November 13, his use of his baton against Person B was unreasonable.

Counsel for CCRB argues that Respondent's use of his baton was excessive, stressing that Person B was an unarmed 14-year old girl, approximately 4'11", 100 pounds at the time of the incident. Just as none of the other officers on the scene felt the need to employ any weapons against Person B, Respondent, too, could have used more minimal force in restraining her. Instead, Respondent rushed into the location "like a bull out of the gate", and repeatedly struck Person B with his baton without police necessity.

Respondent counters that it was a "fast-moving event", and that he reacted reasonably to the situation at hand in order to gain the compliance of Person B. This tribunal agrees. Respondent rushed into the building out of concern for the safety of his partner, whom he had just heard radio for help. The officers were responding to a violent crime, a stabbing that had just occurred, after they had just been at the same location for another alleged assault. There was blood on the street and EMS was on the scene. It was unclear at that moment whether a knife or other weapon connected with that stabbing was somewhere at the location, heightening Respondent's safety concerns.

As Respondent entered the building, he saw Person B actively interfering with his partner's attempt to handcuff a suspect. It is not clear that as Respondent was racing up the stairs, he was in a position to ascertain the age, height and weight of the female, who was wearing an oversized jacket at the time -- certainly not to the point where he could eliminate her as a possible threat to the safety of those on the scene. Respondent was understandably concerned that Person B's actions might pose a risk to the safety of his partner and the other officers. Even after she was separated from her brother and Officer Sanchez, Person B refused to be compliant. Instead, she

continued to pull away from the officers, and the momentum of that struggle sent Respondent up against the wall, where he was standing near the edge of the stairs in a vulnerable position. As a result of Person B's obstructive behavior, as many as four officers were involved in subduing her at the same time her brother was being apprehended.

Under these circumstances, it was not unreasonable for Respondent to employ his baton in the manner he did, in order to restrain Person B swiftly and decisively. It is unclear where precisely Respondent struck Person B with his baton, but from the credible evidence, including the video footage, it appears more likely than not that he struck her repeatedly in the lower body area, around her legs. Person B did not testify, and there was no interview presented that provided her account of what occurred. Person B's medical records reveal no injury to her head, only swelling to her ankle and some superficial redness behind her ear. In her hearsay statement, Person A asserted that Respondent struck Person B in her head and back. However, she also said this occurred while Person A was lying on her stomach, which appears inconsistent with the video footage. It would have been useful to have Person A point out where she was on the video, and to hear her cross-examined on how much of the incident she actually observed, but she, too, did not appear. Even though Respondent, in his CCRB interview, initially stated that he struck Person B in the neck area, later in the same interview he clarified that he misspoke, and I credit his testimony that his intention was to strike her in the lower body, and that he never struck her in the head and neck. This conclusion is supported by how quickly Respondent ceased using the baton.

This tribunal is mindful of the concerns raised by CCRB regarding the striking of a 14-year old with a baton, who apparently suffered an ankle injury from events that day. This tribunal also is aware that Respondent did not observe any weapons in Person B's possession.

Nevertheless, it is important to keep in mind the chaotic and potentially dangerous scene that Respondent came upon, at a location where a stabbing had just occurred.

As Respondent explained:

At that point seeing somebody on my partner's back means that he could be in danger. Knowing that somebody is assaulted already, anyone there could have had a knife at any point. It could be the person on the floor. It could be the female there. Anybody could have hurt anybody there. So to gain control of the situation to avoid anybody being hurt, including my partner or a civilian, those other people being there, it was necessary to gain control of her so she – if she has a knife, she won't be able to hurt anyone, and gain control as soon as possible. (Tr. 87)

Under the totality of circumstances faced by Respondent, his actions were not unreasonable. In light of the violent nature of the underlying crime that had just occurred, his partner's call for help, Person B's active interference with the arrest of her brother, and her resistance to the officers' efforts to gain her immediate compliance, Respondent acted reasonably in order to defuse a rapidly unfolding, volatile situation. The record has failed to establish, by a preponderance of the credible evidence, that Respondent struck Person B without police necessity, and I find him not guilty of Specification 1.

Specification 2 alleges that Respondent unlawfully threatened Person A with his baton. There is no dispute that Respondent did raise his baton in his right hand and held out his left hand as he faced a crowd of people in the lobby area. However, Respondent testified that the crowd was behaving in an aggressive manner, momentarily blocking the officers from leaving the building with their prisoners. This testimony was corroborated by the video footage, where one woman even barreled up the steps to where the officers were holding a handcuffed Person B. Person A, herself, confirmed that "half of the building came downstairs", many of whom were upset with what was happening and were yelling.

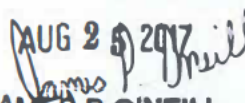
Respondent's actions were a reasonable response to the situation. There had just been a violent felony assault at the location, and the officers had two handcuffed prisoners who they needed to escort out of the building for transport to a secure police facility. Under the circumstances, they did so safely and efficiently, and I find Respondent not guilty of Specification 2.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

AUG 25 2017

JAMES P. O'NEILL
POLICE COMMISSIONER