

201807705
Arland Belande

On September 9, 2018, PO Belande encountered a man urinating in public and arrested him. While the man was rear-handcuffed, with his back against PO Belande's car, he started to move towards the rear of the car. PO Belande then hooked his arm underneath the man's arm. The man then "appears to lean away" from PO Belande, at which point PO Belande grabbed the man's leg to turn him around, and pushed the man backwards by his neck so that the man fell over PO Belande's leg to the ground. The above was recorded on PO Belande's partner's body cam. In the arrest paperwork, PO Belande wrote that he had used a takedown move to bring the man down.

In his CCRB interview, PO Belande denied using a takedown move on the man and denied touching the man's neck. Instead, PO Belande stated that he had tried to pull the man back towards the car, and that the man had fallen down on his own. He testified that the reason he wrote that he had used a takedown move was simply to document that the man had fallen.

When shown the BWC video that depicted him pushing the man to the ground by his neck, PO Belande admitted that he touched the man's neck but stated he could not remember doing so, and continued to testify that the man's fall was accidental.

The CCRB substantiated allegations of excessive force, both for the chokehold and the push, and found that PO Belande made a false statement when he stated the man had fallen to the ground on his own.

At a departmental trial, Deputy Commissioner for Trials Nancy Ryan (who serves on the board of Prison Legal Services) credited the officer's testimony over the victim's statement, in part because the victim did not appear live at trial and she found the officer "credible." She wrote that PO Belande only had his hand on the man's neck for "approximately one second" while pushing him to the ground by the neck, and found that pushing him to the ground was reasonable because she credited PO Belande's testimony that "he feared that [the victim] might head butt him or succeed in running away."

Deputy Commissioner Ryan did not address the fact that PO Belande gave a detailed sworn statement to the CCRB in which he denied pushing the man to the ground at all.

The NYPD did not discipline PO Belande for this incident.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fenkel	Team: Squad #6	CCRB Case #: 201807705	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 09/09/2018 3:13 AM	Location of Incident: [REDACTED]	Precinct: 05	18 Mo. SOL 3/9/2020	EO SOL 3/9/2020	
Date/Time CV Reported Sun, 09/09/2018 5:53 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/17/2018 11:17 AM		

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

Subject Officer(s)	Shield	TaxID	Command
1. POM Arland Belande	7494	948649	005 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Arland Belande	Force: Police Officer Arland Belande used a chokehold against [REDACTED]	A . § 87(2)(g) [REDACTED]
B . POM Arland Belande	Force: Police Officer Arland Belande used physical force against [REDACTED]	B . § 87(2)(g) [REDACTED]
C . POM Arland Belande	Other: There is evidence suggesting Police Officer Arland Belande provided a false official statement in violation of Patrol Guide Procedure 203-08.	C . § 87(2)(g) [REDACTED]

Case Summary

On September 9, 2018, Captain Kenneth Gorman of the 5th Precinct called the IAB Command Center and reported the following incident on behalf of § 87(2)(b) who was transported to § 87(2)(b) Hospital for injuries sustained during his arrest. This complaint was received at the CCRB on September 17, 2018.

On September 9, 2018, at approximately 3:13 a.m., § 87(2)(b) was approached by PO Arland Belande of the 5th Precinct after urinating in public near 9 Rivington Street in Manhattan. § 87(2)(b) was found to have an active warrant and placed under arrest. PO Belande used a chokehold against § 87(2)(b) and threw him to the ground (**Allegation A – B: Force, § 87(2)(g)**). The CCRB found evidence suggesting that PO Belande provided a false official statement during his CCRB interview when he denied that he affected a forcible takedown on § 87(2)(b) (**Allegation C: § 87(2)(g)**).

§ 87(2)(b) was arrested on charges of resisting arrest, obstructing governmental administration, and urinating in public (Board Review 01). § 87(2)(b)

Body-worn camera footage recorded by PO Wing Pong of the 5th Precinct captured a portion of this incident. The original footage can be found in IA #41 (Board Review 03) and is summarized in IA #50 (Board Review 04). A copy of the relevant footage can be found below.

Findings and Recommendations

Allegation A – Force: Police Officer Arland Belande used a chokehold against § 87(2)(b)

Allegation B – Force: Police Officer Arland Belande used physical force against § 87(2)(b)

Body-worn camera footage recorded by PO Pong depicts the following: § 87(2)(b) is rear handcuffed with his back against the patrol car and PO Belande stands facing § 87(2)(b) with his forearm pressed against § 87(2)(b)'s upper chest and shoulder. § 87(2)(b) begins to move toward the trunk and PO Belande attempts to pin § 87(2)(b) against the patrol car by placing his forearm across the side of § 87(2)(b)'s neck. As § 87(2)(b) reaches the trunk, PO Belande hooks his arm underneath one of § 87(2)(b)'s arms and PO Belande briefly pins § 87(2)(b) against the rear of the patrol car, again with his forearm on the side of § 87(2)(b)'s neck. § 87(2)(b) who remains handcuffed, appears to lean away from PO Belande. PO Belande briefly grabs § 87(2)(b)'s leg, near his knee, and turns § 87(2)(b)'s body 180 degrees. PO Belande then grabs § 87(2)(b) by the front of his neck with one hand and throws § 87(2)(b) backwards onto the ground.



BWC.mp4

§ 87(2)(b) was uncooperative with the CCRB's investigation and did not provide a verified statement (see IAs for contact attempts).

PO Belande testified that § 87(2)(b) was relaxed throughout their interaction, though his demeanor began to change after he was handcuffed. § 87(2)(b) stated that he "could have run" and began to use profanity, though PO Belande could not recall what he said. § 87(2)(b) began to move toward the rear of the patrol car and continued to do so despite PO Belande's

orders to stop. § 87(2)(b) reached the trunk, at which point PO Belande grabbed onto the lower front of § 87(2)(b)'s t-shirt with the intention of bringing § 87(2)(b) back to his previous position of standing against the patrol car. However, § 87(2)(b) fell onto the ground. PO Belande denied that he intentionally brought § 87(2)(b) to the ground and testified that he only filled out a Threat, Resistance, or Injury Incident Worksheet (TRI)(Board Review 05) to indicate a forcible takedown was used as a means of documenting that § 87(2)(b) had fallen. PO Belande denied that he had any contact with § 87(2)(b)'s neck and denied that he ever grabbed § 87(2)(b)'s neck or used a chokehold. After reviewing PO Pong's body-worn camera footage, PO Belande acknowledged that the video depicts him grabbing § 87(2)(b)'s neck, but testified that he had no recollection of doing so. PO Belande maintained that the forcible takedown depicted was unintentional.

IAB Log #18-35329 (Board Review 06) documented that § 87(2)(b) was diagnosed with scratches and abrasions at § 87(2)(b) Hospital.

According to NYPD Patrol Guide, Procedure 221-01 (Board Reviews 07), officers will only use the reasonable force necessary to gain control or custody of a subject. The use of chokeholds, the definition of which includes but is not limited to any pressure to the throat or windpipe which may prevent or hinder breathing, or reduce air intake, is prohibited. Furthermore, NYPD Patrol Guide, Procedure 221-01, prohibits officers from using any level of force on a handcuffed subject unless necessary to prevent injury, escape, or overcome active physical resistance.

§ 87(2)(g)
[REDACTED]

Allegation C – Other Misconduct: There is evidence suggesting Police Officer Arland Belande provided a false official statement in violation of Patrol Guide Procedure 203-08.

The CCRB found evidence suggesting that PO Belande provided a false official statement regarding this incident when he denied that he effected a forcible takedown. A spin-off case was sent to IAB under CCRB case number 201901109. The evidence is as follows:

In his CCRB interview, PO Belande testified that § 87(2)(b) fell to the ground on his own accord and PO Belande denied that he intentionally brought § 87(2)(b) to the ground. PO Belande was presented with the handwritten TRI report he prepared, which indicated that he used a forcible takedown was on § 87(2)(b). PO Belande explained that the forcible takedown indicated on the TRI Report referred to § 87(2)(b) falling to the ground, and that since § 87(2)(b) went to the ground, a forcible takedown needed to be documented. At the conclusion of his CCRB interview, PO Belande was presented with PO Pong's body-worn camera footage, which shows that PO Belande forcibly threw § 87(2)(b) to the ground by his neck after



POLICE DEPARTMENT

February 21, 2020

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2019-20510
Police Officer Arland Belande	:	
Tax Registry No. 948649	:	
5 th Precinct	:	

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At:	Police Headquarters One Police Plaza New York, NY 10038
Before:	Honorable Nancy R. Ryan Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:	Simone Manigo, Esq. Claudia Avin, Esq. Civilian Complaint Review Board 100 Church Street, 10 th Floor New York, NY 10007
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For the Respondent:	John Tynan, Esq. Worth, Longworth & London, LLP 111 John Street, Suite 640 New York, NY 10038
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To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Arland Belande, on or about September 9, 2018, at approximately 0313, while assigned to 005 PCT and on duty, in the vicinity of front of 9 Rivington Street, New York County, wrongfully used force, in that he used a chokehold against Person A while Person A was rear-cuffed.

P.G. 221-01, Page 3, Prohibition 2(a)

FORCE GUIDELINES

2. Police Officer Arland Belande, on or about September 9, 2018, at approximately 0313, while assigned to 005 PCT and on duty, in the vicinity of front of 9 Rivington Street, New York County, wrongfully used force, in that he placed his hand around Person A's neck and pushed Person A onto the ground while Person A was rear-cuffed without police necessity.

P.G. 221-02, Page 2, Prohibition 11

FORCE GUIDELINES

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 24, 2020. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. This is a hearsay case. The Civilian Complaint Review Board called Investigator Cassandra Fenkel as a witness and offered the telephone statement of Person A and a video 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. Having reviewed all of the testimony and evidence in this matter, I find Respondent Not Guilty of the charged misconduct.

ANALYSIS

It is uncontested that on September 9, 2018, at approximately 0300 hours, Respondent was in uniform and on patrol, with his partner, Police Officer Pong, in Sector B of the 5 Precinct. The pair encountered Person A, who was urinating in public. When Respondent took his ID to issue a summons, he learned that Person A had an outstanding bench warrant. After Person A was handcuffed, a physical struggle ensued and Respondent ultimately pushed

Person A to the ground. Person A was transported back to the precinct after an additional unit responded; he was later brought to a hospital for evaluation of alleged injuries. At issue is whether, in the course of bringing Person A under control, Respondent (i) used a prohibited chokehold or (ii) used excessive force in pushing him to the ground while he was rear-cuffed.

Cassandra Fenkel testified that she was the supervising investigator at CCRB assigned to this matter. (Tr. 14) She spoke to Person A once on an “initial intake phone call” a few weeks after the incident. No formal interview was conducted, as Person A refused to come to CCRB to provide a statement, partially because he didn’t see the need to do so regarding an incident that was already captured on video. (Tr. 29, 50, 62, 66-68) Though Person A had indicated to Ms. Fenkel on the intake call that he intended to file a civil lawsuit, she acknowledged at trial that she later learned he had never filed any such claim. (Tr. 69)

CCRB submitted into evidence the audio recording and accompanying transcript of Person A’s September 25, 2018 telephone conversation with Ms. Fenkel. (CCRB Exs. 1A & 1B) On that call, Person A alleged, “[Respondent] choked me a little bit.” (CCRB Ex. 1B at 3) He further recounted, “[Respondent] scratched me in my neck, he broke the chain on my neck, he damaged my \$25,000 watch...he cracked my phone.” (*Id.* at 5) He also expressed a desire to sue the City and Respondent. (*Id.* at 4) However, toward the conclusion of the call, he told Ms. Fenkel that he was not interested in cooperating with a CCRB investigation because doing so would be inconvenient and cost him potential income. (*Id.* at 7)

CCRB Exhibit 2 is a body-worn camera video of the incident that was recorded by Respondent’s partner, Officer Pong. The video begins with Person A in handcuffs, standing with his back to the RMP and shouting at Respondent, although there is no audio until 00:59. Respondent has his left hand on Person A’s left shoulder, and his forearm is near Person A’s

throat, although a gap between the two is visible at approximately 00:18. (CCRB Ex. 2: 00:00-00:22) Person A begins struggling more forcefully and attempts to turn around twice; on the second attempt, Person A is halfway turned and Respondent is unable to control him completely. Respondent's arm remains near Person A's neck. (00:26-00:35) For a few seconds, Respondent and Person A are either outside the frame of the video or move by too quickly to be seen.

When they are next clearly visible, Respondent has his right arm under Person A's right arm, grabbing his right shoulder, and his left arm holding Person A's left shoulder near his neck. He then releases Person A's left shoulder and tries to grab his leg instead. Respondent spins Person A around, places his right leg behind Person A's left leg and pushes Person A by his upper chest and neck area. Person A falls backward over Respondent's knee. In total, Respondent's left hand appears to touch the right side of Person A's neck for approximately one second. (00:36-00:48)

Next, Respondent kneels down where Person A is lying on his back, placing his hand on Person A's chest. When the audio begins, Person A can be heard shouting, "You hit me like this?! You snatch my chain off my neck?!" and "Punch me! Punch me!" (01:07-01:33) Person A also utters various profane and racial insults such as, "You can't fight. You're not hard. You're soft as fuck;" (01:50-02:05) and "Fucking black ass mother fucker." (04:02-04:07) Respondent continues talking to him in a low voice. (04:07-04:23) When an additional unit responds, Person A tells those officers, "I have marks all over my neck right now. He scratched me. He hit me. He pulled my chains off my neck." (03:46-03:53) As Respondent guides Person A to the RMP and tries to place him inside, he continues to resist and make profane comments before eventually sitting down. (04:50-05:35)

CCRB entered into evidence the Medical Treatment of Prisoner form, which notes that Person A injured his wrist, neck, back and head and that he refused medical assistance at the command. (CCRB Ex. 4) Photographs from the Threat, Resistance or Injury (TRI) report depict various abrasions on Person A's arm, hip and neck. (CCRB Ex. 3)

Respondent asserted at trial that he used only the force needed to control a non-compliant Person A. He recounted that at approximately 0300 hours on September 9, 2018, he was on patrol with his partner, Officer Pong, in the vicinity of 9 Rivington Street when he noticed Person A urinating on a wall next to his RMP. Respondent asked Person A for ID in order to issue him a summons and recalled that Person A was initially "nice and cool." Respondent ran a check of his name, which revealed an outstanding bench warrant. Respondent told Person A that he would have to arrest him and bring him to the precinct. Person A then began "acting up" and challenged whether arresting him was necessary. Respondent detailed that "he was kind of mad [and] cursed me a little bit." (Tr. 107-109, 127-129)

Respondent explained that once Person A was in handcuffs, he positioned his forearm near Person A's shoulders to prevent him from head-butting. Person A "was moving around too much" and Respondent asked Pong to begin recording the incident and call for an additional unit with a prisoner transport car. Respondent kept his hands high on Person A's body to prevent him from head-butting him. Person A, he recalled, "said he could have run from me," causing Respondent to fear that he might escape. To keep control, Respondent grabbed his arms and shoulders and then used his right hand, with an open palm, to shove Person A to the ground. Once he fell, Respondent knelt next to him and tried to calm him down. Respondent denied wrapping his hand around Person A's throat or neck, asserting that his hand was on Person A's "upper chest area." (Tr. 109-114, 135-38, 151-152, 165-166)

Respondent recounted that when Person A was on the ground, he continued shouting and telling Respondent to punch him, while numerous civilians were nearby. Once the transport vehicle arrived, Person A began kicking the door of the car. Eventually, he was brought to the precinct and issued a summons. Respondent completed a TRI report regarding the use of force and Person A was brought to the hospital to check for injuries because he alleged that Respondent had broken various bones. No hospital records were introduced into evidence. (Tr. 114-117)

Specification 1: Use of Chokehold

Specification 1 charges Respondent with wrongfully using a chokehold on Person A while he was rear-cuffed. The Patrol Guide directs that, “Members of the service **SHALL NOT**...use a chokehold, which it defines as “includ[ing] but... not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air.” (P.G. § 221-01 (emphasis added in original)) The administrative prosecutor for CCRB clarified that CCRB’s position is that the alleged chokehold began at the 00:42 mark on the video. (Tr. 194) Having carefully reviewed the record in its entirety, I find that CCRB has failed to prove by a preponderance of the credible evidence that Respondent applied pressure to Person A’s throat or windpipe in a way that may have prevented him from breathing.

First of all, I find Respondent’s testimony to be credible. He testified in a forthright manner on both direct and cross-examination. Additionally, his recollections are supported by the video in evidence. The video confirms that Respondent’s hand was in the general area of Person A’s neck, but it is not clear that he touched the throat or windpipe. Rather, it appears that his hand touched the right side of Person A’s jaw and neck for an instant, incidentally, as he reached for Mr. Person A’s collarbone and upper chest. I also credit Respondent’s testimony

that he pushed Person A with an open hand. Pushing the jaw and side of the neck with an open hand would not constitute pressure to the windpipe or throat.

Additionally, it is noteworthy that when Person A complained to Respondent and other officers, he did not allege that he was choked. Rather, he mentioned that he was scratched and expressed concern about his jewelry. The noted scratches or abrasions and any damage to his jewelry could quite possibly have happened during the struggle and are not proof that a chokehold was applied. While Person A did tell Fenkel that Respondent “choked me a little,” his brief and vague hearsay statement, which could not be probed further with cross-examination and is not corroborated by any medical records, is an insufficient basis to depart from the impressions drawn from the video and from the credible testimony provided by Respondent. Accordingly, I find Respondent Not Guilty of Specification 1.

Specification 2: Wrongful Push

Specification 2 charges Respondent with using excessive force when he pushed Person A to the ground. Patrol Guide Section 221-02 instructs that officers should, “[a]pply no more than the reasonable force necessary to gain control.” The video confirms that during the incident, Person A was actively resisting, defined by the same section of the Patrol Guide as “physically evasive movements...including bracing, tensing, pushing...” The video further shows that as Respondent attempted to attain compliance, Person A appeared on the verge of breaking away and escaping. I credit Respondent’s testimony that he feared that Person A might head-butt him or succeed in running away. It should be noted that Respondent attempted to control Person A for at least 45 seconds before eventually positioning himself to bring him to the ground. I find that Respondent showed a great deal of restraint throughout the encounter when he simply pushed Person A against the RMP and then carefully grabbed his legs and waist in an attempt to

set up a tri p maneuver. After pushing him in a way that caused him to fall to the ground, Respondent then waited beside Person A for the arrival of the transport car.

Based on the totality of these circumstances, I do not find Respondent's use of force to be excessive. Accordingly, I find Respondent Not Guilty of Specification 2.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

APR 21 2020

DERMOT SHEA
POLICE COMMISSIONER