



POLICE DEPARTMENT

March 29, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-25644
Police Officer Triston Trunk	:	
Tax Registry No. 958131	:	
103 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

To:
HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Triston Trunk, on or about September 19, 2020, at approximately 2330 hours, while assigned to the Criminal Intelligence Section and on duty, in the vicinity of Avenue D and 48th Street, Kings County, with the intent to cause physical injury to § 87(2)(b) did attempt to cause injury to § 87(2)(b) in that he used force to pull § 87(2)(b) by his arms and torso causing injury, without police necessity. (*As amended*)

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

USE OF FORCE

Penal Law § 110/120.00

ATTEMPTED ASSAULT IN THE
THIRD DEGREE

2. Police Officer Triston Trunk, on or about September 19, 2020, at approximately 2330 hours, while assigned to the Criminal Intelligence Section and on duty, in the vicinity of Avenue D and 48th Street, Kings County, with the intent to cause physical injury to § 87(2)(b) did attempt to cause physical injury to § 87(2)(b) in that he placed § 87(2)(b) in a chokehold. (*As amended*)

P.G. 221-01, Page 3, Prohibition 2

FORCE GUIDELINES

Penal Law § 110/120.00

ATTEMPTED ASSAULT IN THE
THIRD DEGREE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 27, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board (“CCRB”) introduced into evidence Respondent’s Body-Worn Camera (“BWC”) footage, as well as the BWC footage of another police officer at the scene. 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 evaluated all of the evidence in this matter, I find Respondent Not Guilty.

ANALYSIS

Shortly before midnight on September 19, 2020, Respondent and his partner were involved in a vehicle pursuit. There were several occupants inside the vehicle they were pursuing, a minivan being driven by the complainant. Respondent, the operator of his RMP, initially attempted to stop the minivan for reckless driving. This attempt was thwarted when the complainant drove away. The ensuing vehicle pursuit lasted approximately one minute, until Respondent angled his RMP in front of the minivan, which came to a stop. Respondent exited his RMP and approached the driver's side of the minivan. It is alleged that during his ensuing encounter with the complainant, Respondent attempted to assault the complainant by pulling his arms and torso, and by placing him in a chokehold.

The complainant did not appear to testify. Instead, the CCRB relied upon the BWC footage from Respondent (CCRB Ex. 1) and Officer Flagumy Valcourt (CCRB Ex. 2), another officer who also was at the scene. In the footage, Respondent can be seen initially stopping his RMP behind the minivan. As Respondent exits to approach on foot, the minivan drives away. (CCRB Ex. 1 at 0:54-1:01) Respondent returns to his RMP and pursues the minivan for approximately one minute, at which point both vehicles come to a stop. (CCRB Ex. 1 at 2:02)

The footage shows Respondent exit his RMP, which is angled in front of the minivan. Another RMP pulls right alongside the driver's side of the minivan. The complainant is in the driver's seat of the minivan with the window down. Respondent approaches on foot, with his firearm drawn. He shouts at the complainant to "get on the fucking ground," while Officer Valcourt, who also has arrived at the scene, instructs the complainant to get out of the car. The complainant does not comply, and instead remains seated within the vehicle, repeatedly stating, "It's me." (CCRB Ex. 1 at 2:05-2:16; Ex. 2 at 0:55-1:00) Respondent uses his left hand to grab

the complainant's left wrist, then re-holsters his firearm and grabs both of the complainant's wrists. Respondent tries to pull the complainant toward him through the window three times, while Officer Valcourt orders him out of the car. (CCRB Ex. 1 at 2:17-2:23; Ex. 2 at 1:01-1:09) The complainant continues to resist, stating, "How do you expect me to get out from here," since there is an RMP positioned right next to the driver's door of the minivan. Respondent reaches with his right hand over the complainant's left shoulder to try to pull him out of the minivan through the window. As the complainant pushes Respondent away with his hands, Respondent reaches toward the complainant with his left hand, and appears to make contact with the front of the complainant's neck for approximately one second. The complainant pulls his head back, and continues to flail his hands. (CCRB Ex. 1 at 2:23-2:27; Ex. 2 at 1:09-1:15)

Seconds later, police officers remove the complainant through the passenger side of the vehicle and place him in handcuffs. The remainder of the video footage shows the officers on the scene interacting with the other passengers of the minivan, along with friends and family who have arrived on the scene.

Respondent testified that he was operating his unmarked RMP in a high crime area within the confines of the 67 Precinct in Kings County when he observed the complainant driving recklessly, including passing through a red light. Respondent activated his lights and sirens in an attempt to pull over the minivan, but as he exited his RMP to approach on foot, the minivan drove away. As he chased the minivan, Respondent observed objects being tossed out the windows of the minivan, which appeared to be marijuana. (Tr. 21-24, 30-31)

When the minivan came to a stop, Respondent exited his RMP and approached on the driver's side. In addition to the complainant, who was in the driver's seat, Respondent observed several occupants in the backseat. Respondent drew his firearm and ordered the complainant,

whom he had never seen before, to put his hands up and get out of the vehicle. Respondent testified that he was concerned for his safety, noting that although he did not actually see a weapon, there might be one inside the minivan within the reach of the complainant. He tried to secure the complainant's hands by grabbing his arms, but the complainant pulled back and moved his arm around. Since another RMP had pulled directly alongside the driver's side of the minivan, creating a "tight fit," Respondent tried to pull the complainant out of the vehicle through the window. When the complainant again pulled away, Respondent grabbed toward his shirt in an attempt to pull him out. Respondent stated that his hand did briefly make contact with the complainant's neck area, but he did not apply any pressure to the complainant's throat. Since the complainant continued to pull away, Respondent was unable to remove him on the driver's side. Additional police officers went to the passenger side of the minivan, and successfully brought the complainant out of the vehicle. (Tr. 24-27, 32-33, 35-40)

Respondent insisted that he was not intending to hurt the complainant, and was only trying to remove him from the vehicle in order to take the complainant into custody. (Tr. 27)

Respondent faces two counts of Attempted Assault in the Third Degree, the first alleging that he pulled the complainant by the arms and torso, and the second alleging he placed the complainant in a chokehold. Inasmuch as the CCRB did not serve the charges and specifications within the relevant statute of limitations, it had to rely on the "criminal exception" to the statute in order to proceed with this case. *See* N.Y. Civ. Serv. Law § 75(4).

As such, this is not a case where the prosecution need only prove that Respondent violated the Patrol Guide, by pulling on the complainant or by placing him in a chokehold. The issue here is not whether Respondent used impermissible force during the encounter as he attempted to remove the complainant through the car window. Rather, since the statute of

limitations was not met, the CCRB has the burden of proving, by a preponderance of the credible evidence, each of the elements of Attempted Assault.

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he or she engages in conduct which tends to effect the commission of such crime. (N.Y. Penal Law § 110.00) The crime of Assault in the Third Degree is defined as intentionally causing physical injury to another person. (N.Y. Penal Law § 120.00(1)) As such, the burden is on the prosecution to prove that Respondent, with the intent to cause physical injury to the complainant, attempted to cause such injury.

It is clear from the video evidence that Respondent did pull the complainant's arms and body as he attempted to remove him from the vehicle. The video footage also shows Respondent reaching his hand toward the complainant and making brief contact with the front of the complainant's neck for approximately one second. The pivotal issue here is one of intent: in order for the CCRB to meet its burden, it must prove that Respondent's "conscious objective or purpose" was to cause physical injury to the complainant.

The complainant did not appear to testify at trial, and no hearsay accounts from him were offered into evidence. As such, the tribunal did not have the opportunity to hear the complainant's perspective on what occurred.¹ Instead, the only evidence presented was the BWC footage and the testimony of Respondent.

I found Respondent's testimony to be credible: his account was detailed, logical, and supported by the video evidence. Respondent explained the circumstances leading up to the encounter, including how the complainant fled after Respondent attempted to pull him over for

¹ There was no evidence presented that the complainant suffered physical injury during the encounter. Although the prosecution was not required to prove such injury, it still would have been helpful to hear the complainant describe what occurred, including whether he suffered any physical effects as a result of Respondent's actions.

reckless driving, and how contraband was thrown from the window during the pursuit. When the minivan was ultimately stopped, Respondent approached on foot with the intention of taking lawful police action by placing the complainant under arrest. The complainant was seated inside the minivan along with several other individuals, and Respondent, for safety reasons, wanted to remove the complainant as quickly as possible. The complainant resisted, and a struggle between Respondent and the complainant ensued, which, as captured by the video footage, lasted less than 30 seconds. As soon as Respondent observed other police officers in position to safely remove the complainant from the passenger side, Respondent immediately stopped struggling with the complainant.

After listening carefully to Respondent's testimony, and considering it in conjunction with the video evidence, I am not persuaded that the CCRB has met its burden of proving that Respondent's intent was to criminally assault the complainant. Based on the particular circumstances presented here, this was not a situation where Respondent's conscious aim or objective was to cause physical injury. Rather, his intention was to take legitimate law enforcement action, by securing the complainant in police custody as quickly as possible. Accordingly, I find Respondent Not Guilty of Specifications 1 and 2.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAY 04 2024
Edward A. Caban
EDWARD A. CABAN
POLICE COMMISSIONER



ERIC L. ADAMS
MAYOR

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ARVA RICE
INTERIM CHAIR

March 27, 2024

The Honorable Edward A. Caban
Police Commissioner
New York City Police Department
One Police Plaza
New York, New York 10038

Re: Police Officer Triston Trunk DADS #: 2022-25644

Dear Commissioner Caban:

The above-referenced case was tried on February 27, 2024, by Administrative Prosecutor Theresa Freitas, for the New York City Civilian Complaint Review Board (hereinafter "CCRB"), pursuant to the Memorandum of Understanding between the CCRB and the New York City Police Department.

CCRB has reviewed the draft decision of Assistant Deputy Commissioner of Trials ("ADCT"), Jeff S. Adler, dated March 14, 2024. I respectfully submit the following comments regarding that draft decision pursuant to *Fogel v. Board of Education*, 48 A.D.2d 925 (2d Dept. 1975).

Respondent, Police Officer Triston Trunk, was charged with the following:

1. Police Officer Triston Trunk, on or about September 19, 2020, at approximately 2330, while assigned to the Criminal Intelligence Section and on duty, in the vicinity of Avenue D and 48th Street, Kings County, with the intent to cause injury to § 87(2)(b) did attempt to cause physical injury to § 87(2)(b) in that he used force to pull § 87(2)(b) by his arms and torso causing injury, without police necessity. (*As Amended*)

PG 221-02, page 2, Prohibition 11—USE OF FORCE
PL § 110/120.00—Attempted Assault in the Third Degree

2. Police Officer Triston Trunk, on or about September 19, 2020, at approximately 2330, while assigned to the Criminal Intelligence Section and on duty, in the vicinity of Avenue D and 48th Street, Kings County, with the intent to cause physical injury to § 87(2)(b) did attempt to cause physical injury to § 87(2)(b) in that he placed § 87(2)(b) in a chokehold. (*As Amended*)

PG 221-01, page 3, Prohibition 2—FORCE GUIDELINES
PL § 110/120.00—Attempted Assault in the Third Degree

The Court found Police Officer Trunk Not Guilty of Specification One (1) and Specification Two (2). It is respectfully requested that you reject ADCT Adler’s findings and find Police Officer Trunk Guilty of Specification One (1) and Specification Two (2). CCRB further requests that you impose CCRB’s penalty recommendation of the forfeiture of ten (10) vacation days for Specification One (1) and termination for Specification Two (2).

STATEMENTS OF FACTS

CCRB adopts the statements of facts articulated in ADCT Adler’s Draft Decision.

ARGUMENT

CCRB disagrees with the Court’s finding that Police Officer Trunk was not guilty of both Specification One (1) and Specification Two (2) and its conclusion that Police Officer Trunk’s testimony was “credible...detailed, logical, and supported by the video evidence” (Draft Decision page 6). While the Court is “not persuaded that the CCRB has met its burden of proving that Respondent’s intent was to criminally assault the complainant,” the evidence submitted by CCRB clearly proves by a preponderance of the credible evidence that Police Officer Trunk intended to cause physical injury to § 87(2)(b) and attempted to cause physical injury to § 87(2)(b) by pulling § 87(2)(b) by his arms and by placing § 87(2)(b) in a chokehold. (Draft Decision page 7). While the Court opines that Police Officer Trunk’s did not have a “conscious aim or objective...to cause physical injury,” to § 87(2)(b) CCRB disagrees (Draft Decision page 7).

We agree that the video evidence presented shows Police Officer Trunk pulling § 87(2)(b) arms and body in an attempt to remove § 87(2)(b) from the vehicle (Draft Decision page 6). We also agree that the video evidence shows Police Officer Trunk reaching his hand towards § 87(2)(b) and making contact with § 87(2)(b) neck. However, we disagree with the Court opining that the actions taken by Police Officer Trunk were done without a conscious objective or purpose to cause physical injury to § 87(2)(b).

While the Court notes that it “...did not have the opportunity to hear the complainant’s perspective on what occurred” and “it...would have been helpful to hear the complainant describe what occurred, including whether he suffered any physical effects as a result of Respondent’s actions” (Draft Decision page 6), this is not required of CCRB and the Court further acknowledges that (Draft Decision page 6, footnote 1). Proof of injury is not a required element for either of the specifications in this case and therefore, CCRB was not required to prove that Police Officer Trunk caused any injury to § 87(2)(b). However, CCRB did show the Court what occurred that day between Police Officer Trunk and § 87(2)(b) and this was done by introducing clear video footage of the actions taken by Police Officer Trunk. The video footage in this case speaks for itself—Police Officer Trunk pulled § 87(2)(b) by the arms and body in an attempt to remove § 87(2)(b) from the vehicle through the vehicle’s driver’s side window. It also shows Police Officer Trunk extending his arm and placing his hand around § 87(2)(b) neck. Both of these actions could have caused physical injury to § 87(2)(b) and it was wrong for Police Officer Trunk to take these actions against § 87(2)(b) under these circumstances. Therefore, Police Officer Trunk must be found guilty of Specification One (1) and Specification Two (2) and the total penalty imposed for both specifications should be CCRB’s recommendation of the forfeiture of ten (10) vacation days and termination.

CONCLUSION

For all the aforementioned reasons, CCRB requests that you reject ADCT Adler's findings and find Police Officer Trunk Guilty of Specification One (1) and Specification Two (2) and impose CCRB's total penalty recommendation of the forfeiture of ten (10) vacation days and termination for both specifications.

Respectfully submitted,

Theresa Freitas

Theresa Freitas
Prosecutor
Administrative Prosecution Unit
Civilian Complaint Review Board

CC: Craig Hayes, Esq.