

## Labor Board Rules Against Fired Cop

by Thomas Breen



Former Officer Santiago punching a handcuffed man.

A state labor board has upheld the firing of former Police Officer Jason Santiago for kicking, pulling, and punching a handcuffed suspect — after a fellow cop recanted earlier testimony against his former colleague, but a different use-of-force expert condemned Santiago’s actions as worse than previously determined.

The Connecticut State Board of Mediation and Arbitration (SBMA) issued that decision last week. The Independent obtained a copy of the 20-page arbitration award on Tuesday.

The SBMA found that the city had “just cause” to fire Santiago, an eight-year New

Haven Police Department veteran, last June.

The incident that led to Santiago’s firing occurred on Dec. 25, 2019. That’s when Santiago and several other officers responded to a call on Lombard Street in Fair Haven involving an intoxicated man and a broken-down vehicle. The scene escalated into Santiago kicking and pulling a suspect named Luis Rivera after the latter had been handcuffed, and then punching the suspect in the face after the latter spit at the officer.

[Click here to read a full story about that incident, and about then-Police Chief](#)

Otoniel Reyes’s recommendation to fire Santiago.

Click here to read about the Board of Police Commissioners’ 4-2 vote on June 16, 2020, to terminate Santiago’s employment with the NHPD.

And click here to read about how state prosecutors subsequently arrested Santiago and charged him with assault and breach of peace related to that Dec. 25, 2019 use of force.

The city’s police union, Elm City Local, subsequently filed an appeal to the state labor board. The union argued that Santiago — fired less than a month after the police murder of George Floyd in Minneapolis and at the height of a nationwide anti-police brutality movement — was the victim of a politically motivated “overreaction” to what the former New Haven officer actually did.

**“We will take administrative appeal on two grounds,” Pattis told the Independent. “The SBMA considered testimony unavailable to the city at the time the decision to terminate was made, and a failure of the panel to disclose conflicts of interest. To say I am disappointed is not enough; I am disgusted. The decision is an insult to every cop who risks life and limb daily on city streets. The next time you have an emergency don’t call 911, call the SBMA.”**

The SBMA ultimately issued an arbitration award in the city’s favor, justifying and upholding its decision to fire Santiago.

“If the public officials in this matter took into account an outcry for heightened police accountability surrounding police use of force, then so be it,” the 20-page document concludes. “This Panel finds, on the facts of this case, as demonstrated, full accountability was warranted.”

Click here to read the full arbitration award report.

“It was a difficult case all the way around,” city-hired attorney Floyd Dugas told the Independent.

“I think it’s a signal in how arbitrators are going to view these cases in holding police officers accountable going forward.”

Mayor Justin Elicker said

the arbitration board’s decision “affirms that the city made the right call here. We have standards of conduct for our officers. Officers serving the police department overwhelmingly do the right thing. But when an officer violates the use of force policy, that officer will be held accountable.”

Former Officer Santiago.

Santiago’s attorney, Norm Pattis, disagreed with the board’s decision, and promised an appeal.

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When asked for comment Tuesday, police union attorney Marshall Segar wrote by email, “The New Haven Police Union, Elm City Local CACP, is in receipt of the arbitration award concerning Jason Santiago. We are reviewing the award, and in consultation with Attorney Pattis,

we will develop our game plan to address the panel’s decision. Appeals on such cases are governed by CGS 52-418 et seq. The appeal would be filed with the Superior Court. Once a decision is made on when and how to appeal, the Union will speak publicly on the case. Until such time, no further comment will be provided other than to say we support Jason and thanks to Attorney Pattis for his zealous representation of our member.”

Santiago, meanwhile, had his most recent virtual court hearing in the ongoing criminal assault case on Tuesday morning.

State prosecutors have charged him with one misdemeanor count of third-degree assault and one misdemeanor count of second-degree breach of peace.

Tuesday morning’s judicial “status conference” was closed to the public.

### **City Use-Of-Force Expert Reverses Opinion**

The 20-page SBMA arbitration award reveals a host of new details about the lengths to which city police officers went to defend Santiago and to try to reverse the city’s decision against him.

One of the city’s key witnesses in support of Santiago’s firing — now-retired Officer Dave Acosta reversed his opinion

on Santiago's use of force between when he first spoke with city Internal Affairs (IA) investigators on the matter in March 2020, and when he testified before the state labor panel more than half a year later.

Acosta, a certified use of force instructor who retired from the NHPD at the end of 2020, met with city investigators Det. Jessica Stone and Sgt. Chris Fennessy last March.

After reviewing officer body camera footage, a bystander cell phone video, and all of the officer-filed incident reports pertaining to the investigation, Acosta offered three opinions:

- That Santiago's kick to the suspect's groin while the latter was handcuffed and on the ground and no longer fight back "was not reasonable and was excessive."
- That Santiago's grabbing of suspect by his hair from the ground to his feet was also excessive.
- And that Santiago's punching the suspect in the face while the latter was handcuffed was reasonable because that act of spitting "would be considered a use of force against the officers" by the suspect.

"Stone and Fennessy concluded that Santiago's kick to the groin and pulling

Rivera up by the hair was unreasonable and excessive," the SBMA award reads. "They found the punch to the face was reasonable. Thus, Santiago was found in violation of General Orders 6.01.02, 6.01.04 and 1.03."

When Acosta testified to the SBMA about this very same incident, he offered a radically different take on Santiago's actions than what he had provided to the city investigators.

"At the hearing before this Panel, Acosta testified that the hair pulling might be justified if it were not actually bearing or pulling Rivera's weight," the SBMA award reads. "He further testified that he could not say with certainty, and then, did not have an opinion on, whether the kick was justified because he would need to know more about Santiago's state of mind and his view of the totality of the circumstances."

The SBMA award goes on to state that Acosta was disciplined by then-Chief Otoniel Reyes "between the IA interview and when Acosta testified before this Panel. Further, the Chief testified that there was pressure on the matter from his fellow officers."

The arbitration award states that the local police union presented a number of witnesses before the state panel who testified to the "high character of Santiago."

Those included Officer Eduardo Leonardo, who testified to “Santiago’s truthfulness and respect in the eyes of the community.” Trevor Burke testified that he knows Santiago as a “selfless individual who always sought to protect others.” Officer Eric Aviles testified that he has known Santiago for over 14 years and “sees him as a high-standard, outstanding officer.” And Officer Joseph Bleck, who testified he has known Santiago since before he joined the force in 2014, stated that Santiago “has always been truthful, a true leader.”

### **New Use-Of-Force Expert Condemns Kick, Hair Pull, & Punch**

So.

After Acosta offered testimony to the SBA that “totally negated his previous opinions with respect to Santiago’s actions,” the city hired former state trooper and attorney Eric Daigle to review the matter.

Daigle reviewed all of the videos and other evidence and exhibits in the matter.

His conclusions: Not only was Santiago in the wrong when he kicked a handcuffed man in the groin and then pulled him by his hair. He also used excessive force when he punched Rivera in the face. He went further than the original assessment by New Haven police.

“It is my opinion to a reasonable degree of professional certainty that Santiago’s closed fist punch to Rivera’s face did not meet industry standards regarding use of force and was a violation of Department policy related to use of force,” the arbitration award quotes Daigle as saying.

“NHPD General Order 6.01 ... provides that ‘officers shall use only the amount of force necessary and reasonable to control a situation, effect an arrest, overcome resistance to arrest, or defend themselves from harm’... It is true Rivera was resisting up until the time he was handcuffed, and did spit bodily fluids at or on Santiago once he was brought to his feet, but in weighing Santiago’s response to the action I find it unreasonable ... In my opinion, Officer Santiago’s punch was retaliatory and the risk of causing significant injury far outweighed the treat posed.”

“National use of force standards set forth by clearly established law, policy and training do not support the action of punching a handcuffed subject in the face for spitting,” Daigle continued. “An analysis of the incident ... does not lead to the conclusion that a punch to the face was an appropriate response to spitting in this situation...”

## “A Kick In The Nuts Is, Well, A Kick In The Nuts”

The SBMA ultimately agreed with the city’s decision to fire and with Daigle’s subsequent analysis, rather than with the union’s appeal and Officer Acosta’s reversed testimony.

“Upon review of the video, in reliance on the determination of the IA investigators in this matter, and as elucidated by the Daigle report, we find that Santiago lost his composure and temper, as he kicked Rivera, a handcuffed man face down, in the groin. Santiago’s own words: ‘I’ve had it’ disclose this.”

The SBMA recognized that the kick “certainly was not seen as a strong, highly forceful thrust of his boot into Rivera’s groin.” Nevertheless, the kick did immediately result in Rivera blurting out, “You kicked me in the nuts!”

The panel wrote that sometimes, the degree of touching or violence is relevant to a judgment of what penalty is appropriate.

Here, they found, the nature of the act itself provided the answer.

“If an officer is caught stealing a \$5 item, is that truly any different than a \$500 item,”

they asked. “We think not. Here, we chose not to attempt to discern what exact force of a kick should be met with termination versus a lesser penalty. A kick in the nuts is, well, a kick in the nuts. And, the fact that Rivera was handcuffed face down exacerbates judgment on the conduct.”

The panel also wrote that Santiago’s pulling of Rivera’s hair “appeared forceful and weight bearing.” While grabbing and using someone’s hair to control the direction of their face is a reasonable technique, they wrote, “Standing up a face down handcuffed individual by the hair is not.”

“Stone, Fennessey, Acosta (until he changed his mind), Daigle, the Chief and assumably the Police Commission found the hair pulling to be excessive force in violation of the police. We do as well.”

And what about the punch to the face?

“It is interesting that Stone, Fennessey and Acosta found that the punch was reasonable,” the panel wrote. “Daigle found it ‘retaliatory and the risk of causing significant injury far outweighed the threat posed.’”

The panel condemned Rivera’s spit as a “disgusting, violent and perhaps disease causing act [that] can be seen as an immediate threat. It is not difficult to understand punching an individual in

the face after being spat upon by such an individual. But should a police officer do so to a handcuffed individual? It appears that Daigle judged the blow in the context of the entire situation, including Santiago's expressed that he had 'had it.'

“With such conflicting viewpoints, it is difficult for this Panel to discern the reasonableness of the punch. We can rely on industry standards in determining a question of ‘just cause,’ when they are clear and uniformly understood by all affected. It appears much work needs to be done to grapple with the industry standards around reasonable use of force, so that all officers are on clear notice.”

When asked for his thoughts on Acosta's reversal of testimony in the direction of supporting Santiago, Pattis, Santiago's attorney, told the Independent, “The city called Acosta as its own witness in the hearing. When he recanted they went out and bought another expert who had no involvement in the case. This would never have been tolerated in orderly and honest proceedings.”

City-hired attorney Dugas had a different take on the matter.

“Clearly his testimony changed from his statements that he gave to the Internal Affairs investigators and gave to me,”

Dugas said about Acosta, “which frankly was troubling. The Chief testified about discipline that had been issued to him recently. We can only speculate or surmise as to why he changed his view. But obviously the arbitrators saw through that shift and didn't credit his latter testimony.”

