

## New Haven, police union grapple over cop's firing in use-of-force case

By Ben Lambert

Attorneys representing the New Haven police union and the city have submitted arguments for and against vacating a decision upholding the firing of former Officer Jason Santiago, who was found to have used excessive force during a December 2019 arrest, as a court case on the issue continues.

Santiago, dismissed by the Board of Police Commissioners through a 4-2 vote, struck a man, allegedly kicked him in the groin while he was handcuffed on the ground and then pulled the man to his feet by his long braids. His firing was upheld by state arbiters in June.

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In a Jan. 4 brief, attorney Norm Pattis, representing Santiago and Elm City Local, argued the arbitration panel's decision upholding Santiago's firing should be vacated.

Pattis cited the changed testimony of Officer David Acosta, the department's use of force trainer, and a purported familial relationship between a member of the arbitration panel and a sponsor of the state's recent police accountability bill, as enough to prompt the change.

Acosta found during the department's internal investigation that the strike was justified, but the alleged kick and hair-

pulling were not. While speaking before arbitrators, he said he could not speak to the appropriateness of the kick without a better understanding of Santiago's perspective and that the hair-pulling could be considered justified if it was not bearing the man's weight, Pattis said.

Pattis contended that, given Acosta's changed stance, the city did not have just cause to fire Santiago in the first place.

A second expert, attorney Eric Daigle, testified at arbitration that none of the three uses of force was justified.

Pattis characterized Daigle's testimony as "after-acquired evidence." Given that, he said, while it was legally proffered to the panel, the situation was at least uncommon and potentially improper.

Pattis said "after-acquired evidence" usually is used to determine liability, not the facts at hand, noting he could not find another similar instance in which it was relied on in this fashion. He also suggested that Daigle's testimony was compelled by financial interest.

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Minneapolis.

"The impact of this termination ... (reflects) a lack of leadership at the highest levels of New Haven's politics that will, in the end, cost the life or lives of officers and potentially citizens involved in the often tense and rapidly evolving crises that take place all too often on the city's streets," Pattis said in his brief. "On the record considered by the City and examined by the panel, there simply was no justification other than political expediency for the firing."

Pattis sought for Santiago to be reinstated, if it were found that Daigle's testimony was improper, or for the decision to be sent back to arbitration if a conflict of interest were determined.

In a Jan. 14 response, attorney Floyd Dugas said the city was permitted to proffer Daigle's thoughts under state regulation, noting that the statute governing the Board of Mediation and Arbitration allows parties involved to "offer such evidence as they desire," with the panel having the power to weight it as it chooses.

He said Daigle's testimony was, regardless, not "after-acquired evidence" — it was an expert opinion on the previously-established evidence at hand in the case.

Dugas also argued the potential link between an arbitrator and an unspecified relative of their spouse was too nebulous to firmly establish “evident partiality,” as required under past precedent for vacating such decisions.

He noted that all three members of the arbitration panel voted to uphold Santiago’s termination, although one is appointed to represent the interests of labor, another to represent the interest of management, and one to be neutral, and clearly considered the specific question at hand regarding whether there was just cause.

The court is not permitted to reconsider the entirety of the matter at hand, Dugas said, as allowing that level of discretion would invalidate the purpose of arbitration.

“(An) application to vacate is not a de novo review or ‘second bite’ of the apple. Courts are not permitted to substitute their judgement over that of the arbitrators appointed to decide these very issues. If a court could freely substitute its judgement as to whether the just-cause standard was met, the goals of arbitration would be entirely frustrated,” said Dugas. “Unless one of the limited bases for vacating an award is established, an application to vacate must be denied.”

Santiago was arrested and charged with

third-degree assault and second-degree breach of peace in connection with the matter. He pleaded not guilty to both charges; the case is set to go to trial, according to court records. ■