



POLICE DEPARTMENT

December 11, 2024

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In the Matter of the Charges and Specifications :

- against - :

Detective Alex Viera :

Tax Registry No. 945080 :

77 Precinct :

Case No.

2023-28294

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Fredy Kaplan, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE JESSICA S. TISCH
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Detective Alex Viera, on or about January 30, 2022, at approximately 2140 hours, while assigned to the 77 Precinct and on duty, in the vicinity of the 77 Precinct Stationhouse, Kings County, wrongfully used force, in that Detective Viera used physical force against [the complainant] by shoving [the complainant] into a wall without police necessity.

P.G. 221-02, Page 2, Prohibitions 11-12

USE OF FORCE

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

2. Detective Alex Viera, on or about January 30, 2022, at approximately 2140 hours, while assigned to the 77 Precinct and on duty, in the vicinity of the 77 Precinct Stationhouse, Kings County, wrongfully used force, in that Detective Viera hit [the complainant's] face against a precinct locker without police necessity.

P.G. 221-02, Page 2, Prohibitions 11-12

USE OF FORCE

P.G. 200-02

MISSION, VISION, AND
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REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 6, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The complainant did not appear to testify; instead, the CCRB introduced into evidence a prior recorded statement along with additional exhibits. 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

On January 30, 2022, at approximately 1730 hours, Respondent, who was in the rank of Police Officer at the time, arrested an individual ("the complainant") for possession of a loaded

firearm, and transported him to the 77 Precinct in Kings County. It is alleged that inside the stationhouse, Respondent used excessive force in that he twice shoved the handcuffed complainant, once into a metal locker and once against the wall, causing a laceration to his face.

The complainant did not appear to testify. Instead, the CCRB offered into evidence an audio recording and transcript of a video interview they conducted with the complainant while he was in jail on February 25, 2022. (CCRB Exs. 1 & 1A) In the absence of live testimony from the complainant here, this tribunal carefully considered his prior statement, in conjunction with the other evidence presented at trial.

In his interview, the complainant stated that he was arrested by Respondent for possession of a gun, and possibly oxycodone. He was brought to the 77 Precinct and placed in a holding cell, where he was asked to go upstairs to the investigation room to answer questions from a detective. The complainant did not want to be questioned, but Respondent brought him upstairs anyway. When the complainant said he did not want to be there, the detective screamed and cursed at the complainant, and told Respondent to bring him back downstairs. Respondent grabbed the left arm of the complainant, who was handcuffed, and steered him down the hallway toward the staircase; Respondent was squeezing the complainant's arm hard. As they were walking, they exchanged words about what had just occurred with the detective. According to the complainant, Respondent suddenly, and for no reason, slammed him into a metal locker in the hallway, and also pushed him against the wall. The complainant's face and right side made contact with the locker, causing a cut to his face, which the complainant stated required eight stitches to close. Other officers ran to them, and escorted the complainant down to the first floor. The complainant stated that while he was downstairs, he heard Respondent telling other officers that the complainant had been trying to escape, which according to the complainant was a lie.

EMS arrived to treat him, and then the complainant was transported to Interfaith Medical Center. (CCRB Ex. 1A at 7-9, 27-32, 36)

A photograph of the complainant from the TRI report (CCRB Ex. 2) shows the laceration and bleeding on the right side of his face, and the complainant's Mugshot Pedigree photographs (CCRB Ex. 3) depict the laceration on his right cheek. In the records from Interfaith Medical Center, the complainant states he was assaulted by police, and [REDACTED]

[REDACTED]
(CCRB Ex. 4)

The parties stipulated that the complainant pled guilty to felony gun possession stemming from his arrest in this matter, and has been sentenced to 2-to-4 years in prison. They also stipulated that the complainant has a pending lawsuit against Respondent and the NYPD based on the incident inside the precinct, as reflected in his Summons and Complaint. (Resp. Ex. B)

Respondent, a Public Safety Officer at the time of the incident, testified that he was on patrol when he observed several individuals smoking marijuana inside a laundromat. They appeared to be loitering, and so Respondent and his partner, who were in uniform, entered the location to investigate. One of the individuals inside was the complainant, who was holding a bag in his hand. Respondent made eye contact with the complainant, who then tossed the bag behind the counter. Respondent retrieved the bag, which contained a loaded firearm, and placed the complainant under arrest. (Respondent Ex. A (Arrest Report); Tr. 28-30)

The complainant was transported to the 77 Precinct, where he was processed and placed in a holding cell on the first floor. Respondent testified that the complainant was compliant during their initial interactions, and there were no problems between them. As he was completing his paperwork for the arrest, Respondent received a call from the detective squad,

asking him to bring the complainant up to their office for a debriefing. The complainant told Respondent that he did not want to speak to the detective and wanted an attorney, and Respondent answered that he should say that to the detective when they got upstairs. He then escorted the complainant to the second floor, removed his handcuffs, and placed him alone inside the interrogation room in anticipation of the interview with Detective Gomez. From outside the room, Respondent, who was standing with the detective, could hear the complainant banging on the door and shouting that he wanted to be let out. They opened the door, and the complainant and Detective Gomez proceeded to scream and argue with each other. Respondent intervened, asked if he could bring the complainant back down, and the detective agreed he should do so. (Tr. 30-33, 39-48, 67)

Respondent testified that he rear-cuffed the complainant, gripped his left arm, and began escorting him down the hallway toward the staircase. As they were walking, the complainant, who now was "very agitated" based on his heated argument with Detective Gomez, pulled away from Respondent and screamed at him to keep his hands off. Respondent answered that he had to hold on to him this way. Respondent testified that the complainant, who was wearing a face mask for COVID that had moved up on his face toward his eyes, turned to Respondent to yell at him some more, then abruptly turned away from Respondent again. In doing so, the complainant accidentally banged his face into the edge of a metal locker in the hallway. Respondent insisted that he did not intentionally shove the complainant into the locker or against the wall. According to Respondent, while still in the hallway, the complainant told him he was going to claim that Respondent beat him up and make money off this incident. As they continued walking, Respondent noticed the complainant was bleeding, and so he used the face mask to wipe the

blood off his cheek. Respondent brought the complainant back down to the first floor, called EMS, and notified IAB regarding what transpired.¹ (Tr. 33-38, 49, 53-62, 65)

Two photographs of the hallway, one of which shows the metal locker, were admitted into evidence. (CCRB Exs. 5A & B)

Respondent faces two charges in connection with his interaction with the complainant inside the stationhouse. It is undisputed that the complainant's face collided with the hallway locker, causing a laceration to his cheek; the parties disagree, however, on the details of how the contact with the locker occurred. At issue is whether the record has established, by a preponderance of the credible evidence, that Respondent wrongfully used force against the complainant, in that he hit his face against that locker, in addition to shoving him into a wall.

Since there is no video footage capturing the incident, this tribunal must assess the accounts provided by Respondent and the complainant. Respondent testified in a detailed, logical manner about his interaction with the complainant, and I credit his description of events. Upon arrival at the precinct, Respondent obtained food for the complainant, allowed him to make phone calls, and there were no problems between them. The first difficulties arose when the complainant had an angry verbal exchange with someone else, Detective Gomez. Respondent intervened to end the argument. As Respondent was escorting him from the interrogation room, the complainant was now visibly agitated, and several times pulled away from Respondent. On one such occasion, the complainant turned away and his face collided with the metal locker. I reject any suggestion that Respondent, knowing there were no cameras in the hallway, forcibly hit the complainant's face into the locker, and also shoved him into the wall; Respondent had no

¹ At trial, Respondent could not recall if the complainant's handcuffs became loose as this was happening, though in his IAB interview on March 1, 2022 (*see* Dept. Ex. 6), he told investigators that he noticed the handcuffs were loose and went to secure them, but the complainant pulled away. (Tr. 49-52, 60)

reason to do so, and came across as sincere on the witness stand as he testified that the contact with the locker was inadvertent, not deliberate. Indeed, immediately after the accident, Respondent tried to wipe the bleeding with the complainant's mask, called for EMS, and notified IAB regarding what transpired.

The complainant, in contrast, did not appear to testify, and so the CCRB relied primarily on his hearsay statement, in conjunction with the photographs and medical records introduced into evidence. It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross examine, and the court can observe witness demeanor.

In his hearsay statement, the complainant, who has an active lawsuit against the Department stemming from this incident, claimed that Respondent, for no reason, deliberately slammed him into the locker, and then shoved him into the wall as well. However, since he did not appear at trial, counsel for Respondent did not have the opportunity to cross examine the complainant regarding his description of events. Had the complainant appeared, counsel could have explored with him the impact of the argument with Detective Gomez; in particular, counsel could have asked the complainant about how his anger from that interaction affected his subsequent behavior, including multiple attempts to pull away from Respondent as he was escorting him from the interrogation office. The complainant also could have been asked about how his mask rose up on his face toward his eyes, and whether being handcuffed prevented him from adjusting the mask; if so, did that affect his ability to see the locker as they were walking down the hall? Additionally, since the complainant did not testify, he did not have to answer

pointed questions about whether the contact with the locker occurred inadvertently, when he pulled away from Respondent. After carefully reviewing the complainant's hearsay statement, and considering it in conjunction with the other evidence presented at trial, I reject the complainant's claim that Respondent slammed him into the locker, and separately shoved him into the wall.

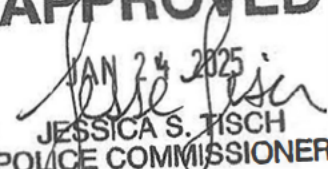
Also, as noted above, the parties stipulated that the complainant pled guilty to felony gun possession stemming from his arrest in this matter, and has been sentenced to 2-to-4 years in prison. However, during his CCRB interview, upon which the CCRB relies, the complainant claimed that his arrest was "a frame" by the police; based on the credible evidence, that was a false statement by the complainant, which further adversely affects his credibility. (CCRB Ex. 1A at 9)

To be sure, it is unfortunate that the complainant sustained a laceration to his face while in police custody. However, that injury occurred through the complainant's own actions, and not through a wrongful use of force by Respondent. The CCRB has failed to meet its burden of proving, by a preponderance of the credible evidence, that Respondent forcibly hit the complainant's face against the locker, or that he forcibly shoved him into a wall. Accordingly, I find Respondent Not Guilty of both specifications.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED
JAN 24 2025

JESSICA S. TISCH
POLICE COMMISSIONER