



POLICE DEPARTMENT

December 29, 2023

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In the Matter of the Charges and Specifications

- against -

Sergeant Mark Xylas	:	Case No. 2021-23673
Tax Registry No. 948160	:	
Gun Violence Suppression Division	:	
 Police Officer Alvin Guthrie	:	Case No. 2021-23674
Tax Registry No. 955965	:	
Patrol Borough Brooklyn North	:	

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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: Dwayne Bentley, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondents: Matthew Schieffer, Esq.
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To:

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

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2021-23673

1. Sergeant Mark Xylas, on or about June 19, 2019, at approximately 1500 hours, while assigned to the 79 Precinct and on duty, inside of [REDACTED] abused his authority as a member of the New York City Police Department, in that he damaged Aljabbar Green's bedroom door without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Sergeant Mark Xylas, on or about June 19, 2019, at approximately 1500 hours, while assigned to the 79 Precinct and on duty, inside of [REDACTED] abused his authority as a member of the New York City Police Department, in that he entered [REDACTED] without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

3. Sergeant Mark Xylas, on or about June 19, 2019, at approximately 1500 hours, while assigned to the 79 Precinct and on duty, inside of [REDACTED] abused his authority as a member of the New York City Police Department, in that he searched [REDACTED] without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

4. Sergeant Mark Xylas, on or about June 19, 2019, at approximately 1500 hours, while assigned to the 79 Precinct and on duty, inside of [REDACTED], abused his authority as a member of the New York City Police Department, in that he damaged Anthony Collinston's entry door without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

Disciplinary Case No. 2021-23674

1. Police Officer Alvin Guthrie, on or about June 19, 2019, at approximately 1500 hours, while assigned to the 79 Precinct and on duty, inside of [REDACTED] abused his authority as a member of the New York City Police Department, in that he searched [REDACTED] without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Police Officer Alvin Guthrie, on or about June 19, 2019, at approximately 1500 hours, while assigned to the 79 Precinct and on duty, inside of [REDACTED] wrongfully used force, in that he pointed his gun at Aljabbar Green without police necessity.

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

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 30, 2023. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB called Aljabbar Green as a witness, and entered into evidence the Body-Worn Camera (“BWC”) footage of Respondents and their respective partners (CCRB Exs. 1-4). Respondents testified on their own behalves. 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 as follows:

Respondent Xylas: Not Guilty of all charges

Respondent Guthrie:

Specification 1 (wrongful search): Guilty

Specification 2 (wrongfully pointed firearm): Not Guilty

Recommended penalty for Respondent Guthrie: three (3) vacation days.

ANALYSIS

This case involves police entry into a Kings County residence on the afternoon of June 19, 2019. At the time they entered [REDACTED] officers were in pursuit of an individual, Aljabbar Green, who was a suspect in a gunpoint robbery of a taxi driver that occurred minutes earlier. Officers followed Mr. Green inside his home, where he was apprehended moments later,

after he emerged from a second floor bathroom in which he was hiding. After further investigation, however, it was determined that Mr. Green was not one of the individuals involved in the robbery, and he was released from the precinct without being charged. With respect to Respondent Xylas, it is alleged that he entered and searched the home without sufficient legal authority, and that he wrongfully damaged two doors in the process. Regarding Respondent Guthrie, it is charged that he, too, searched the home without sufficient legal authority, and that he wrongfully pointed his gun at Mr. Green.

Aljabbar Green testified that he had just left his home at [REDACTED] where he has lived for 28 years, and was walking to get something to eat when he heard sirens in the area. From a distance of approximately 15 feet, he observed a firearm on the ground, which was being watched by police officers. Mr. Green made eye-contact with one of the officers, who the parties agree was Officer Sukhdeep Singh, and became concerned that the police might try to say it was his gun. He turned around and headed back to his home, where he saw his grandfather and a neighbor sitting out front. They told Mr. Green that two kids had just run down the block. (Tr. 31-32, 37-38, 62-63)

While he was still outside his home, an unmarked vehicle pulled up and two individuals in street clothes exited "aggressively." One of the two was Respondent Xylas, who told Mr. Green to "come here." Mr. Green testified that he was scared because he did not know who these "strangers" were, and so he walked inside his home and closed the front door behind him. According to Mr. Green, about 15-to-20 police officers entered the house behind him after busting through the front door. He could hear his grandfather and neighbor trying to tell the police that they had the wrong person, to no avail. Mr. Green went up to the second floor and hid inside a bathroom in his grandmother's bedroom. He heard police officers break open the

bedroom door and yell, "Where the fuck are you?" Mr. Green answered that he was inside the bathroom, had no weapons, and was coming out. He cracked open the door and observed 10-to-15 officers, eight-to-ten of whom had their guns pointed at his face. Mr. Green identified Respondents as two of the officers pointing their guns. The officers ordered him to come out of the bathroom and get on the floor, which he did. They asked him where the guns were, and Mr. Green told them he did not have any. The officers then handcuffed Mr. Green and brought him out to the street, without any shoes on his feet. (Tr. 32-35, 39-42, 49-50, 52-57, 63-66)

Many people from the block were outside, as Mr. Green was held there for about 15 minutes while the officers were trying to sort out what had occurred. Mr. Green testified that he felt "humiliated." He was transported to the precinct and placed in a holding cell for approximately four hours, before he was released without being charged or issued a summons. Mr. Green testified he was "traumatized" by the incident, and is now scared every time a police car drives by. He noted that the front door to the home was knocked off its hinges by the police entry, and the lock on an upstairs bedroom door was damaged as well by the officers. He did not give the police permission or authority to enter his home or damage the doors. Mr. Green stated that he is in the process of trying to file a lawsuit against the Department. (Tr. 35-37, 46-48, 57-61, 65)

Respondent Xylas testified that he was the Anti-Crime sergeant on the day of the incident. He responded to a radio call from two of his officers, who had come upon two males who were committing a gunpoint robbery of a taxi driver. The call stated that the suspects had fled from the officers on foot, heading down [REDACTED] In the vicinity of [REDACTED] Respondent Xylas encountered the two officers, Sukhdeep Singh and Roberto Stultz, who were with the taxi driver. The officers were safeguarding a firearm on the sidewalk, which had been

discarded by one of the fleeing suspects. Respondent Xylas heard Officer Stultz broadcast a description of the suspects over the radio: two male blacks wearing dark clothing, one of whom had lost a shoe as he was fleeing. While standing there, Respondent Xylas looked up [REDACTED] and observed a male black wearing dark clothing and no shoes standing approximately 100-to-150 feet away. Respondent Xylas reasoned that an individual who had lost one shoe might then remove the other shoe as well. He asked Officer Stultz if that was one of the suspects, and Officer Stultz answered yes. Based on that information, Respondent Xylas and his partner got into their unmarked police car and drove up the block toward the suspect with the intention of stopping him. (Tr. 71-77, 93-98)

Upon arrival at the front of [REDACTED], Respondent Xylas, who was in plain clothes, wearing a vest that had "Police" openly displayed, and with his shield visible as well, exited the vehicle and attempted to stop the suspect, Mr. Green; Respondent Xylas could not recall what specifically he said, but it may have been "Come here," as testified to by Mr. Green. Before Respondent Xylas could say anything else, Mr. Green immediately ran into [REDACTED]. Respondent Xylas testified that he ran inside behind him, breaking open the front door in the process, which caused damage to the door; he was not sure whether he kicked it open or ran through it with his body. Once inside, he observed Mr. Green on top of the staircase. Respondent Xylas briefly exited the location to check on the address, which he broadcast over the radio, then re-entered in pursuit of Mr. Green. He acknowledged that he did not have a warrant or consent to enter the residence, but stated that he believed exigent circumstances justified his entry since he was chasing an individual suspected of committing an armed robbery. (Tr. 74-75, 78-82, 96, 103, 104-06)

Respondent Xylas testified that he went to the second floor, where he checked one bedroom while his partner checked another. Since he had his firearm and radio in his hands, and he needed to look inside the room which was dark, Respondent Xylas used his foot to kick open the door, causing it to come off its hinges. He did not observe anyone inside the room, and went up to the 3rd floor, but found no one there. While upstairs, Respondent Xylas heard a commotion on the second floor, and rushed back down to the room where other officers had located Mr. Green. He heard them order Mr. Green out of the bathroom, and observed Mr. Green in the custody of the officers inside the bedroom. Respondent Xylas did not point his firearm or interact with Mr. Green. Respondent Xylas's BWC footage (CCRB Ex. 4) corroborates his account of what occurred. (Tr. 82-87)

Mr. Green was taken to the 79 Precinct, where Officer Singh, a relatively inexperienced officer, was designated the arresting officer; the more experienced Officer Stultz had gone home for the day. Respondent Xylas testified that he checked with Officer Singh to make sure everything was in order. Officer Singh seemed apprehensive and intimidated in speaking with the Anti-Crime sergeant, so Respondent Xylas asked some other officers on his team to follow up with Officer Singh about the arrest. Meanwhile, Respondent Xylas also spoke with Mr. Green's father at the precinct, who insisted his son was a good kid who would not have done something like this. Following that conversation, Respondent Xylas went back to Officer Singh, who stated that he was not one hundred percent sure they had the right guy. Respondent Xylas decided to do further investigation, and retrieved video footage from a deli that was in the suspects' flight path. After viewing that footage, Respondent Xylas determined that although Mr. Green resembled one of the suspects, he was not, in fact, one of the individuals involved in the crime, and so he ordered the arrest to be voided. Mr. Green was released from custody, and

Respondent Xylas explained to his father the process for having the City cover the cost of repairing the doors that had been damaged. (Tr. 87-92, 100-02)

Respondent Guthrie testified that he heard an emergency call for assistance over the radio from the officers engaged in a foot pursuit of two suspects in a gunpoint robbery. When he and his partner, Officer Melvin Clarke, responded to the vicinity of [REDACTED] they briefly conferred with Respondent Xylas, who instructed them to canvas for the suspects. About two or three minutes later, as they were canvassing, they heard another "emergency call" for assistance, this one from Respondent Xylas, who sounded "desperate" as he called for backup at [REDACTED]. Based on what he heard, Respondent Guthrie believed that the sergeant had located the suspects and pursued them inside that location. (Tr. 112-15, 125-26)

Upon arrival at [REDACTED] Respondent Guthrie and his partner followed several other police officers inside the house. On the second floor, he observed approximately five uniformed officers inside a bedroom ordering Mr. Green to come out of the bathroom. Respondent Guthrie testified that the officers had their firearms drawn, and he drew his gun as well, for his safety and the safety of the other officers, since they were dealing with a suspect in a gunpoint robbery. Once he observed Mr. Green exit the bathroom with his hands in the air, Respondent Guthrie immediately re-holstered his weapon. Respondent Guthrie observed that Mr. Green was not wearing shoes. (Tr. 115-19, 121, 124, 126-29)

After Mr. Green was placed in handcuffs, Respondent Guthrie walked into the vacated bathroom, and proceeded to search its interior for a firearm. Respondent Guthrie testified that if Mr. Green had stashed a gun in the bathroom, he did not want anyone else in the house to get their hands on it. Toward that end, he opened up a cabinet, looked inside bags, and checked

inside the toilet, even though he did not have a warrant or consent to search. Respondent Guthrie did not discover a gun, and did not conduct any additional search of the house. Respondent Guthrie's BWC footage (CCRB Ex. 3) confirms his description of events. (Tr. 119-20, 123, 129-30)

After the arrest, Respondent Guthrie followed-up with the arresting officer, Officer Singh, who indicated that he was not one hundred percent sure about the identification. Respondent Guthrie testified that he consulted with Respondent Xylas, and they each proceeded to canvas for surveillance video. As noted above, after viewing the video footage it was determined that Mr. Green was not one of the individuals involved in the crime, and he was released from the precinct. (Tr. 120-123)

Specifications

Having listened carefully to the testimony of the witnesses, in conjunction with the video evidence, the Court turns to consideration of the specifications in this matter. The parties are in essential agreement about the details of what occurred in this case. Mr. Green provided a straight-forward narrative of how he was pursued into his home by police officers, and was taken into custody, at gunpoint, even though he had committed no crime. At the same time, Respondents provided credible explanations of how they relied on the initial identification of Officer Stultz in taking the actions that they did. Fortunately, Respondents prevented a bad situation from becoming worse: through their follow-up investigation they determined that Mr. Green was not involved in the gunpoint robbery, and he was promptly released from custody. At issue is whether under these circumstances Respondents' actions constituted misconduct. The charges against each Respondent will be considered separately.

Respondent Xylas

Respondent Xylas faces four charges: one count alleges that he wrongfully entered the residence, one charges him with an improper search of the premises, and two of the specifications allege that he wrongfully damaged two doors.

Specification 2 charges Respondent with entering the residence without sufficient legal authority, and Specification 3 alleges that he wrongfully searched the location. It is conceded that Respondent Xylas did not have a warrant to enter and search the home, nor did he receive consent to do so. As a general rule, police officers may not enter a private residence in order to make an arrest without first securing an arrest warrant. It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. There are, however, certain recognized exceptions to the warrant requirement. One such exception is where the police are in "hot pursuit" of a suspect for whom they have probable cause to arrest. A suspect may not defeat an arrest which has been set in motion in a public place by retreating into his home. *See United States v. Santana*, 427 U.S. 38 (1976).

Here, Respondent Xylas did have probable cause to arrest Mr. Green: he relied upon the information provided by his fellow officer, Officer Stultz, who identified Mr. Green as one of the individuals who had fled after robbing a taxi driver at gunpoint. Mr. Green was not wearing any shoes, which was consistent with one of the fleeing suspects having lost one shoe during his flight from the police. Respondent Xylas drove up the block and exited his vehicle with the intention of apprehending the suspect, who was standing in front of [REDACTED]. Before he could do so, Mr. Green retreated into his home. Under these specific exigent circumstances, Respondent Xylas had sufficient legal authority to pursue Mr. Green inside the home. Once inside, Respondent Xylas conducted what he described as a "sweep," as he attempted to locate

the fleeing suspect. (Tr. 92, 103) After Mr. Green was located and safely placed in custody, Respondent Xylas exited the home, without conducting any search of the premises.

Under these circumstances, Respondent Xylas acted lawfully in his pursuit of Mr. Green inside the house, as well as the sweep he conducted in order to locate the fleeing suspect. Although it later turned out that Mr. Green was not one of the individuals who robbed the taxi driver, the reasonableness of Respondent Xylas's actions must be assessed in light of the information he had at the time of the pursuit. Based on the information provided by Officer Stultz, in conjunction with his own observations, Respondent Xylas acted reasonably when he pursued Mr. Green inside the house. The credible evidence has failed to establish that Respondent Xylas wrongfully entered or searched the home of Mr. Green. Accordingly, I find him Not Guilty of Specifications 2 and 3.

Specifications 1 and 4 charge Respondent Xylas with wrongfully damaging two doors at [REDACTED]. At trial, Respondent Xylas conceded that he caused damage to the doors: he broke through the front door in pursuit of Mr. Green, and he kicked open an interior bedroom door while he was trying to locate Mr. Green inside.

In assessing the reasonableness of Respondent Xylas's actions, it is important to consider the context in which he damaged the doors. As discussed above, at the time he pursued Mr. Green inside the house, Respondent Xylas had probable cause to arrest him in connection with the gunpoint robbery that had just occurred. Given the dangerous nature of the underlying offense, there were legitimate safety concerns that justified Respondent Xylas's immediate entry into the home in pursuit of the fleeing suspect.

This was not a calm situation where Respondent Xylas gratuitously kicked in the two doors without reason. Rather, there was a real sense of urgency as he was attempting to

apprehend a dangerous individual wanted in connection with an armed felony. In light of the exigent circumstances that existed at the time, Respondent Xylas acted reasonably, and the damage he caused to the doors did not constitute misconduct. Accordingly, I find Respondent Xylas Not Guilty of Specifications 1 and 4.

Respondent Guthrie

Respondent Guthrie faces two charges: one count alleges that he wrongfully pointed his firearm at Mr. Green, while the other specification charges him with searching the bathroom without sufficient legal authority. The two counts will be considered separately, in chronological order.

Specification 2 charges Respondent with pointing his firearm at Mr. Green without police necessity. It is undisputed that Respondent Guthrie followed other officers inside the home in pursuit of Mr. Green. When he arrived at the second-floor bedroom he drew his firearm and pointed it at the bathroom door behind which Mr. Green was hiding. He continued to point his firearm until Mr. Green emerged from the bathroom and was taken into custody by other officers, at which point he re-holstered his gun. Respondent Guthrie's actions were captured by his BWC, and his testimony at trial was consistent with that video. At issue is whether it was reasonable for him to point his firearm under these particular circumstances.

Section 221-01 of the Patrol Guide states that any application of the use of force must be reasonable under the circumstances. The Patrol Guide notes that a uniformed member of service should not draw his firearm prematurely. "The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present." When that threat is ended, the officer must re-holster his firearm as soon as practicable.

Here, Respondent Guthrie *did* articulate a reasonable belief that there was the potential for serious physical injury at the time he pointed his firearm. He and his fellow officers were responding to a call of a gunpoint robbery that had just occurred. Respondent Guthrie heard Respondent Xylas put over the radio an urgent call for police assistance, as the sergeant was chasing one of the suspects into the house. Respondent Guthrie raced to the scene, and lawfully entered the home to assist in the apprehension. When he arrived at the second floor bedroom, several other officers were already inside, with their weapons drawn and pointed at the bathroom where Mr. Green was hiding. Respondent Guthrie similarly pointed his firearm, but only until Mr. Green emerged and was safely secured by officers, at which point he promptly re-holstered his weapon.

Under these specific circumstances, where a suspect in an armed robbery fled and hid in a bathroom, Respondent Guthrie's decision to draw his firearm was not unreasonable. This was not a situation where an officer prematurely drew his gun and created an unnecessary risk. I credit Respondent Guthrie's testimony that he was reasonably concerned for the safety of himself and his fellow officers at the time he pointed his firearm. The record has failed to establish that Respondent Guthrie wrongfully used force by pointing his gun at Mr. Green, and I find him Not Guilty of Specification 2.

Specification 1 charges Respondent Guthrie with searching the residence without sufficient legal authority. It is undisputed that the officers on the scene, including Respondent Guthrie, did not have a warrant to search the location, nor did they have consent to do so. It also is undisputed that after re-holstering his firearm, Respondent Guthrie proceeded to search the bathroom where Mr. Green had been hiding. He looked through cabinets, bags, and the toilet

tank. Respondent Guthrie's search was captured by his BWC (CCRB Ex. 3 at 00:35-02:28), and his testimony at trial was consistent with that video.

The concern here is not with Respondent Guthrie's entry into the home, which, for reasons discussed above, was lawful. At issue is whether his warrantless search of the bathroom was improper. It is well-settled that an officer may reasonably search the person of an arrestee in order to remove any weapons that might be used to resist or escape. For safety reasons, an officer may also search the area into which the arrestee might reach in order to grab a weapon or other evidentiary items. However, an officer may not extend the search outside the arrestee's reachable location. An officer intending to conduct such a search must instead secure the area and obtain a search warrant. *See Chimel v. California*, 395 U.S. 752 (1969).

Here, Respondent Guthrie claimed that he searched the bathroom because of safety concerns, since Mr. Green, a suspect in an armed-robbery, had just been hiding inside that room. However, by the time of the search Mr. Green had already emerged from the bathroom into the bedroom, where he was promptly placed in handcuffs by multiple police officers. The scene was secure, and there were no civilians inside the bedroom. The areas inside the bathroom that Respondent Guthrie then searched, including opening cabinets above and beneath the sink, looking inside bags, and checking under the toilet lid, were no longer reachable by Mr. Green or anyone else. Indeed, from his BWC footage (CCRB Ex. 3), it appears that Respondent continued to search the bathroom even after Mr. Green had safely been removed from the bedroom.

In this specific situation, the search of the bathroom was improper. There were no exigent circumstances to justify such a search. At that point, if Respondent Guthrie wished to search the bathroom he needed to secure the location and obtain a search warrant. Since the

search was conducted without sufficient legal authority, I find Respondent Guthrie Guilty of Specification 1.

PENALTY

In order to determine an appropriate penalty for Respondent Guthrie, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent Guthrie's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent Guthrie, who was appointed to the Department on January 8, 2014, has been found guilty of wrongfully searching inside [REDACTED]. The CCRB recommended a total penalty of 20 vacation days, but that included the charge of wrongfully pointing his firearm, for which Respondent Guthrie has been found not guilty.

The Disciplinary Guidelines do not provide a penalty category that precisely addresses the misconduct in this matter. There is a box for "Unlawful Search/Entry Premises," where the entry involves substantial physical presence and/or remaining on the premises: that misconduct carries a presumptive penalty of 10 days, and a mitigated penalty of five days. However, that category appears to envision a situation where a respondent is wrongfully on the premises, whereas in this case, Respondent Guthrie lawfully entered the home in pursuit of a robbery suspect. As such, the scope of his misconduct was more limited, and a lower penalty than the numbers articulated in the matrix is warranted.

On balance, a forfeiture of three (3) vacation days is appropriate to address Respondent Guthrie's misconduct here. It is important to keep in mind that both Respondents acted quickly

and decisively in responding to a gunpoint robbery that had just occurred. Following the apprehension of a suspect, they each were proactive in taking further investigative steps to make sure they had the correct person in custody. When they determined that Mr. Green had been incorrectly identified, he was promptly released from the precinct.

The only misconduct in the handling of this case was the improper search conducted by Respondent Guthrie. That search was brief and limited to the bathroom area where Mr. Green, a suspect in an armed robbery, had just been hiding. Taking into account the totality of the facts and circumstances in this matter, I recommend a penalty of three (3) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAR 1 2024

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ALVIN GUTHRIE
TAX REGISTRY NO. 955965
DISCIPLINARY CASE NO. 2021-23674

Respondent was appointed to the Department on January 8, 2014. On his three most recent annual performance evaluations, he was rated "Exceptional" in 2020 and 2021, and "Exceeds Expectations" in 2022. He has been awarded eight medals for Meritorious Police Duty and seven medals for Excellent Police Duty.

In 2020, Respondent forfeited 30 vacation days and was placed on one-year dismissal probation after pleading guilty to multiple charges in connection with a 2017 off-duty "road rage incident."

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials