



POLICE DEPARTMENT

June 24, 2024

-----X
In the Matter of the Charges and Specifications :

- against - :

Police Officer Robert Wilson :

Tax Registry No. 965620 :

72 Precinct :

Case No.

2022-26624

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

Before: Honorable Anne E. Stone
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:

Michael Martinez, 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

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>

CHARGES AND SPECIFICATIONS

1. Police Officer Robert Wilson, on or about February 25, 2021, at approximately 1851 hours, while assigned to the 72 Precinct and on duty, in the vicinity of [REDACTED], [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he interfered with Complainant's [REDACTED] use of a recording device without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5
(now encompassed by
 A.G. 304-06, Page 1, Paragraph 1)

PUBLIC CONDUCT–
 PROHIBITED CONDUCT

2. Police Officer Robert Wilson, on or about February 25, 2021, at approximately 1851 hours, while assigned to the 72 Precinct and on duty, in the vicinity of [REDACTED], [REDACTED] Kings County, was discourteous to therapist [REDACTED] in that he ended a video call between Complainant and therapist [REDACTED] without police necessity.

P.G. 203-09, Page 1, Paragraph 2
(now encompassed by
 A.G. 304-06, Page 1, Paragraph 2)¹

PUBLIC CONDUCT–
 PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND VALUES
 OF THE NYPD

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 30, 2024.

Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board called Complainant [REDACTED] as a witness, and presented body-worn

¹ CCRB appears to have mistakenly charged Respondent under P.G. procedure 203-09, paragraph 2 (in effect at the time of the incident), which addresses the duty to carry Right to Know business cards. In addition, their reference to A.G. 304-06, paragraph 2, which prohibits the use of discourteous remarks based upon membership in a protected class, also appears to be an error. Respondent was not accused of, nor was any evidence presented regarding either his making statements of that nature or his failing to carry or offer business cards. This charge, as argued by counsel for CCRB throughout this case, seems to clearly fall under the provision dealing with conduct prejudicial to the good order and discipline of the Department, as addressed in A.G. 304-06, paragraph 1 (formerly P.G. 203-10, paragraph 5). The Tribunal will analyze the discourtesy alleged in Specification 2 under this framework.

camera footage of the incident recorded by Respondent and Lieutenant [REDACTED].

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 of both specifications.

ANALYSIS

This case arises from a wellness check conducted by Respondent and three other members of service on February 25, 2021, during which it is alleged that Respondent improperly terminated a cellphone video call. The facts underlying the allegations are largely undisputed.

At some point in the early evening, on that date, the telephone switchboard operator ("TS") at the 72 Precinct received a call from a psychiatrist, Dr. [REDACTED], who reported that her patient, [REDACTED] ("Complainant"), was in imminent danger of harming herself. Dr. [REDACTED] requested that officers be sent to Complainant's apartment immediately to bring her to the hospital. Respondent received the assignment, and on the way, he contacted Dr. [REDACTED] to gather more information. The doctor confirmed that she had been on a FaceTime video call with Complainant who was "actively suicidal." (Tr. 44-46) He also notified Lieutenant [REDACTED], who, along with his driver, met Respondent and his partner around the corner from the location.

The four officers entered the apartment building and rang the doorbell and knocked on Complainant's door. Body-worn camera footage showed Lieutenant [REDACTED] covering the peephole with his hand. (CCRB Ex. 1 at 01:13-01:15; CCRB Ex. 2 at 01:12-01:15; Tr. 20, 34, 58) Complainant was in her bedroom, wearing a bathrobe, and was on a FaceTime call with her therapist, [REDACTED]. Complainant came to the door and opened it slightly; upon seeing the officers, Complainant cried out, attempted to close the door, and ran back through the

apartment into her bedroom. (CCRB Ex. 1 at 01:57-02:08; CCRB Ex. 2 at 01:56-02:10; Tr. at 20-21, 34, 47) The officers followed, and Respondent was the last to enter the room. Lieutenant [REDACTED] and the other two officers attempted to subdue Complainant, who was facing her bed and leaning on it, crying and repeatedly insisting that she did not want to be taken to the hospital. While they placed her in handcuffs, Respondent briefly surveyed the room. Complainant's cellphone was on the bed, and the video call app was still open; Respondent picked up the phone and ended the call. (CCRB Ex. 1 at 02:09-03:15; CCRB Ex. 2 at 02:11-03:18; Tr. 21, 23-24, 48)

After Complainant was placed in handcuffs, Respondent requested that female officers be sent to the location so that Complainant could change into street clothes. (CCRB Ex. 2 at 04:35-05:55; Tr. 26-27, 51) When they arrived, the handcuffs were taken off while Complainant got changed. Complainant was allowed to call back her therapist, and her roommate accompanied her in the ambulance. (Tr. 16, 32, 52-53)

Complainant [REDACTED] appeared before the Tribunal. She testified that on the date in question, she had attended the funeral of a friend who died "unexpectedly." (Tr. 19) After getting out of the shower and putting on a bathrobe, she saw that she had a missed call from her therapist. She described the call as not "planned." Complainant called her back and was speaking to her via FaceTime. She recalled hearing a knock at the front door, and thinking it was her roommate returning from walking her dog. Complainant recounted opening the door and seeing four "large" men standing there. She acknowledged that she knew they were police officers and that she was "worried that they were there to take me to the hospital. And simultaneously [concerned that] I was still in my bathrobe." Complainant continued, "I panicked, I ran, I ran to my room. Within seconds, I was completely physically overpowered by these men." (Tr. 20) Complainant acknowledged that during this incident she was unaware that her psychiatrist, in

conjunction with her therapist, had called the police because they feared she was in imminent danger of fatally harming herself. She was admitted to the hospital for “a couple of weeks” following this incident. (Tr. 19, 28-29, 32)

Complainant described how she felt as she saw Respondent end the FaceTime call with her therapist. She explained, “she was my only witness or source of support or just connection to the outside world. The only person who could observe in any way what was happening . . . So in that moment I just felt completely over, a little bit hopeless and terrified.” (Tr. 21) She confirmed that, if her therapist was saying anything, she could not hear it. Complainant emphasized that Respondent did not have her permission to end the call and that he did not tell her that he was doing so. She testified that Respondent disconnecting the call still causes her trauma and upset, which comes upon her at random times. (Tr. 21, 24, 35)

Complainant testified that female officers came, uncuffed her, and that she remained without restraints after she put on clothing. She also confirmed that she was then allowed to call her therapist back. Complainant conceded that she was not recording the call with her therapist. At some point after the incident, she made a complaint against Respondent to the CCRB. (Tr. 26-29, 36-37)

Respondent took the stand in his own defense. He recalled receiving the call from the “TS,” and calling Dr. [REDACTED] to try and gather more information, including whether Complainant had any weapons in her apartment, which the psychiatrist did not know. Respondent and his partner responded to the location “quickly.” He stated that he believed, based on the communications that Complainant’s life was in imminent danger. (Tr. 46) Respondent conceded that he was told by Dr. [REDACTED] that it was possible that a member of Complainant’s mental health “team” would be on a video call with her when police arrived. (Tr. 67-68)

Respondent explained the precautions he and his colleagues took, not to alert Complainant to their presence, including not utilizing lights and sirens, parking around the corner, speaking in whispers, and covering the peephole. He also detailed the plan they made prior to entering the building which entailed gaining entry, subduing Complainant, and then searching for any weapons while awaiting EMS response. (Tr. 46-47, 57-59)

Respondent admitted that while his colleagues were attempting to handcuff Complainant, he disconnected the video call on her cellphone. He asserted that his reason for doing so was that he saw Complainant was very focused on the phone, and not listening to or complying with Lieutenant [REDACTED]'s directives. Respondent described Complainant as being "in a panic," and he was "[w]orried about she's trying to reach for something, trying to commit suicide." (Tr. 49) Respondent contended that shortly after he ended the call, Complainant stopped fighting the officers and they were able to place her in handcuffs. Respondent recalled that, once she was dressed and compliant, either he or one of his colleagues got permission from EMS to allow her to call her therapist back. (Tr. 59, 52-53)

Specification 1: Interference with a Recording Device

Specification 2: Discourtesy

Respondent stands charged with acting discourteously towards Complainant's therapist as well as interfering with Complainant's use of a recording device, when he disconnected the video call on the evening of February 25, 2021. As both specifications stem from the same act, I will analyze them together.

Administrative Guide 304-06, paragraph 1 prohibits officers from engaging in conduct prejudicial to good order, efficiency, or discipline of the Department,² and Patrol Guide 200-02

² See footnote 1, *supra*

sets forth the NYPD's mission and values. That includes mandates to: protect the lives and property of our fellow citizens and impartially enforce the law, as well as to value human life, respect the dignity of each individual and *render our services with courtesy and civility*.

(emphasis added)

Respondent has admitted that he picked up Complainant's cellphone and disconnected the video call while his colleagues were attempting to place her in handcuffs. The questions for the Tribunal are whether that act was contrary to the good order, efficiency and discipline of the Department, and whether, in doing so, he was discourteous to Ms. [REDACTED] and Complainant. For the reasons set forth below, I find that Respondent's actions did not rise to the level of sanctionable misconduct. In addition, I find that his behavior was not discourteous.

With regard to Specification 1, Complainant conceded that she was not using her cellphone to record the incident. Although not formally charged, during summation, the CCRB prosecutor argued that ending the call violated the provisions of Patrol Guide procedure 203-29 (now encompassed by A.G. 304-21) because Complainant was utilizing the phone as a platform for her therapist to observe the officers, provide emotional support, as well as to, "see that they were going to take [Complainant] to the hospital." In addition, CCRB asserts that at the moment Respondent ended the video call, Complainant was contained and any potential safety concerns had been resolved. (Tr. 81-82)

When addressing the discourtesy alleged in Specification 2, CCRB argues that Respondent's disconnection of the call was discourteous not only to the therapist, but also to Complainant. They argue that Respondent knew that the person on the call was part of Complainant's care team, and he should have announced his intentions and asked both his supervisor and Complainant for permission before ending the video call.

Respondent testified that his reason for ending the call was his observation of Complainant focusing on her phone, not listening to his colleagues, and continuing to resist their attempts to subdue her. Complainant was crying and pulling her arms away from the officers, as they attempted to gain control of her. His testimony was corroborated by the body-worn camera footage, which shows her looking at and, more significantly, reaching for her phone. (CCRB Ex. 1 at 02:20-02:27) In addition, Complainant also described being “very aware” of her phone on the bed as the officers were handcuffing her. (Tr. 23-24)

Respondent also explained that, although they had information that Complainant posed a grave danger to herself, he had no information about what, if any, weapons Complainant might have had at her disposal. As set forth in Patrol Guide Procedure 221-13, Mentally Ill or Emotionally Disturbed Persons, Respondent and his fellow officers developed a plan before they entered the apartment. Their intention was to subdue and restrain Complainant as quickly as possible to prevent her from grabbing a weapon and hurting herself or anyone else. She would then be taken to the hospital to get help. Respondent testified with sincerity that he and his colleagues were trying to prevent Complainant from taking her life. I believe his contention that they were aware that the interaction was frightening to Complainant, and it appeared that the officers were actively trying to mitigate that. Indeed, in the body-worn camera footage, Lieutenant [REDACTED] and the other officers can be heard attempting to reassure Complainant, using her first name, telling her they are here to help her and not hurt her. (CCRB Ex. 1 at 01:27-02:26)

In reviewing the testimony and evidence in this matter, particularly the video footage, I was struck by how challenging this situation was for everyone involved. Respondent and his colleagues, in order to prevent Complainant from harming herself and get her the help she

needed, had to take steps which they knew could scare her. Much like officers grabbing a person threatening to jump from a bridge, in order to prevent Complainant from accessing any weapons or dangerous instruments in her immediate vicinity, Respondent and the other officers had to quickly restrain her. While she was actively resisting being placed in handcuffs, by moving her body and particularly her arms, Respondent saw that Complainant was focused on her phone. She seemed to not be hearing what Lieutenant [REDACTED] was saying to her. Although it is evident on the video footage that they were doing so, Complainant testified that she could not remember the officers calling her by her first name and telling her they wanted to help her. (Tr. 35) In order to refocus Complainant's attention and bring the encounter to a safe and swift conclusion, Respondent picked up her cell phone and disconnected the FaceTime call.

In spite of Complainant's contention that she wanted her therapist to observe what was happening to her, I am not persuaded that Patrol Guide Procedure 203-29 was applicable in this situation. That procedure does not relate to the subject of police action, it instructs officers about how to handle onlookers, who wish to observe and record police activity. Even if her therapist had been present in Complainant's apartment, the officers, following the provisions of that policy, may have reasonably opted to exclude her from the bedroom until Complainant was subdued. In that hypothetical, Patrol Guide 203-29 would be violated if Respondent had grabbed the therapist's cellphone from her hand and ended a recording she was making from a safe distance. That was not the case in this incident, and indeed, in keeping with Patrol Guide 221-13, Complainant's roommate was not allowed into the room with her until she was dressed and calm.

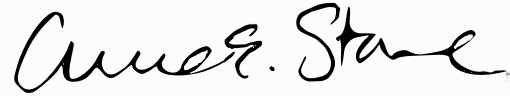
In making this finding, the Tribunal acknowledges Complainant's assertion that she was disturbed by Respondent ending the video call. I have no reason to doubt her statement that this incident had an impact on her. While it was undoubtedly difficult to for her to do, she was clearly

determined to appear before the Tribunal and share her version of events. Nevertheless, Respondent's actions did not constitute misconduct.

Respondent made a split-second determination that the therapist's presence on the video call was distracting, and presented a potential danger to everyone in the room; his decision to terminate the call was not punitive or an effort to block the therapist from seeing what was transpiring. Rather, it was guided by his wholly reasonable aim to turn a potentially volatile situation into a safe and contained one. Accordingly, I find Respondent Not Guilty of Specification 1.

With respect to the discourtesy charge, there are circumstances under which a police officer hanging up a call between a citizen and another individual would constitute a violation of their obligation to treat the public with courtesy and respect. I find that no such circumstances existed here. Under perfect conditions, it would have been preferable if Respondent had informed Complainant and the therapist that he was ending their call, and that Complainant would be allowed to call back as soon as possible. However, his failure to do so was not discourteous on its face, or in its intent, and in the view of the Tribunal does not constitute actionable misconduct. There was no evidence offered that Respondent's disconnection of the video call was gratuitous, undertaken as retribution for behavior, or meant to be demeaning. He was simply trying to remove a distraction in order to facilitate getting Complainant the help she needed. As soon as it was safe to do so, Complainant was permitted to call her therapist, and her roommate was allowed to sit with her. Indeed, it was clear from all of the evidence presented that Complainant's well-being was in the forefront of Respondent's mind throughout this unfortunate incident. For the foregoing reasons, I find Respondent Not Guilty of Specification 2.

Respectfully submitted,



Anne E. Stone

Assistant Deputy Commissioner Trials

APPROVED



AUG 16 2024
EDWARD A. CABAN
POLICE COMMISSIONER