



POLICE DEPARTMENT

August 17, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-28106
Police Officer Corey Titus	:	
Tax Registry No. 965566	:	
PBMS Public Safety Teams	:	

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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 Department: David Green, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Stuart London, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

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

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Corey Titus, while assigned to Patrol Borough Manhattan South, on or about October 11, 2021, at about 0120 hours, in front of 36 West 28th Street, New York County, wrongfully discharged his service firearm at a moving vehicle.

P.G. 221-01, Page 3, Para. 1(f)

FORCE GUIDELINES
TACTICAL OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 3, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Department called Detective Carlos Santos as a witness, and introduced into evidence video footage from cameras that captured the incident. Respondent called Officer Brittany Vera as a witness, and 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 Guilty, and recommend that he forfeit 20 vacation days.

ANALYSIS

In October 2021, members of the NYPD were investigating a robbery pattern in the city involving multiple recent gunpoint robberies. Armed gang members were staking out high-end clubs and restaurants, with the intention of robbing patrons of expensive jewelry and other valuables. In the early morning hours of October 11, Respondent was part of the B.L.A.R.E. team, a unit that was planning to take action against individuals who were suspected of being part of that robbery pattern.

On this particular night, Police Officer Brittany Vera, one of the officers in the B.L.A.R.E. Unit, had a telephone conversation with a bouncer at Pergola, a Manhattan

restaurant/lounge. Officer Vera testified that the bouncer informed her that there was a suspicious car driving around, as if they were casing the restaurant. Officer Vera responded to the location to investigate. She observed the vehicle, a black BMW, parked on the street, several car lengths west of Pergola. The car was initially double-parked, but then pulled into a parking space alongside the curb. The BMW's windows were darkly tinted, so it was unclear how many occupants were inside; it was later learned that there was a driver and two occupants. Officer Vera ran the license plate, which came back as not matching the vehicle, thereby raising her suspicions since that was frequently the case with the cars used as part of this pattern. With the intention of approaching the BMW in order to take further investigative steps, Officer Vera called for back-up, since from past experience she anticipated that the suspects would do whatever was necessary to get away. (Tr. 55-58, 73-75)

Officer Vera, who had two officers with her in her car, pulled her police vehicle alongside the BMW in order to box it in. She testified that another police car, with two supervisors inside, drove up behind her vehicle, to provide support in case the suspects tried to flee on foot. At the same time, Respondent and his partner, the back-up officers, parked their car at the east end of the block, and positioned it in a way to block the BMV from getting by in the event the driver attempted to escape by car. Officer Titus and his partner then exited their vehicle and walked westbound, toward where the BMW was parked. (Tr. 58-60, 79-84)

Video surveillance from three separate building cameras shows what happened next (Dept. Exs. 1-3). Officer Vera and her colleagues exit their vehicle and walk toward the BMW, which has moved from a parking spot further up the block to one that is a couple of car lengths closer to Pergola. The BMW, which is parked against the curb, initially tries to pull out into the street, but its path is blocked by the two police cars. The BMW then reverses course, abruptly

jumps the curb, and speeds eastbound on the sidewalk. The BMW passes under some scaffolding as it draws near the entrance of Pergola. Approximately 10 people standing outside the restaurant in the path of the car run for cover. By the time the vehicle reaches them, most have hurried inside Pergola, while one or two duck behind a planter outside the restaurant.

Meanwhile, Respondent and his partner are walking in the middle of the street toward Pergola from the opposite direction. Officer Vera is in the street running toward them, and can be heard screaming a warning to Respondent to watch out for the BMW. Respondent shines his flashlight up the block, and observes the BMW speeding down the sidewalk. He points his firearm toward the windshield of the BMW, and fires three shots, striking the driver's side of the windshield, just as the vehicle reaches the front of Pergola. The parties agree that no one was struck by any of the bullets, though one of the occupants of the BMW was injured from the windshield glass that was shattered by the gunshots. After the BMW speeds past Respondent and his partner, it moves back into the street and continues eastbound. (Dept. Ex. 1 at 5:50; Dept. Ex. 2 at 1:30; Dept. Ex. 3 at 57:00 and 1:00:40)

Respondent testified that as he was walking up the block he observed approximately 10 people outside Pergola, who seemed unaware that a BMW was speeding on the sidewalk in their direction; his view of the unfolding scene was captured by his Body-Worn Camera (Resp. Ex. A at 1:07). He determined that he needed to stop the vehicle before it rammed the people on the sidewalk. Toward that end, Respondent pointed his firearm at the driver's side of the front windshield, and, with a clear, unobstructed view, fired three shots in close succession, striking the windshield as intended. There was no one in his line of fire, and Respondent did not believe that any civilians in the area, other than the occupants of the BMW, were in danger from his discharging his firearm. It was Respondent's hope that the shots would incapacitate the driver,

causing the vehicle to slow down or veer into an object and come to a stop. (Tr. 94-106, 111-12, 114, 117-23)

The three shots did not stop the BMW, which continued eastbound. Respondent testified that he heard the BMW smash into his unoccupied vehicle, before it then drove away from the location. The abandoned BMW was eventually found about a block-and-a-half away, and all three occupants were eventually taken into custody by other members of the service. A firearm was recovered from inside the BMW. (Tr. 86, 107-09)

Specification 1 charges Respondent with wrongfully discharging his firearm at a moving vehicle. Section 221-01 (1)(f) of the Patrol Guide states that uniformed members of service “shall not discharge their firearms at or from a moving vehicle unless deadly physical force is being used against the member of the service or another person present, by means other than a moving vehicle.”

Here, there is no dispute that Respondent fired three shots at the moving BMW. What is in dispute is whether Respondent’s act of discharging his weapon, under these particular circumstances, constituted misconduct. Respondent explained that he felt justified in firing his weapon because he was concerned that the vehicle might strike the innocent pedestrians on the sidewalk. However, the Patrol Guide explicitly states that such a firearm discharge is only justified if deadly physical force is being used *through means other than the vehicle itself*. Here, the only force being used came from the operation of the BMW; as Respondent, himself, acknowledged (Tr. 118), there was no use of deadly physical force from any other source. This was not, for instance, a case where an occupant of the BMW was shooting a gun at somebody. As such, Respondent’s act of discharging his firearm was prohibited by the Patrol Guide.

Counsel for Respondent also argues that firing the weapon was justified as a response to a vehicle ramming attack, defined in section 221-01 of the Patrol Guide as “a form of attack in which a perpetrator deliberately rams a motor vehicle into a crowd of people or building.” That section notes that there may be an exception to the rule against firing at a moving vehicle when there are exigent or exceptional circumstances, such as the “extraordinary event” of a vehicle ramming attack.

This argument, too, is unsupported by the credible evidence. Under these circumstances, it was not reasonable for Respondent to conclude that this was a vehicle ramming attack, the type of “extraordinary event” that would justify Respondent’s actions here. Although the BMW was speeding down the sidewalk where individuals were gathered outside the restaurant, it was not swerving in a way that suggested it was targeting people, or otherwise being driven in a way designed to continuously run down unsuspecting members of the public. By the time Respondent fired the three shots, the BMW already had reached Pergola, and the individuals in front of the restaurant had moved out of the path of the oncoming vehicle. There was no reasonable basis to conclude that the driver of the BMW was deliberately targeting people in the vicinity with his vehicle for the purpose of injuring them.

Rather, the driver of the BMW drove onto the sidewalk in order to evade the police officers, who had him boxed in on the driver’s side and were approaching him on foot. In order to escape, the driver hopped the curb and sped down the sidewalk until he was past all of the officers, at which point he moved back into the street. Respondent was aware that suspects in this pattern had driven on the sidewalk in the past in order to avoid apprehension, just as they were doing here.

Under the specific facts of this case, I find that there was not a reasonable basis for Respondent to treat this incident as a vehicle ramming attack. The credible evidence has established that Respondent committed misconduct in that he wrongfully discharged his firearm at a moving vehicle. Accordingly, I find Respondent Guilty of Specification 1.

PENALTY

In order to determine an appropriate penalty, 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'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, who was appointed to the Department on January 10, 2018, has no disciplinary history, has received consistently exceptional performance evaluations, and has been awarded eight medals for Meritorious Police Duty and two for Excellent Police Duty.

Respondent has been found guilty of discharging his firearm at a moving vehicle. He fired three shots at a BMW as it sped down the sidewalk, trying to evade the police. The presumptive penalty for this misconduct is 20 penalty days, with an aggravated penalty of up to 30 days with dismissal probation. The Department Advocate recommends a penalty of 25 vacation days, based on Respondent's actions being dangerous and reckless.

On the one hand, at the time of the incident Respondent and his colleagues were attempting to take into custody dangerous individuals who were suspected of taking part in a series of armed robberies, and even murder. As Respondent was walking up the block, he observed the target vehicle speeding down the sidewalk in the direction of several people in front

of the restaurant. Respondent was understandably concerned that the driver of the BMW was endangering the safety of those standing outside the restaurant, as well as other people who might find themselves in the path of the vehicle.

However, even if Respondent was genuinely looking to protect the public when he fired three shots at the speeding BMW, he would have better served that purpose by following the rules set out in the Patrol Guide, which take into account the overall safety of those in the area. A vehicle that is fired upon may strike innocent bystanders if the driver loses control. A moving vehicle presents a difficult target, increasing the likelihood that a bystander or other vehicle occupant may be struck by gunfire. Although it is fortunate that no one was hit by a bullet or the vehicle here, it remains troubling that Respondent discharged his firearm three times at the BMW. Even though Respondent was relying on his training, and taking care to fire at a precise location on the windshield, the safety risks from his firing multiple shots at the moving vehicle were unacceptable, and there must be appropriate accountability.

On balance, the presumptive penalty of 20 vacation days is appropriate to address Respondent's actions in this case. Such a penalty constitutes a significant loss of days for an officer who has an otherwise strong record with the Department. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit twenty (20) vacation days.

Respectfully submitted,

13/ JEFF S. ADLER BY PMG

Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED

OCT 04 2023
EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER COREY TITUS
TAX REGISTRY NO. 965566
DISCIPLINARY CASE NO. 2023-28106

Respondent was appointed to the Department on January 10, 2018. On his three most recent annual performance evaluations, he was rated “Exceptional” for 2020, 2021, and 2022. He has been awarded eight medals for Meritorious Police Duty, and two medals for Excellent Police Duty.

Respondent has no disciplinary history.

For your consideration.

/s/ JEFF S. ADLER BY PAG

Jeff S. Adler

Assistant Deputy Commissioner Trials