



POLICE DEPARTMENT

July 29, 2024

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In the Matter of the Charges and Specifications :

Case No.

- against - :

2023-28818

Lieutenant Ryan Murphy :

Tax Registry No. 933077 :

Transit Borough Manhattan :

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Kenneth Crouch, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondent: James Moschella, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

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

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CHARGES AND SPECIFICATIONS

1. Lieutenant Ryan Murphy, on or about April 15, 2022, at approximately 2032 hours, while assigned to TD 01 LTP and on duty, in the vicinity of [REDACTED] New York County, abused his authority as a member of the New York City Police Department, in that he engaged in conduct prejudicial to good order, efficiency, or discipline of the Department, in that he issued an unlawful summons to Complainant [REDACTED] for disorderly conduct without sufficient legal authority.

A.G. 304-06, Page 1, Paragraph 1

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 June 18, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board presented a hearsay case, entering body-worn camera footage into evidence. 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

This case arises from an anonymous complaint made to the Internal Affairs Bureau and forwarded to CCRB. The complaint concerned a disorderly conduct summons issued by Police Officer Randy [REDACTED], to Complainant [REDACTED], on April 15, 2022 at 2032 hours. In support of its case, CCRB presented body-worn camera footage of the incident recorded by Respondent and Police Officer [REDACTED]. (CCRB Exs. 1-2, 4-5) In addition, CCRB presented Respondent's Activity Log Entries for the date in question. (CCRB Ex. 3) The video footage

depicts the interaction between Respondent and Complainant, which occurred on the [REDACTED] subway station, from different angles. Respondent appeared on his own behalf and entered into evidence a YouTube video, created by Complainant, which included footage from this incident.

The facts underlying this incident are largely undisputed. Respondent, who has been assigned to the Transit Bureau in different assignments since 2008, testified that on April 15, 2022, he was conducting visibility patrols of the subway with Police Officers [REDACTED] and [REDACTED]. Respondent explained that the patrols consisted of “visual inspections” of each train car as they entered the station, as well as watching the platform and trains on the opposite side of the station. He recalled stopping a social worker and her client on the platform, because the social worker opened the emergency gate, allowing her client to enter without paying the fare. Respondent remembered that he first took notice of Complainant while he was explaining to the social worker and her client his decision not to issue a summons. Complainant was standing behind Respondent recording the conversation and the social worker asked him to stop. Complainant responded, “What if you get shot?” to which the social worker shrugged. Complainant replied, “You’re welcome, C’mon, please wake up.” Respondent finished his conversation, and then proceeded to the center of the platform where he and the two police officers took up observation positions. (Tr. 41-46; CCRB Ex.1; CCRB Ex. 5)

Respondent recalled that approximately “eight seconds” later, Complainant walked in front of where he and the other officers were standing. Complainant was standing close to the yellow safety line near the train tracks and appeared to be filming them. After approximately a minute and a half, during which time a couple of commuters walked in front of the officers, Complainant stated to an individual, “you can go ahead, bro, don’t be afraid.” The person can be

heard saying, “I don’t want to get in your shot,” and Complainant called out, “I got you, I got you.” Complainant and Respondent then had the following exchange:

Complainant: “You heard what he said?”

Respondent: “What?”

Complainant: “He don’t want to get shot.”

Respondent: “No, he said he didn’t want to get in your shot.”

Complainant: “No, he said he don’t want to get shot.”

(CCRB Ex. 2 at 01:38-01:58; Respondent Ex. A at 33:10-33:32)

Shortly after this conversation, a train entered the station; Respondent and the other officers approached it and peered into the cars. Complainant followed them, still appearing to record. Respondent and the officers returned to their position on the platform and Complainant continued to record from a distance. (Tr. 54; CCRB Ex. 2 at 03:20-03:50; CCRB Ex. 5 at 03:40-04:05)

Complainant walked straight towards Respondent, stopping a couple of feet away when Respondent instructed him to not come any closer. Complainant responded, “You gonna shoot me? Why you looking at me like I’m the enemy?” When Respondent told Complainant not to come any closer, he again exclaimed “Oh, you gonna shoot me, right,” then yelled, “Why are you taking me as the enemy?” Respondent informed Complainant that he could, “record...from over there,” while pointing at the spot Complainant had stood before. Complainant moved partially back. Several subway riders were standing near the turnstiles, watching the interaction. (CCRB Ex. 2 03:50- 04:27; CCRB Ex. 5 at 04:14-04:44) Shortly thereafter, Complainant began shouting at Respondent:

Complainant: “Why the fuck you don’t embrace me? Why the fuck you treat me like that?”

Respondent: “Stop screaming, Stop screaming.”

Complainant: “Stop screaming? What’s wrong with you? Shut the fuck up.”
(CCRB Ex. 2 at 04:37-04:50)

After this exchange, Respondent testified that he made the decision to issue the disorderly conduct summons and motioned to Complainant to come towards him. Complainant began walking backwards quickly towards the turnstiles and Respondent grabbed his shirt to stop him. In the tussle, Respondent’s body-worn camera was dislodged. Complainant was arrested and taken to the Transit District for processing. Respondent testified that he consulted the NYPD’s Legal Bureau regarding the possibility of charging Complainant with both Disorderly Conduct (Penal Law § 240.20) and Obstructing Governmental Administration (Penal Law § 195.05). After discussing the incident, the Legal Bureau representative recommended issuing the Disorderly Conduct summons. They advised against charging Complainant with Obstructing Governmental Administration. Respondent instructed Police Officer [REDACTED] to write a summons to Complainant for Disorderly Conduct, recalling that the summons was to be issued under subsection 3, using abusive or obscene language in a public place. (Tr. 55-58, 61-62; CCRB Ex. 2; CCRB Ex. 5)

Respondent stands charged with abusing his authority by issuing a disorderly conduct summons without sufficient legal authority to do so. Respondent does not deny directing Police Officer [REDACTED] to write the summons. The issue before the Tribunal is whether CCRB has proven, by a preponderance of the evidence, that no basis existed to support its issuance. I find that they have not.

Paragraph 3(a) of Patrol Guide 208-01 provides that a police officer may make an arrest¹ without a warrant for a violation, when they possess “reasonable cause,” and the offense was

¹ Patrol Guide 209-01 authorizes the service of a summons in lieu of arrest for violations contained in the Penal Law, including section 240.20, disorderly conduct.

committed in their presence. An individual is guilty of Penal Law § 240.20 (3), Disorderly Conduct, when “with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof. . .” they use “abusive or obscene language, or make an obscene gesture,” in a public place.

The evidentiary record in this case is lacking. The summons in question was not entered into evidence. Counsel for CCRB explained that the summons was dismissed and sealed, and no unsealing order was sought. (Tr. 4) In addition, no evidence was presented regarding the reason for, or the timing of, the dismissal. Respondent testified, and I accept his statement, that the summons was written under subsection 3, using abusive or obscene language in a public place.

In spite of not having the summons narrative available, the parties entered into evidence the entire encounter as captured by body-worn and Complainant’s camera. In addition, Respondent testified about this matter in a detailed and straightforward manner, and I credit his account of the events.

Respondent contends, and the video footage corroborates, that Complainant intended to annoy and alarm members of the public who were on the platform that day. Complainant repeatedly, loudly, referenced himself, or others potentially being shot by Respondent and his colleagues. He got close to Respondent with a camera on a tripod in his hand. Complainant was increasingly loud and contentious. At least one person hesitated to walk in between Complainant and the officers, and when ushered through by Complainant, he rushed by quickly. Respondent described, and body camera footage depicted, other commuters watching near the turnstiles, but not approaching the part of the platform where Complainant was engaging Respondent.

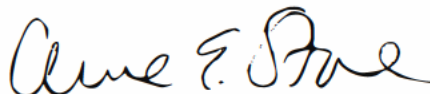
Respondent remained calm and professional throughout the event. He followed the Department’s guidelines regarding private individuals recording police activity. Respondent

objected only when Complainant got within an arm's length of him. Respondent never told Complainant to stop recording, and did not take action until Complainant began to yell obscenities and ignored Respondent's warning to "stop screaming."

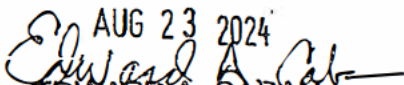
The specification charges that the summons, which was issued at Respondent's behest, was unlawful. Ideally, in order to make a determination regarding the lawfulness of the summons, the Tribunal would be able compare the allegations made against Complainant in the accusatory instrument with the video footage, Respondent's testimony, and any other evidence presented. However, even without the summons, the evidence showed an increasingly belligerent Complainant, causing a disruption in a public place, corroborating Respondent's assertions regarding the basis for the summons. In addition, Respondent took the additional step of consulting with a member of the NYPD's Legal Bureau, who recommended that he go forward with the summons, but not the arrest for Obstructing Governmental Administration. Respondent followed that advice and authorized the issuance of the summons to Complainant in good faith.

Ultimately, the burden lies with CCRB to establish the misconduct charged by a preponderance of the credible evidence. I find that they have failed to establish that the summons Respondent directed Police Officer [REDACTED] to issue Complainant was unlawful, and I therefore find Respondent Not Guilty.

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials

APPROVED
AUG 23 2024

EDWARD A. CABAN
POLICE COMMISSIONER