



POLICE DEPARTMENT

December 18, 2023

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| In the Matter of the Charges and Specifications | : | Case No. |
| - against - | : | 2021-24056 |
| Police Officer Joseph Vitale | : | |
| Tax Registry No. 953539 | : | |
| Highway Unit 3 | : | |

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

Before: Honorable Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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. Police Officer Joseph Vitale, on or about September 18, 2020, at approximately 1143 hours, while assigned to Highway Unit 3, in the vicinity of Eastbound on the Grand Central Parkway, near LaGuardia Airport, Queens County, made an offensive comment towards **Complainant**, in that he stated in sum and substance, “You retard.”

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

PUBLIC CONTACT –
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 14, 2023. Respondent, through his counsel, entered a plea of Not Guilty. CCRB offered the hearsay statements of **Complainant** and **Person A** in 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, the Tribunal finds Respondent Guilty and recommends that he forfeit 20 vacation days.

ANALYSIS

This case arose out of a CCRB complaint that was made by **Complainant** shortly after a brief interaction she had on September 18, 2020 with an NYPD vehicle while she was driving on the Grand Central Parkway. Specifically, it was alleged that an NYPD officer used the term “retard” towards **Complainant** over an RMP loudspeaker. The following is a summary of the relevant evidence presented at trial.

After her initial complaint intake call, **Complainant** was telephonically interviewed by CCRB investigators on September 28, 2020 (CCRB Exs. 1A, 1B). She stated that on September 18, 2020, at approximately 1143 hours, she was driving her car eastbound on the Grand Central

Parkway, in the vicinity of LaGuardia Airport, between 82nd Street and 94th Street, before exit 6¹ (CCRB Ex. 1B at 3, 6, 24). She initially drove in the right lane, before moving left to finally drive in the far-left lane (*Id.*). At that point, [Complainant] observed “a marked NYPD cop car” in her rear-view mirror who pulled into the left lane behind her (*Id.* at 6-7).

She stated that the NYPD car was “going fast . . . faster than [she] was.” According to [Complainant], the NYPD car then activated its siren; but she was unsure of whether she was being pulled over. The vehicle flashed its lights for approximately 10 seconds. She stated that it took her about 15 seconds to “figure out what to do” and that she could “hear them on the speaker, on the megaphone loudspeaker saying something,” but her windows were “rolled up” and she “couldn’t hear what they were saying.” [Complainant] stated that she rolled down her window and heard [the NYPD vehicle] “say ‘pull to the right lane.’” She then changed lanes into the right lane and the NYPD vehicle sped past her. As it passed her on the left, [Complainant] stated that she could hear something garbled, but then “heard ‘you retard’ as plain as day.” She stated that her passenger, [Pers(Person A)] copied the license plate of the NYPD vehicle but did not take a picture of it. [Complainant] said, “It was just like, my God, I cannot believe that a NYPD car would say that over a loudspeaker” (CCRB Ex. 1B at 7-8, 16-19, 25, 27, 28, 30).

[Complainant] described the NYPD vehicle as “a regular NYPD cruiser . . . a sedan . . . with lights on the top . . . blue and white with the NYPD insignia (CCRB Ex. 1B at 8-10). She recalled the voice on the vehicle’s loudspeaker being that of a male, but could not offer any physical description of the occupant (*Id.* at 9-11). She described the conditions on the highway as clear with traffic but “it wasn’t rush hour” (*Id.* at 12). [Complainant] was driving a 2005 Subaru Outback with Montana license plates and a black “roof box” (*Id.* at 12-13). At the time, the NYPD vehicle

¹ I take judicial notice that exit 6 on the Grand Central Parkway eastbound is “LaGuardia Airport 94 Street.”

passed her, she estimated her speed at between 50-55 MPH and the NYPD vehicle's speed at 10-15 MPH faster than hers (CCRB Ex. 1B at 20-21). She described the encounter as lasting approximately 20 seconds; after the NYPD vehicle passed her, it continued eastbound on the Grand Central Parkway (*Id.* at 22).

Person A was interviewed by phone by CCRB investigators on October 14, 2020 (CCRB Exs. 2A, 2B). She told the investigators that on September 18, 2020, at about 1143 hours, she was riding a passenger in a car driven by her friend, Complainant near exit 6 on the Grand Central Parkway (CCRB Ex. 2B at 5). She recalled they moved to the left lane to avoid slower-moving vehicles, when a marked NYPD car approached them from the rear. According to Person A the NYPD car appeared to be going faster than the speed limit. She then heard someone speaking over the loudspeaker, telling them to pull over to the right. Person A stated that when an opening appeared in the flow of traffic, Complainant changed lanes and drove to the right lane. The NYPD car then drove up next to them on their left and a voice on the loudspeaker said, "You retard" (CCRB Ex. 2B at 5, 15-16). Person A stated that the NYPD car was driving too fast for her to take a picture, so she "jotted" down the license plate (*Id.* at 5, 19).

Person A told CCRB investigators that Complainant was operating their car at about 50 MPH. She described the NYPD car as a four-door sedan which was marked with "white and blue, big NYPD and on the back it had a like a precinct number," which she was unable to get (CCRB Ex. 2B at 8-9). Person A identified the voice on the loudspeaker as being male, but was unable to see into the police car to provide a physical description of its occupants (*Id.* at 9-10). She was unable to understand the first sounds she heard from the NYPD car's loudspeaker, which she described as garbled; she later explained that when she first heard the voice over the loudspeaker, the music in their car was playing, the front windows of their car were rolled up and she was

conversing with [Complainant] (*Id.* at 11, 23). [Person A] stated that she heard the voice over the loudspeaker from the time that they first moved into the far-left lane until they moved back over one lane to the right and the NYPD car passed them (*Id.* at 14).

[Person A] told CCRB investigators that the license plate on the NYPD vehicle was “59046” (CCRB Ex. 2B at 18). She clarified that the numbers were not all the same size and that one or two of them were smaller (*Id.*). [Person A] stated that she recorded the numbers in her web browser, then took a screen shot of the page (*Id.* at 19). She estimated that the entire encounter lasted about 30 seconds (*Id.*). [Person A] stated that the NYPD car slowed down as it approached their car in the left lane but that once they moved over, the car sped up to approximately 65 m.p.h. (CCRB Ex. 2B at 21).

The parties entered into a stipulation of fact that the license plate on the vehicle Respondent was operating on September 18, 2020 was “5940” (T. 9-10)

Respondent testified that on September 18, 2020, he reported for patrol duties with Highway Patrol Unit 3 at 0600 hours, and that he was in RMP 5940 (T. 31, 34, 47). He testified that when he was called to CCRB for an interview, he was aware of “what [he] was going down for,” but did not recall whether he had his Daily Activity Log with him at the interview (T. 35-36; Resp. Ex. A). He testified further that he had no independent recollection of any confrontation with a vehicle in which he ordered it to “move over to the right, retard” (T. 36, 41). Respondent testified that after refreshing his recollection with his Daily Activity Log, he did recall responding to a “serious incident” at 184-32 Grand Central Parkway (*Id.*). The entry regarding this incident begins with a 911 call at 1151 hours and Respondent’s arrival at the scene at 1225 hours (T. 37). He explained that he created this entry at 1337 hours after obtaining the time of the 911 call and time of his arrival at the scene of the incident from data in the I/CAD

system² (T. 53-54). Respondent denied having any knowledge of his location at the time the 911 call was placed or the time he received notification of the call (T. 73-74).

Respondent testified that he recalled being at the incident “for a while,” between one and two hours (T. 37-38). He testified further that the location of the incident was “quite a few miles”³ from LaGuardia Airport and that he had no recollection of being near the airport that day (T. 38).

Respondent testified that he did render funeral escort assistance on September 18, 2020; after refreshing his recollection with his Daily Activity Log, he recalled that he performed such duties beginning at approximately 0930 hours⁴ (T. 39). According to Respondent, he was assisted in the performance of those duties by Police Officer Rosenberg, operating RMP 5944, and another RMP designated 5906⁵ (T. 40). He testified that he was unaware of an RMP “59046” and stated that such a vehicle “does not exist in Highway 3” (T. 41). Respondent described his vehicle as “a white patrol vehicle with blue NYPD markings. Also would have high visibility NYPD highway patrol markings, and it would have lights on it, I would have riser bars, also for visibility, and would have ballistic panels in the front window, which pretty much cover the entire window” (T. 42).

² I take judicial notice that “I/CAD” refers to this Department’s Intergraph’s Computer Aided Dispatch System.

³ I take judicial notice that Google Maps calculates the driving distance between Grand Central Parkway Exit 6, 94th Street, and 184-32 Grand Central Parkway, as 7.9 miles (<https://www.google.com/maps/dir/40.7679993,-73.883591/184-32+Grand+Central+Parkway,+Queens,+NY/@40.7437657,-73.8522895,14z/data=!3m1!4b1!4m9!4m8!1m0!1m5!1m1!1s0x89c2610edc36e64d:0x372d43749ce39b68!2m2!1d-73.779754!2d40.7200527!3e0?authuser=0&entry=ttu>).

⁴ The entry in Respondent’s Daily Activity Log for that detail describes the location as “NB VWE LINDEN BLVD” (Resp. Ex. A).

⁵ The entry in Respondent’s Daily Activity Log for that detail does not contain any information of any other officers assigned to the detail or the RMPs they operated (Resp. Ex. A).

Respondent acknowledged that his RMP was equipped with turret lights; he asserted that activation of those lights automatically activates the cameras in his vehicle (T. 43). He testified that he had no recollection of activating those turret lights, either before, or after, arriving at the scene of the serious incident (T. 44). He testified further that that his search of the database which stores those videos did not contain any video recordings from that date (T. 45).

On cross-examination, Respondent conceded that it was possible to travel from the 94th Street exit on the Grand Central Parkway to the location of the serious incident within the 36 minute period from the initiation of the 911 call at 1150 hours to the time of his arrival at 1225 hours (T. 61). He further conceded that the loudspeaker on his RMP was working on September 18, 2020, and it would have been possible for him to have used it to tell a motorist to move over, although he testified that he had no recollection of using it (T. 62-63, 65-66).

Respondent denied that he used the word, “retard,” on September 18, 2020 or at any other time and denied that he would do so over a loudspeaker (T. 66). He acknowledged that the use of that word is contrary to the mission and values of this Department (T. 69-70). Respondent denied ever having an encounter with either **Complainant** or **Person A** prior to September 18, 2020 (T. 70). When asked if it was his testimony that two people who had neither met him nor had any issues with him fabricated an interaction where they claimed he called them a “retard,” his answer was, “Yes, because I don’t use that word” (T. 70-71).

Spec. 1: Offensive Comment

I find that CCRB has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent uttered the phrase, “You retard,” to **Complainant** on or about September 18, 2022, over the loudspeaker of his RMP.

I credit the hearsay statements of Complainant and Person A as reliable. Their statements are largely corroborative of each other, but not so similar that they raise the possibility of collusion. In Complainant's statement, she never asserted that she knew the license plate number of the police vehicle; instead, she asserted that her passenger copied it. I find that her willingness to admit not having what she would have realized at that time to be important information adds to her credibility. There is also no evidence that either witness had a previous encounter with Respondent which could have raised the issue of bias.

Complainant stated that she heard the NYPD car behind her activate its siren; Person A made no assertions regarding hearing a siren. Respondent claimed that had he activated his siren, a video recording would have automatically been created. He further asserted that his search of the database containing such recordings was negative for that date. I also note that while technology exists which could have pinpointed the exact location of Respondent's RMP during the period from 1150 to 1225 hours, neither party offered such evidence at trial. Under these circumstances, Respondent's claim of a negative search is self-serving. I do, however, note the inconsistency between Complainant's and Person A's recollections regarding a siren as a factor in assessing their respective credibilities.

In contrast, both women were consistent in their recollection of seeing an NYPD police car approach them from the rear while they were in the far left lane of the Grand Central Parkway near LaGuardia Airport. They both recalled being directed to move to the right by a voice over a loudspeaker. Respondent testified that the loudspeaker of his RMP was functioning properly on September 18, 2020. Since the direction for a motorist to move over issued over a loudspeaker is consistent with the foreseeable and intended use of such loudspeaker, I find that

the police vehicle [Complainant] and [Person A] observed did issue that command over its loudspeaker, as they reported.

Both [Complainant] and [Person A] also reported hearing the term “You retard,” being directed at them by the same police vehicle which had previously directed them to move over to the right of the highway. Respondent admitted during his testimony that the use of that term would violate the mission and standards of this Department and that it referred to a disability, as that term is used in the Administrative Guide prohibition against the use of discourteous and offensive language. I find that the use of that term, under the circumstances set forth in CCRB’s case-in-chief, constitutes an offensive comment.

The dispositive issue in this case is whether it was Respondent who directed the offensive language toward [Complainant] and [Person A]. Neither witness claimed to have seen the driver of the NYPD police car and neither appeared at trial to identify Respondent as the driver. [Person A] stated that she saw a license plate “59046” on the NYPD vehicle as it sped away from their car. Respondent admitted that the license plate on the RMP he drove on September 18, 2020 is “5940.”

[Person A]’s description of the digits on the license plate not being uniform in size has the ring of truth. I take judicial notice that marked NYPD vehicles typically bear four-digit numbers as vehicle identifiers. Those numbers are accompanied by smaller two-digit numbers on the right side of the license plate. While it is possible for [Person A] to have made an imperfect report of what she observed on the license plate, this possibility does not mean that she was mistaken in identifying Respondent’s vehicle.

Based upon the totality of the evidence, I find that, despite [Person A]’s inaccurate recall of the correct sequence of the digits appearing on the license plate of the RMP, the digits are sufficiently consistent with those which Respondent admits appear on his license plate to identify

him as the driver of the police car [Complainant] and [Person A] reported seeing. The Tribunal need not employ the services of an expert witness to find that sometimes, in the course of human events, people juxtapose a number within a series of numbers, especially when they have a limited time to observe it and it was previously unknown to them. I find that it is so common for people to switch numbers in a street address or a telephone number, reporting an inaccurate sequence of numbers does not raise the likelihood that the reporter is fabricating their observation.

I note that Respondent testified he had no recollection of being near LaGuardia Airport on the date and at the time of the reported incident; that is not to say that he declared that he could not have been there at that time or that it would have been impossible for him to have driven from that point to the location of the “serious incident” that he did recall. Depending on traffic conditions at the time he encountered [Complainant] and [Person A] he still had time to transit from LaGuardia Airport to the location of the “serious incident” within the 36 minute period noted in his Daily Activity Log.

It is noteworthy that although Respondent claimed not to remember any encounter on the Grand Central Parkway that morning, such as the witnesses described, he did appear to recall two other license plates assigned to police vehicles which he claimed were part of his funeral escort detail earlier that day. Respondent did not testify that those two police vehicles were with him after the detail; neither of CCRB’s two witnesses reported seeing any other police vehicles other than the one which pulled up behind them in the far left lane. I find that the existence of two other police vehicles, bearing license plate numbers as Respondent testified, has no probative value in this case, as they were not present for [Complainant] and [Person A] to take note of them and potentially confuse their license plates with Respondent’s.

Based upon the credible, relevant evidence, I find that Respondent was the driver of the police vehicle [Complainant] and [Person A] described and that he made an offensive comment over its loudspeaker, to wit: "You retard."

Based upon the foregoing, 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 July 11, 2012, has been found guilty of making an offensive comment over the loudspeaker of his RMP. CCRB has recommended a penalty of 20 vacation days; I concur.

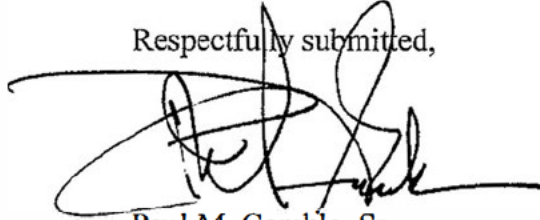
The presumptive penalty for offensive language, which "includes slurs based upon membership in a protected class," is 20 days. The mitigated penalty is 10 days and the aggravated penalty is termination. I find that the term "retard" refers to a mental disability, placing it within the general class of "disability."

After examining the record of trial, I find that there is no mitigating evidence warranting a lesser penalty. Respondent used his office as a New York City Police Officer, and Department equipment, for an unintended purpose: to disparage two strangers on a public highway for no reason other than his likely pique at being prevented from driving in the left lane at his own pace. While Respondent had the authority to direct [Complainant] to move to the right, the cost of her

acquiescence to his authority cannot be to absorb whatever invective he decided to direct her way. This Department, and the public it serves, deserve better.

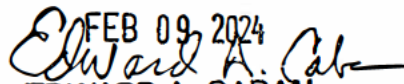
Accordingly, I recommend that Respondent forfeit 20 vacation days.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Gamble, Sr.', written over a horizontal line.

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials

APPROVED

FEB 09 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 JOSEPH VITALE
TAX REGISTRY NO. 953539
DISCIPLINARY CASE NO. 2021-24056

Respondent was appointed to the Department on July 11, 2012. On his three most recent performance evaluations, he was rated “Exceeds Expectations” in 2020, 2021, and 2022.

Respondent has no formal disciplinary history.

For your consideration.

Paul M. Gamble, Sr.
Assistant Deputy Commissioner Trials