



POLICE DEPARTMENT

January 24, 2022

-----X

In the Matter of the Charges and Specifications :

- against - :

Lieutenant Thomas Turner :

Tax Registry No. 926232 :

73rd Precinct :

Case No.

2020-23009

-----X

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

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Di'Indra Forgenie, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

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

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

COURTESY • PROFESSIONALISM • RESPECT

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

CHARGES AND SPECIFICATIONS

1. Lieutenant Thomas Turner, on or about October 26, 2019, at approximately 0345 hours, while assigned to 073 PCT and on-duty, in the vicinity of the 73rd Precinct stationhouse, Kings County, was discourteous, in that he used [Person A]’s jacket to wipe urine off the floor without police necessity.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT

2. Lieutenant Thomas Turner, on or about October 26, 2019, at approximately 0345 hours, while assigned to 073 PCT and on-duty, in the vicinity of the 73rd Precinct stationhouse, Kings County, used offensive language to [Person A], calling him “faggot.”

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

PUBLIC CONTACT –
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 16, 2021. Respondent, through his counsel, pleaded Not Guilty to the subject charges. CCRB presented a hearsay case. 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 reviewed all of the evidence in this matter, I find Respondent Guilty of Specification 1 and Not Guilty of Specification 2, and recommend a penalty of the forfeiture of 15 vacation days.

ANALYSIS

It is undisputed that on October 26, 2019, a male complainant, AB, was arrested for assaulting a male client who failed to pay him the agreed upon price for sex. Respondent was present during portions of AB’s arrest processing and knew why AB was arrested. Later that evening, AB attempted to get the attention of a cell attendant in order to use the bathroom. No cell attendant was present. AB, who was in a cell without a toilet or sink, urinated on the floor in front of his holding cell. Upon being informed of the urination, Respondent entered the cell area,

took a jacket off a nearby coat hook that he knew to be AB's, and used it to clean up the urine.

While Respondent does not dispute that he used AB's jacket to mop up urine, he disputed that it was discourteous to do so (Tr. 37, 89-90).

AB, who did not testify at trial, further claimed in a hearsay statement that, while Respondent was wiping up the urine with his jacket, Respondent called him a "faggot." Respondent denies this. Two other individuals, MH and GJ, were in the cell with Respondent at the time. GJ told CCRB that he did not hear the word "faggot" used and MH stated that he heard a "White" officer use the word "faggot" when they were first being placed inside the holding cell. While surveillance video of the holding cell depicts two individuals inside the cell with AB at the time Respondent is mopping up the urine, they are depicted in a sleeping position and do not appear to take notice of the relevant events. The surveillance video does not contain sound.

CCRB's Case

CCRB presented a hearsay case, entering the statements of two witnesses (AB and MH) into evidence (Dept. Exs. 1 & 3), and video evidence depicting portions of AB's arrest processing and detainment in a precinct holding cell (Dept. Ex. 2).

Complainant AB stated in a November 14, 2019 in-person interview, conducted by CCRB, that he was arrested "around 12" a.m., when a male client, who "cheated me out of some money," falsely claimed AB had assaulted him. AB stated that, at the precinct, Respondent was initially "respectful" and a "fairly nice, middle-aged, guy," who told him, "we're going to try to get you a DAT and get you out of here." Shortly, thereafter, however, a background check revealed that AB had an open warrant for an "open container" and AB was informed that he would be further detained. (Dept. Ex. 1A at 4, 8-13, 20, 33-34)

Once in the cell area, AB stated that, initially, the cell attendants were "doing bathroom breaks," but after the "shooting" incident, they stopped "for hours." AB stated that he banged on

the cell bars to attempt to get the attention of a cell attendant to be taken to the bathroom. Upon being ignored, he chose to urinate on the floor. Afterwards, a “chubby,” “Indian,” officer,¹ who was “supposed to [be] doing the bathroom breaks,” came in and asked him, “you pissed on the fucking floor?” The officer then informed Respondent. According to AB, Respondent entered the cell area “acting indignant” and grabbed AB’s jacket, stating, “I should throw your crystal in the fucking piss.”² Respondent then threw his “designer,” “Armani Exchange,” “powder blue,” “leather” jacket on the floor and “stepped on” it to “wipe up the piss.” (Dept. Ex. 1A at 6, 27-28, 34, 37-39)

After Respondent used his jacket, AB admitted he himself was “indignant,” calling Respondent “names,” and, according to AB, “that’s when” Respondent called him a “faggot.” AB stated that the “Indian” officer was in the room at the time. AB admitted, “we was both exchanging names.” Respondent left his jacket on the floor “balled up.” Later, as Respondent was leaving, AB stated that Respondent moved his tongue “like he was eating vagina” and “grabbed his crotch.”³ (Dept. Ex. 1A at 7, 42, 44-49, 58)

AB admitted that when he initially called CCRB he told them that Respondent had called him a “nigger,” but, during his in-person interview, he clarified that Respondent had only called him a “faggot.” AB explained that he regarded the two words as comparable and it felt like Respondent was calling him a “nigger” when he called him a “faggot.” (Dept. Ex. 1A at 55-57)

AB further claimed that he was not given a property receipt during arrest processing and several items, including an unopened pack of “Newports,” a “Dewalt knife,” headphones, and cologne, were not returned to him. AB stated that on the way home he was humiliated because

¹ This officer was not identified at trial.

² During arrest processing, AB had a necklace removed which held a large crystal amulet that AB told Respondent he wore for religious purposes (Dept. Ex. 2B).

³ These actions are not depicted in the surveillance video.

he had to wear his soiled jacket because it was cold outside and people reacted negatively to the smell on the train. AB further stated that the leather on his jacket was damaged due to Respondent's actions. (Dept. Ex. 1A at 6-7, 9, 50, 53-54, 59)

CCRB entered the transcript of a phone interview on January 13, 2020, with another cellmate of AB's, MH. During the interview, MH, who confirmed he was in a cell with AB on the incident date, stated that the officers were "rude and nasty" and "right before we got into the cell" a "White" officer called AB a "faggot." MH was unable to provide any other identifying features for this officer. MH further stated that he did not see urine being cleaned up with a jacket because "I probably left [by then]." (Dept. Ex. 3B at 5-6, 9-11)

The arrest processing video (Dept. Ex. 2B) captured an intake officer approaching Respondent to ask about a crystal removed from AB's neck, telling Respondent it is a religious item. Respondent asks to see the crystal. Respondent says to leave the crystal in AB's jacket pocket. The intake officer asks, "How does that work voucher-wise?" Respondent replies, "We'll figure it out." Respondent then asks to see it. Respondent states that it is not jewelry and instructs the officer to describe it as "a lanyard with a stone." Respondent assures AB he will get it back. Respondent also informs AB that the "DAT" is contingent on a background check. AB reports to the intake officer that he has been drinking. (Dept. Ex. 2B at 06:47-09:02)

The surveillance video from the cell area (Dept. Ex. 2A) depicts the following events:

00:00-00:35 – AB, waving his hands, attempts to get the attention of someone outside the cell. No officers are depicted in the cell area. Two other individuals are depicted in the cell with AB: one appears to be sleeping on the ground and the other appears to be sleeping on a bench.

00:37-01:00 – AB moves to the corner of the cell, removes his penis, aims outside the cell, and urinates on the floor immediately in front of the cell.

01:12-02:48 – AB stands against the bars of the cell looking out, periodically speaking and waving his hands and arms.

02:49-03:07 – AB moves toward the side of cell he urinated from, puts his hand through the cell bars, and points to the urine on the floor, appearing to talk to someone.

03:08-04:21 – AB paces in the cell, returns to the front bars, and appears to be yelling in anger.

04:22-05:00 – Respondent walks into the cell area, takes AB's jacket off of a coat hook, places it on the floor where AB urinated, and uses his foot to push the jacket around on the floor. AB continues to speak in an animated fashion; however, he does not appear to be speaking to Respondent, but someone else off camera.

04:52-04:54 – Respondent is briefly depicted speaking to AB.⁴

05:02-05:29 – AB moves to address Respondent, speaking in an animated manner. Respondent continues to clean the floor with AB's jacket.

05:30-05:56 – Respondent moves off-camera. AB continues to speak in an animated manner. Video ends.

Respondent testified that on October 26, 2019, he was assigned to work a 1445x2330 tour of duty, but because of a police involved shooting also worked four hours of overtime at the end of his tour, departing his command around 3:45 a.m. Respondent recalled that earlier in the night he became aware that AB was arrested for an assault in connection with a "prostitution dispute" with another male. AB's demeanor when he "first encountered him" was "agitated and upset," using a "[l]oud voice" and "yelling."⁵ Respondent stated that he approached AB and "explain[ed] to him that there was a complaint against him by another person that stated he was assaulted, [] that he would be processed for the assault arrest, and we would do everything in our power to get him a desk appearance ticket, so he could be out of the station house." After that, AB "calm[ed] down." (Tr. 44, 47, 65, 77, 81, 83-84)

Later, at approximately 3:45 a.m., as Respondent was "attempting to go home," another officer approached him to inform him that AB had urinated in the cell area. Respondent

⁴ Respondent's face is off-camera during much of his presence on-camera.

⁵ The video evidence depicting a portion of AB's arrest processing does not show AB acting in this manner. Rather, AB is depicted speaking in a calm manner.

proceeded to take AB's jacket off the hook and mop the floor with it. Respondent described AB, at this time, as "yelling," "cursing," and "asking me to suck his dick." Respondent explained that he did not use a mop because he believed it would be "unhygienic" to use the same mop that is used to clean floors "where we eat our food." He further stated that there was not a mop "accessible" to him at that time and he would have had "to try to locate one." Respondent admitted, however, that he "didn't really process it" and "used what was right in front of me." (Tr. 46, 49, 50-51, 61, 87)

Respondent denied calling AB a "faggot." Respondent did admit, however, to cursing in general, although he did not recall "the specifics of the conversation." (Tr. 52, 63, 76)

Respondent introduced the transcript of a "contact call" CCRB made to AB on October 29, 2019. During the call, AB reported that Respondent called him a "Black faggot nigger" (Resp. Ex. C at 6).

Respondent further introduced the transcript of an "intake call" on January 2, 2020, with the second cellmate of AB's, GJ,⁵ who stated that he saw a "sweater" used to wipe up urine and heard a "dark skin" officer say "shut the fuck up," but did not hear "any officer" use the word "faggot." (Resp. Ex. B at 4-6)

Findings

It is undisputed that Respondent grabbed AB's jacket off a coat hook, threw it onto the floor, and used his foot to move the jacket through a pool of urine. Respondent readily admitted as much at trial. Respondent contended, however, that he did not intend these actions to be discourteous. This defense defies common sense. The Tribunal finds that these actions were *per se* discourteous. Accordingly, the Tribunal finds Respondent Guilty of Specification 1.

⁵ CCRB stipulated that GJ was in the cell with AB at the time of the incident (Tr. 13). CCRB was unable to establish which of the two individuals depicted on the surveillance video as in the cell with AB was GJ (Tr. 115).

As to Specification 2, there is insufficient evidence that Respondent used the word “faggot” as CCRB alleges. While hearsay in administrative proceedings may form the sole basis for a finding of fact (*see* 38 RCNY § 15-04 [e]; *Gray v. Adduci*, 73 N.Y.2d 741, 742 [1988]), the more central controverted hearsay evidence is to the charged misconduct the more reliable it should be in order to support a finding of guilt (*Human Res. Admin. v. Green*, OATH Index No. 3347/09 at 9 [Nov. 18, 2009]; *Dep’t of Envtl. Prot. v. Ginty*, OATH Index No. 1627/07 [Aug. 10, 2007]). Here, the hearsay evidence is the only evidence of the charge and no other witness reliably corroborated that Respondent used the word “faggot,” despite others being present. The statements of MH, submitted by CCRB, place a use of the word “faggot” hours before the time CCRB alleges it was used by Respondent while wiping up the urine. MH is unable to describe the officer who used the word other than to describe the officer as “White.” Furthermore, the only other person identified as present during this time, GJ, stated that he did not hear the word “faggot” used. Finally, AB initially claimed that Respondent used the word “Nigger,” but later retracted the allegation.

Accordingly, based on the record evidence before the Tribunal, AB’s hearsay statement as to the use of the word “faggot” is not sufficiently reliable to alone support a finding of guilt. Accordingly, the Tribunal finds Respondent Not Guilty of the misconduct charged in Specification 2.

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 was also 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 March 1, 2000, has been found guilty of engaging in a discourteous act when he used an arrestee's jacket to mop up urine on a precinct floor. In connection with the discourtesy charge, CCRB has recommended a forfeiture of ten (10) vacation days, which constitutes the aggravated penalty under the Disciplinary Guidelines for an act of discourtesy. The Tribunal agrees that an aggravated penalty is warranted, but disagrees that a forfeiture of ten (10) vacation days is adequate to address the instant misconduct.

Respondent's actions here extended beyond those typically reached in charges of discourtesy. His discourteous act was not limited to an offensive tone, harsh words, or an undignified gesture. Here, the discourtesy also involved property damage. In prior cases, a charge of discourtesy involving damage to personal property has resulted in the application of an aggravated penalty (*see, e.g., Disciplinary Case No. 2019-20147* [June 18, 2021] [Twelve-year police officer forfeited 10 vacation days for requiring a driver during a car stop to sit in his car with all of the windows down for 20 minutes in the rain, causing damage to an interior window switch.]). The instant case, however, is more serious. Unlike the misconduct reached in *Disciplinary Case No. 2019-20147*, the misconduct here is markedly different than requiring a driver to sit in their car in the rain with the windows down. Knowingly placing an individual's clothing in urine is inherently devaluing and humiliating.

Moreover, Respondent is a supervisor. Supervisory status often results in the application of enhanced penalties under Department precedent (*see, e.g., Disciplinary Case No. 2019-20395* [August 2, 2021] [Police Commissioner disapproved penalty recommendation noting, "Based on [the Inspector's] rank, position and role during this particular event I find that the aggravated

penalty under the Disciplinary System Penalty Guidelines (“Matrix”) is appropriate in this matter.”)).

At trial, Respondent showed no signs of remorse for his actions. Respondent further attempted to rationalize not using a mop to clean up the urine based on a concern that the same mop might be used to clean a floor where Respondent “eats.” Instead, Respondent used AB’s jacket. The Tribunal rejects Respondent’s cavalier explanation as a reasonable rationale for his actions. Respondent’s degrading treatment of AB was unacceptable and violative of one of the core tenets of the NYPD – to treat members of the public with courtesy, professionalism, and respect.

Finally, the Tribunal is troubled that this is now the third disciplinary matter in recent years that it is aware of involving the use of an arrestee’s clothing to clean up urine (*see Disciplinary Case No. 2015-14310* [March 28, 2017]; *Disciplinary Case No. 2019-21027* [May 18, 2020]). This conduct must be deterred.

Accordingly, based upon the totality of the circumstances presented in this disciplinary matter, the Tribunal recommends that Respondent forfeit 15 vacation days to address the instant misconduct.

Respectfully submitted,



Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED

MAY 13 2022

KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT THOMAS TURNER
TAX REGISTRY NO. 926232
DISCIPLINARY CASE NO. 2020-23009

Respondent was appointed to the Department on March 1, 2000. On his three most recent performance evaluations, he received 4.5 overall ratings of “Extremely Competent/Highly Competent” for 2017, 2019 and 2020. Respondent has been awarded 31 medals for Excellent Police Duty and four medals for Meritorious Police Duty.

Respondent has no disciplinary history.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials