



POLICE DEPARTMENT

May 30, 2024

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2022-26752
Police Officer Roberson Tunis	:	2023-28316
Tax Registry No. 946347	:	
24 Precinct	:	

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Deanna Everett-Johnson, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: John Tynan, Esq.
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To:

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

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-26752

1. Police Officer Roberson Tunis, on or about March 2, 2021, at approximately 1619 hours, while assigned to the 24 Precinct 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 drew his gun without police necessity.

P.G. 221-01, Page 3

FORCE GUIDELINES

2. Police Officer Roberson Tunis, on or about March 2, 2021, at approximately 1650 hours, while assigned to the 24 Precinct and on duty, inside the 24 Precinct Stationhouse, located at 151 West 100th Street, New York County, abused his authority as a member of the New York City Police Department, in that he strip-searched [REDACTED] without police necessity.

P.G. 208-05, Page 3, Paragraph C (1)

ARRESTS- GENERAL
SEARCH GUIDELINES

Disciplinary Case No. 2023-28316

1. Police Officer Roberson Tunis, on or about February 19, 2022, at approximately 2133 hours, while assigned to the 24 Precinct and on duty, inside of [REDACTED] [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that PO Tunis searched a bedroom inside of [REDACTED] [REDACTED] in Manhattan 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

2. Police Officer Roberson Tunis, on or about February 19, 2022, at approximately 2133 hours, while assigned to the 24 Precinct and on duty, inside of [REDACTED] [REDACTED] New York County, PO Tunis abused their authority as a member of the New York City Police Department, in that they failed to provide [REDACTED] with a business card containing all required information under the Right to Know Act, without sufficient legal authority.

A.G. 304-11

COMPLIANCE WITH THE
NEW YORK CITY RIGHT
TO KNOW ACT

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 April 24, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board (hereinafter “CCRB”) called [REDACTED], the complainant, as a witness in Disciplinary Case No. 2022-26752. Conversely, in Disciplinary Case No. 2023-28316, CCRB relied solely on the Body-Worn Camera (hereinafter “BWC”) footage offered in evidence as CCRB’s Exhibits 12 and 13 to prove their 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 evaluated all of the evidence in this matter, the Tribunal finds Respondent Not Guilty of all charges and specifications in both cases.

ANALYSIS

Disciplinary Case No. 2022-26752

The following is a summary of the facts that are not in dispute. On March 2, 2021, Respondent and his partner, Officer Melendez were on patrol in a NYCHA building within the confines of the 24 Precinct. They were conducting a “vertical” whereby they walked from the rooftop of the building to the main floor down each stairwell, sweeping the building for criminal activity. At approximately 1630 hours that day, they arrived on the 8th floor and observed the complainant, [REDACTED], and his friend sitting in the hallway and smoking marijuana. (Tr. 70-71, 80-81)

Upon encountering Respondent and his partner, [REDACTED] and his friend stood up to leave the hallway and walked through the door which leads to the stairwell. [REDACTED] held the door and ushered his friend in front of him. His friend immediately took off running. At that moment, Respondent grabbed [REDACTED], pulled him to the ground, yelled for him to “stay,”

and "give me your hands." Respondent also pulled out his service weapon and pointed it at [REDACTED]. [REDACTED] then relinquished his hands to be cuffed and Respondent reholstered his firearm.

After being apprehended, [REDACTED] was frisked and searched on scene, at which time a small bag of marijuana was recovered from his pocket. At the precinct, [REDACTED] was searched before the desk sergeant while his arrest was being processed. [REDACTED] was then escorted to the back cells where he was more thoroughly searched by Respondent and other officers before he was placed in the holding cell. No weapons, drugs or other contraband were recovered from [REDACTED] in the subsequent searches. (Tr. 33-38, 114-25)

[REDACTED] testified that on the date of the incident, he was meeting a friend who resides at a NYCHA building located at [REDACTED] because they were attending a concert together that evening. [REDACTED]'s friend was taking a shower inside his apartment, so he and another friend sat in the hallway outside his apartment to smoke marijuana while they waited for him to get ready. He estimated that they were in the hallway for approximately ten to fifteen minutes before Respondent and Officer Melendez emerged from the staircase exit.

Upon seeing the two uniformed officers, [REDACTED] assumed that they wanted him and his friend to "evacuate the building." (Tr. 26) According to his testimony, neither Respondent nor his partner gave them any verbal directives or made any gestures indicating that they had to leave the building but they did so of their own volition. [REDACTED] proceeded to open the door leading to the stairwell and ushered his friend in front of him. (Tr. 19, 25-26)

Once inside the stairwell, [REDACTED] recalled that Respondent immediately grabbed him, tackled him and wrestled him to the floor. (Tr. 27) [REDACTED] testified that up until that moment, there had been no verbal communication between him and Respondent or his partner.

He further stated that when he was wrestled to the floor, he was lying on the stairs with Respondent in front of him and Officer Melendez behind him. [REDACTED] testified that he then attempted to put his arms up to “let him know that there’s no resistance being caused.” (Tr. 28) He recalled being able to raise his right arm, but not his left arm because it was pinned down behind him. It was at this moment that [REDACTED] remembered Respondent pulling out his gun and pointing it at his rib cage. (Tr. 30)

[REDACTED] asserted that he had nothing in his hands except his cell phone that day, he did not attempt to reach for anything when the officers grabbed him and that he did not resist at all. He recalled that eventually Respondent and Officer Melendez placed him in handcuffs. Once in handcuffs, [REDACTED] was patted down and the officers searched his jacket and pants. He was then escorted out of the building in handcuffs and brought to a police car for transportation to the precinct. Prior to getting into the police car, [REDACTED] stated that another pat-down of his pants was conducted. (Tr. 31-33)

[REDACTED] testified that once he arrived at the precinct, he searched again in front of the desk sergeant and his money, wallet, identification and chain were vouchered. Thereafter, he was brought to the holding cells where another search was conducted. While in the holding cell, he was instructed to remove his jacket, hoody, shoes, socks and any remaining jewelry. Respondent then informed [REDACTED] that he was going to search his drawers and briefs. [REDACTED] said he did not resist, but he did tell Respondent that he “did not want him to go through his stuff.” (Tr. 36)

Despite his verbal opposition, Respondent continued to search and called for “backup.” According to [REDACTED]’s testimony: “They all pinned me against the wall. And he [Respondent] forcibly grabbed my drawers, and put his hand under my briefs and started moving

it around.” He further added that Respondent, “kept grabbing under my genitals, under my boxers and he kept moving it around after he already saw everything.” (Tr. 36-37) [REDACTED] affirmed that nothing was recovered from him except a bag of marijuana recovered subsequent to the initial search on scene. He also testified that this search made him feel violated, embarrassed and emotionally distressed. (Tr. 38)

Respondent testified that while he was on patrol with his partner, at [REDACTED] [REDACTED] he observed two gentlemen (one who was later identified as [REDACTED]) sitting on the 8th floor smoking marijuana. He believed that he gestured to them to get up and make their way to the stairwell. According to Respondent, he was intending on questioning them in the stairwell. As Respondent entered the stairwell, he recalled [REDACTED] “blocked” him from apprehending his friend by placing his body in between the two of them. According to Respondent’s testimony, he realized that [REDACTED]’s friend was wearing a heavy jacket and it was heavier on one side so he wanted to frisk him. Before Respondent could get to him, [REDACTED]’s companion immediately ran down the stairs. That was when Respondent attempted to place [REDACTED] under arrest. (Tr. 71-73)

Respondent proceeded to grab [REDACTED]’s wrist to handcuff him. According to Respondent, [REDACTED] then resisted by refusing to place his hands behind his back and pulling his hands away from him. At this point, Respondent decided to “remove his firearm.” He added that he did so:

Because we fell on to the staircase. Now we are both laying on the staircase flat. And his left hand, he's reaching out toward his waistband. That's when I stated to him, do not reach toward your waistband. If its drugs you're worrying about, do not worry about it. Because it's a misdemeanor, at best, at the time. By him doing that, placing me in fear of my safety. (Tr. 75)

Respondent recalled having his firearm out for less than a second or two before he reholstered it. He maintained that his firearm did not make contact with [REDACTED]'s body. Respondent further stated that he "pleaded with him to cooperate" and when he finally did, he was able to handcuff [REDACTED]. (Tr. 75-76)

Respondent testified that he requested the assistance of additional officers because [REDACTED] was uncooperative. Although Respondent did not search [REDACTED] himself before being placed in the RMP for transport back to the stationhouse, he did acknowledge that someone patted him down. Respondent also stated that [REDACTED] was searched in front of the desk sergeant at the precinct before he was brought to the holding cells for an additional search. (Tr. 76-77)

According to Respondent, in his experience, when a person is arrested for marijuana, it is not uncommon to find more marijuana on them when a more thorough search is conducted. He further elaborated that a more thorough search includes the removal of jackets, belts, and strings and clearing the waistband to check for concealed weapons or additional drugs. Respondent asserted that he did not remove [REDACTED]'s clothing but conducted a thorough search of his person in the holding cells which included pulling [REDACTED]'s waistband to clear it. Respondent characterized [REDACTED] as uncooperative during this search. (Tr. 77-79, 125) He said that [REDACTED] "kept moving his body away and pushing towards me and not cooperating." (Tr. 79) Other officers were called in to assist Respondent due to [REDACTED]'s attempt to prevent Respondent from completing the search. Ultimately, no other drugs or weapons were found pursuant to this search. (Tr. 78-79)

CCRB submitted BWC footage that captured the initial encounter between Respondent and [REDACTED] and the contested search at the precinct. (CCRB Ex. 1) Having carefully

analyzed the video evidence provided, this Tribunal credits the testimony of Respondent and [REDACTED] to the extent that his testimony is corroborated by the footage, as will be discussed in detail below.

Specification 1: Improperly Pointing Firearm

Respondent is charged with improperly pointing his firearm at [REDACTED] in violation of the Patrol Guide. CCRB argues that Respondent improperly pointed his firearm at [REDACTED] while he was being apprehended. Conversely, Respondent's contention is that he drew his firearm because he believed [REDACTED] was a serious threat to the safety of his partner and himself, at the time and place he was being taken into custody. This Tribunal credits Respondent's testimony and finds that he acted reasonably under the circumstances.

Patrol Guide section 221-01 states that any application of the use of force must be reasonable under the circumstances. The Patrol Guide cautions that a uniformed member of service should not draw his/her firearm prematurely. "The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present." It further provides that when that threat has ended, the officer must re-holster his firearm "as soon as practicable." That is precisely what occurred here. Respondent articulated a belief that there was the potential for serious physical injury to himself and his partner at the time he pointed his firearm at [REDACTED], which was corroborated by the video evidence submitted by CCRB. Once the threat ceased, Respondent reholstered his service weapon as mandated by the Patrol Guide.

On the date of this incident, Respondent encountered [REDACTED] and his friend smoking marijuana in the hallway of a NYCHA residential building. Respondent gestured to [REDACTED] and his friend to go into the stairwell and they initially complied. Once in the stairwell,

Respondent asserted that he wanted to frisk [REDACTED]'s friend because his jacket was weighed down on one side. Respondent, however, did not have the opportunity to do that because [REDACTED] stood in between Respondent and his friend while he ushered his friend down the stairs. [REDACTED]'s friend then took off running down the stairs which elevated Respondent's suspicion. Respondent then grabbed [REDACTED] to place him in handcuffs and he became combative.

By all accounts, [REDACTED] towered over Respondent—[REDACTED] testified that his height is 6'5 and he weighs 200 pounds; Respondent testified that he stands 5'9. This created a significant physical disadvantage for the officers when attempting to place him in handcuffs. (See Tr. 27, 53) Moreover, as depicted in CCRB's Exhibit 1, while Respondent is attempting to gain control of [REDACTED], his back is facing a flight of stairs, adding to the mounting danger of the situation. Respondent also testified that he could not see both his hands and he believed [REDACTED] was reaching toward his waistband. This action contributed to Respondent's perceived threat of serious physical injury. In addition, Respondent and his partner were the only two members of service in the stairwell at the time with no back-up to rely upon. In fact, despite Officer Melendez's request for back-up over the radio (CCRB Ex. 1 at 21:50-25:00), it took some time for additional units to arrive on scene. Finally, [REDACTED]'s failure to immediately comply with Respondent's directives to give him his hands compounded by his resistance, caused Respondent to believe that [REDACTED] posed a serious risk to his safety thereby justifying the drawing of his firearm.

Despite CCRB's assertions to the contrary, verbal de-escalation techniques had proved ineffective and the force used by Respondent was proportionate to the level of threat with which he was confronted. Respondent drew his firearm and within a few seconds was able to gain [REDACTED]

██████████'s compliance to be handcuffed. Once the threat of physical injury to Respondent dissipated, he reholstered his firearm.

The circumstances surrounding Respondent's encounter with ██████████ required him to act immediately to protect himself and his partner from potential serious physical injury. Respondent had to act quickly and decisively to reduce the possibility of active aggression and the risks associated with being unable to control this subject. By drawing his service weapon, Respondent was ensuring a safe and expeditious end to this confrontation. Taking all of these factors into consideration, Respondent pointing his firearm at ██████████ did not constitute sanctionable misconduct.

Accordingly, the Tribunal finds the Respondent Not Guilty of Specification 1.

Specification 2: Strip Search of ██████████ without Police Necessity

Specification 2 charges Respondent with conducting a strip search of ██████████ without sufficient legal authority. I find that CCRB has failed to meet its burden of proof by a preponderance of the evidence that Respondent conducted a strip search without sufficient legal authority.

A strip search is defined in the Patrol Guide as "any search in which an individual's undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas." (P.G. 208-05) Pursuant to the Patrol Guide "strip searches may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by other search methods." *Id.*

CCRB's Exhibit 1, starting at 38:00, captures the search conducted in the holding cell area. The video shows Respondent and another male officer directing [REDACTED] to remove his jacket, belt, shoes and chain. At approximately the 41:00 minute mark, Respondent can be seen attempting to frisk him. [REDACTED] begins verbally protesting the search. Respondent cautions [REDACTED] to stop or he will have to place him back in handcuffs. [REDACTED] does not comply and instead tries to step away from Respondent. At this juncture, [REDACTED] is placed back in handcuffs after his attempts to move away from the Respondent and the other officer who are trying to search him. Three other officers then enter the area to assist Respondent in completing his search. At 41:32, Respondent continues the search, pulls the waistband of [REDACTED] [REDACTED]'s boxer shorts away from his body and slides his hands underneath the waistband area. The search concludes less than one minute after that.

As described in the previous section, when Respondent engaged with [REDACTED] in the stairwell, he initially attempted to leave and became resistant to Respondent's attempts to handcuff him. This initial interaction sparked Respondent's suspicion that [REDACTED] was concealing something from him, as per his testimony. Upon being searched on scene, a small quantity of marijuana was recovered from one of [REDACTED]'s pockets. Thereafter, when [REDACTED] [REDACTED] was searched in the holding cell area, he again became resistant and combative to Respondent's attempt to search him. Respondent testified that based on his experience, he believed that [REDACTED] was trying to conceal something such a contraband or a weapon in a manner that they may not be discovered by prior searches, so he needed to conduct a more thorough search.

Given the nature of the crime for which [REDACTED] was arrested (possession of marijuana) and the manner in which he resisted Respondent's attempt to search him, Respondent

made a reasonable inference based on his training and experience that he was concealing additional contraband on his person. Viewing the facts objectively and in their totality, Respondent had reasonable suspicion that [REDACTED] could have drugs or other contraband secreted underneath his clothing thereby justifying this search.

Accordingly, I find him Not Guilty of Specification 2.

Disciplinary Case No. 2023-28316

This case involves allegations of an unlawful search of a bedroom and a failure to provide a business card to a member of the public. CCRB relied solely on BWC footage to prove their case. In the absence of live witness testimony from the occupants of the residence, the following facts are uncontroverted. On February 19, 2022 at approximately 2330 hours, Respondent was reporting to a domestic incident at [REDACTED] [REDACTED] in the confines of the 24 precinct. CCRB's Exhibit 12 at 22:36 clearly shows a female civilian opening the door of the apartment and inviting Respondent and the other officers into the home by waving them in and stepping aside to let them enter. As the officers entered the apartment, Respondent pushed a bedroom door open that was slightly ajar, with his hand, and looked inside while still standing outside the bedroom door. Respondent remained inside the apartment, in what appears to be the living room area, while a fellow officer completed the Domestic Incident Report (hereinafter "DIR"). At the conclusion of the investigation, Respondent and the other officers exited the apartment. Respondent did not provide his business card to anyone in the apartment.

Respondent testified that on the date, time and location of the above-mentioned incident, he received a "domestic call in regards to an individual that was accused of taking a large sum of money from a victim" (Tr. 147) He recalled that he and approximately four or five other officers responded to the apartment where the complainant resided to take a report. Upon arrival

at the apartment, the door was open, but Respondent noted that he was invited in by the “owner” of the apartment. (Tr. 150)

Respondent described that upon entry he could see that it was a “multiple bedroom apartment.” He further stated that the Department’s “standard procedure” when entering an apartment to gain information is to “make sure the apartment is safe for officers... By peeking into a room with eyeballs without entering.” (Tr. 149) He explained that when officers enter into an apartment there is always a concern that individuals could be hiding in rooms and can “ambush officers” who are responding, so for safety reasons they peer into bedrooms upon entering. Moreover, on the date of this incident, upon entering the apartment, Respondent noticed a bedroom door partially ajar so he “slightly opened the door that was slightly ajar to make sure no one was hiding in that room.” (Tr. 149) He denied entering the bedroom, but admitted looking inside as he remained outside the door frame. It is worth noting that Respondent’s testimony is corroborated by the video footage received in evidence as CCRB’s Exhibit 12, which I find to be independent, credible evidence confirming Respondent’s version of events.

Respondent testified that he remained in the apartment for approximately fifteen to twenty minutes while he conducted his investigation and took a report from the complainant. He denied ever looking into other bedrooms or conducting a search. At the conclusion of his investigation, Respondent recalled providing a copy of the report to owner of the apartment prior to leaving. He admitted that he did not provide the complainant or anyone else in the apartment with his business card. (Tr. 150, 159)

Specification 1: Search of a Bedroom without Sufficient Legal Authority

Respondent is charged with conducting an illegal search of a bedroom. Based upon the credible evidence in the record, I find CCRB has not presented sufficient evidence to establish that Respondent's actions amounted to a search without sufficient legal authority. Accordingly, for the reasons set forth below, I find him Not Guilty of this specification

CCRB's Exhibit 12 clearly demonstrates that Respondent and the other officers were invited into the apartment by a woman who appears to be a tenant. I therefore find that Respondent was legally authorized to be inside said premises. CCRB contends that Respondent's action of pushing a bedroom door open and looking inside was akin to an unconstitutional search which exceeded his legal authority. This Tribunal disagrees with CCRB's assessment.

Based upon a careful review of CCRB's Exhibit 12, it appears that the bedroom door in question was slightly ajar upon Respondent's entry into the apartment, allowing for light to emanate through its opening. Respondent pushing the bedroom door further open, while remaining outside the threshold, and was a permissible visual scan of the bedroom conducted to protect the safety of Respondent and the other officers. A police officer investigating an alleged crime in an unfamiliar and confined area may make a "protective sweep" of the area and any adjoining areas that he/she reasonably believes may harbor potential threats. A protective sweep is defined as a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person may be hiding." *Maryland v. Buie*, 494 U.S. 325, 327 (1990); *see also People v. Harper*, 100 A.D.3d 772, 774 (2d Dept. 2012)

This Tribunal finds that Respondent's visual inspection of the bedroom was even more limited than the protective sweep authorized in *Maryland v. Buie*. In fact, it was a reasonable

and *de minimis* measure aimed at abating Respondent and his fellow officers' exposure to any unknown dangers. Unlike a street encounter, an in-home investigation puts officers at a unique disadvantage especially since the configuration of a home is unfamiliar to them and the presence of threats are not readily apparent. Gaining awareness of the presence of persons or other hidden dangers for safety reasons, is not only reasonable, but a sagacious tactic for officers conducting investigations of this nature. Under this set of circumstances, this Tribunal opines that Respondent acted with prudence to ensure that he and his team were not subjected to an inordinate risk of harm while they pursued their investigation.

Specification 2: Failure to Provide a Business Card

Respondent is charged with failing to provide the complainant with a business card without police necessity pursuant to Administrative Guide 304-11. New York City's Right to Know Act (hereinafter "Right to Know Act") was legislation passed with the aim of protecting the rights of civilians during interactions with members of the Department. The intent of the law was to promote communication, transparency and accountability in everyday interactions between NYPD and the public.

A.G. 304-11 was implemented to ensure compliance with the Right to Know Act and requires officers to offer business cards to civilians upon the conclusion of certain law enforcement activities. These activities include:

- a) Noncustodial questioning of individuals suspected of criminal activity (Level 2 Encounter)
- b) Stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter (Level 3 Encounter)
- c) Frisk (Level 3 Encounter)
- d) Search of persons or property, including vehicles
- e) Roadblock or checkpoint stops, including checkpoints related to enforcement of Article 31 of the Vehicle and Traffic Law (Alcohol and Drug-Related Offenses)

but not including planned security checks of vehicles at sensitive locations or street closures for public events or emergencies

f) Home search.

The purpose of supplying civilians with a business card at the conclusion of such activities to ensure that they have the information needed, in writing, to identify an officer at the conclusion of an encounter.

Based upon the evidence in the record, this Tribunal finds that CCRB has failed to establish that Respondent's law enforcement activities on the date of the incident fall into any of the above-mentioned categories for which a business card is to be offered. CCRB categorized Respondent's action on the day in question as a "home search." As stated in the previous section, Respondent pushing a door open and conducting a visual scan of a bedroom does not constitute a "search." There is also no evidence to demonstrate that the complainant requested a business card or other information from Respondent. Moreover, at the conclusion of the investigation complainant was provided with a DIR containing any information she may have needed to follow-up on the investigation.

This Tribunal recognizes that strict compliance with A.G. 304-11 is important to further the purpose of the Right to Know Act and that deviations from the protocol may result in punitive measures. However, under the circumstances, Respondent was not required to provide a business card. Accordingly, Respondent is found Not Guilty of Specification 2.

Respectfully submitted, *JS*

/s/ Vanessa Facio-Lince

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

Edward A. Caban
JUL 24 2021
EDWARD A. CABAN
POLICE COMMISSIONER