



POLICE DEPARTMENT

June 5, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-28282
Police Officer Marcarthur Jean	:	
Tax Registry No. 965219	:	
Police Service Area 1	:	

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

For the Respondent: John Tynan, Esq.
Worth, London & Martinez, 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 Marcarthur Jean, on or about January 11, 2022, at approximately 1920 hours, while assigned to PSA 1 and on duty, in the vicinity of the City Point BKLYN Mall at 445 Albee Square, Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that P.O. Jean threatened **Complainant** with the use of force by brandishing an ASP baton 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 Marcarthur Jean, on or about January 11, 2022, at approximately 1920 hours, while assigned to PSA 1 and on duty, in the vicinity of the City Point BKLYN Mall at 445 Albee Square, Kings County, wrongfully used force, in that P.O. Jean used physical force against **Complainant** by twice pushing **Complainant** and grabbing **Complainant** by the arm without police necessity.

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

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 May 6, 2024.

Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB introduced into evidence the hearsay statement of the complainant, as well as video surveillance footage that captured a portion of the incident. 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

On January 11, 2022, Respondent was working a paid detail at the City Point BKLYN Mall in Kings County. Respondent was employed that day by the Target store located on the second floor of the mall. The parties are in agreement that as part of this paid detail, Respondent was in his NYPD uniform, and was responsible for acting in a manner consistent with the Department's guidelines.

It is undisputed that at approximately 1920 hours that day, Respondent became involved with an individual ("the complainant") outside the Target store. It is alleged that during the course of their interaction, Respondent wrongfully used force against the complainant, in that he brandished and threatened the use of his baton, and that he pushed and grabbed the complainant without police necessity.

The complainant did not appear to testify. Instead, the CCRB offered into evidence the hearsay statement of the complainant from a telephone interview with the CCRB on February 1, 2022. The recording of that interview, and the accompanying transcript, were admitted as CCRB Exs. 1 & 1A. It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross examine, and the court can observe witness demeanor. In the absence of live testimony from the complainant here, this tribunal carefully considered his prior statement, in conjunction with the other evidence presented.

In his telephone interview, the complainant stated that as he was exiting Target, Respondent stared at him like he was a thief. Respondent and a security guard approached the

complainant, and words were exchanged, with Respondent threatening to beat him up. The complainant was confused, since he had not done anything wrong. He took the escalator down to the first floor, followed by Respondent and the security guard, who again confronted the complainant and told him he could not return. According to the complainant, Respondent removed and extended his baton and threatened to beat him up, which made the complainant mad. People in the vicinity stopped and stared at the confrontation. (CCRB Ex. 1A at 8-10, 22-23, 34, 37)

Rather than leave the location, the complainant followed Respondent back up to the second floor because he wanted to talk with the Target manager, but Respondent told him he could not come inside the store. The complainant stated that he wanted to know Respondent's name, but all Respondent did was pull down his mask so the complainant could see his face. Respondent told him he needed to leave or he would be arrested. The complainant admitted he became "irate," and they continued to exchange words. The complainant tried to enter Target through another entrance, but Respondent stood in front of him and poked the complainant in the chest several times. Respondent pushed the complainant, trying to get him out of the location, and grabbed him by the back of his coat. The complainant stated that he was concerned that Respondent would charge him with disorderly conduct, and so he left the location. (CCRB Ex. 1A at 11-14, 24-31, 35-37)

Video surveillance footage from outside Target (CCRB Ex. 2), shows the initial part of the interaction as the complainant exits the store. At 0:16, the complainant can be seen on the left side of the screen walking out of Target. Two seconds later, Respondent follows him out of the store, as does a security officer. On the way to the down escalator, the complainant takes off his jacket, turns toward Respondent, and it appears that words are exchanged. The complainant

then approaches the escalator, and Respondent begins to walk away. At the last second, rather than get on the escalator, the complainant turns and takes a couple of steps back toward Respondent and the security officer, who, in turn, walk back toward the complainant. After what appears to be a brief exchange of words, the complainant steps on the down escalator, and is followed down to the first floor by Respondent and the security officer. The interaction between the parties downstairs was not captured by the video.

At 3:57 of the video, Respondent and the security officer come back up the escalator to the second floor. The complainant follows right behind them and as he steps off the escalator, Respondent walks up to him. The two are face-to-face and exchanging words for approximately 10 seconds, before they move to the right off-camera. At 5:38, Respondent and the security officer reappear, and begin to walk away from the area. Respondent then turns and steps back toward the complainant, who appears to have his right hand raised. They exchange words, before Respondent turns and again walks away. The complainant takes a few steps toward Respondent and lingers near the front of the escalator, and Respondent walks back toward him, gesturing toward the escalator. As the complainant is backing away, Respondent appears to push him in the chest area two times, and then grabs the complainant with his left hand to steer him toward the down escalator. The complainant finally steps on the escalator, and Respondent and the security officer follow him down. When Respondent and the security officer come back up the escalator two minutes later, the complainant no longer is with them.

Respondent testified that he observed a commotion inside Target involving the complainant and customer service employees. The store personnel indicated that the complainant was causing a disturbance, and they wanted him to leave the store. Respondent, who was standing inside the store near the entrance, told the complainant to leave. After he

exited Target, the complainant, who appeared agitated, took off his jacket and exchanged words with Respondent, as seen in the video. Respondent told the complainant that he needed to leave, but the complainant stated that he wanted to fight and threatened to beat up Respondent. The complainant eventually got on the escalator, and Respondent followed him down to make sure he exited. (Tr. 25, 28-31, 45, 48-50, 61-67)

Downstairs, the complainant continued to tell Respondent that he wanted to fight him. Respondent testified that he tried to be patient, again asking the complainant to leave. When that did not work, and the complainant continued to make threats and behave erratically, Respondent brandished his baton, hoping to convince the complainant to exit the location. The complainant refused to obey, and Respondent decided to walk away from him and return to the second floor, but the complainant followed him back up. (Tr. 32-33, 50-52)

When the complainant stepped off the escalator, Respondent told him multiple times that he needed to leave. They moved off to the right side near a window, and the complainant continued to threaten to fight. Respondent testified that the complainant wanted to see his face, so Respondent pulled his mask down; Respondent's shield was plainly visible, and the complainant did not ask for his identification. Respondent's concern was that the complainant not reenter the store, so he walked away hoping the complainant would leave. The complainant did not leave, so Respondent approached him again. According to Respondent, the complainant pulled up his pants and raised his fists to chest level in a fighting stance, but Respondent again walked away with the hope of defusing the situation. When the complainant refused to leave and continued to tell Respondent to come outside and fight him, Respondent pushed him two times with his hand to get him to leave, causing the complainant to take two steps back in the area near the escalators. He then escorted the complainant back down to the first floor. (Tr. 34-42, 54-61)

Specification 1 charges Respondent with wrongfully threatening to use force against the complainant by brandishing his baton, while Specification 2 alleges that Respondent wrongfully used force by twice pushing the complainant and grabbing him by the arm. Section 221-02 of the Patrol Guide requires an MOS to “apply no more than the reasonable force necessary to gain control.” An MOS is expected to “assess the situation continually and adjust the use of force as necessary.”

Here, the credible evidence has established that Respondent used a reasonable level of force in dealing with an increasingly uncooperative individual. Respondent testified in a detailed, logical manner regarding what occurred, and I credit his account, which was supported by the video evidence. The complainant, meanwhile, did not appear to testify, and so counsel did not have an opportunity to explore with him his behavior during this incident. The complainant did provide a hearsay statement to the CCRB, but it would have been useful to hear him questioned in greater detail regarding why he persisted in refusing to leave the location, including his threatening words and actions toward Respondent.

The incident began when the complainant became involved in a dispute with customer service personnel inside Target. Respondent asked the complainant to leave the store, and if he had complied the matter would have ended there. Instead, despite being told multiple times by a uniformed police officer to leave the location, the complainant persisted on remaining. Making matters worse, he became combative with Respondent, repeatedly challenging him to a fight and threatening him. After a brief interaction down on the first floor, the complainant went so far as to follow Respondent back up the escalator to the second floor, extending the encounter even further. At one point, he raised his fists in a fighting stance, before Respondent finally succeeded in steering the complainant back down to the first floor.

In this context, Respondent's actions toward the complainant were reasonable, and did not constitute misconduct. Despite being confronted by an individual who was acting in an erratic, threatening manner, Respondent kept his poise and attempted to defuse the situation. Several times during the course of their encounter, Respondent turned and walked away from the complainant; had the complainant simply exited as instructed, the situation would have ended. Instead, the complainant refused to comply with Respondent's repeated requests, over the span of several minutes, to leave the location voluntarily. It was only after the complainant persisted in his threatening behavior that Respondent employed minimal, necessary force, briefly brandishing his baton while they were downstairs, and twice pushing the complainant near the escalator on the second floor. Under these specific circumstances, the force used was reasonable, designed to gain compliance from an uncooperative individual. Accordingly, I find Respondent Not Guilty of both specifications.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED


JUL 29 2024
EDWARD A. CABAN
POLICE COMMISSIONER