



POLICE DEPARTMENT

November 27, 2024

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In the Matter of the Charges and Specifications :

- against - :

Sergeant Perry Quincoses :

Tax Registry No. 947371 :

Transit District 3 :

Case No.

2023-28950

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For the Respondent: Matthew Schieffer, Esq.
The Quinn Law Firm
399 Knollwood Rd #220,
White Plains, NY 10603

To:

HONORABLE JESSICA S. TISCH
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Sergeant Perry Quincoses, on or about April 21, 2022, at approximately 0907 hours, while assigned to TD 3 and on duty, in the vicinity of the 145th Street "A/C/B/D" subway station, New York County, engaged in conduct prejudicial to good order, efficiency, or discipline of the Department, in that he ejected **Complainant** from the transit system, without police necessity.

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

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

2. Sergeant Perry Quincoses, on or about April 21, 2022, at approximately 0907 hours, while assigned to TD 3 and on duty, in the vicinity of the 145th Street "A/C/B/D" subway station, New York County, engaged in conduct prejudicial to good order, efficiency, or discipline of the Department, in that he interfered with **Complainant's** use of a recording device, without police necessity.

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

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

3. Sergeant Perry Quincoses, on or about April 21, 2022, at approximately 0907 hours, while assigned to TD 3 and on duty, in the vicinity of the 145th Street "A/C/B/D" subway station, New York County, wrongfully used force, in that he grabbed **Complainant's** arm, without police necessity.

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

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 16, 2024.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB presented a hearsay case, entering the audio and written transcript of the CCRB interview of **Complainant**¹, as well as body-worn camera and cellphone video footage into evidence.

¹ CCRB was able to contact **Complainant** before trial; however, he declined to appear before the Tribunal based upon the advice of counsel in a civil lawsuit regarding this matter, which is pending against the City. (Tr. 3)

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 of Specification 2, and Guilty of Specifications 1 and 3. I recommend the forfeiture of ten (10) vacation days.

ANALYSIS

On April 21, 2022, at approximately 0907 hours, Respondent ejected [REDACTED] ("Complainant") from a Metropolitan Transit Authority ("MTA") facility. The following is a summary of facts which are not in dispute. On the date in question, Respondent was working at Transit District 3, which is located inside of the 145 Street, A/C/B/D, subway station in Manhattan. A member of the public alerted officers that an individual appeared to be having a medical emergency near the token booth in the station. Respondent and several other members of service, including Lieutenant Ralph Charles, rushed to assist the person and called an ambulance. Simultaneously, Complainant approached the turnstiles on the paid side. While there is a dispute as to what Complainant was doing, it is undisputed that he caught the attention of Lieutenant Charles. He pointed Complainant out to Respondent, who approached Complainant. At that point, Complainant was standing in between the metal barriers of the turnstile with a cellphone in his hand.

Approximately ten seconds later, Complainant stepped through the turnstile, while speaking with Respondent. Respondent informed Complainant that he was being ejected from the station. Respondent grabbed Complainant by the right bicep, pulled him towards the stairs, and activated his body-worn camera. Complainant struggled against Respondent, while repeatedly asking why he was being removed from the subway. Respondent and another officer quickly moved Complainant up the stairs and onto the sidewalk. Complainant subsequently was

taken to the hospital and was treated for [REDACTED]. (CCRB Exhibit 1, *Respondent's body-worn camera footage*; CCRB Exhibit 2, *Police Officer Lopez's body-worn camera footage*; CCRB Exhibit 5, *Complainant's medical records*, at p. 6; CCRB Exhibit 6A, *Complainant's CCRB interview* at 47-48; Tr. 14)

Complainant, who did not appear before the tribunal, was interviewed via telephone by CCRB eight days after the incident on April 29, 2022. Complainant recalled that on the date of the event, after exiting the train, he walked towards the subway exit. While approaching the turnstile, still in the paid portion of the station, Complainant observed a group of police officers on the other side, near the token booth. He described the officers "tussling" and "panicking," although he acknowledged that he did not know what caused the officers to behave that way. Complainant stopped and stood watching. Complainant recounted seeing a "black guy who was in charge of the situation with [a] white shirt," and asking him, "what's going on, man?" (CCRB Ex. 6A at 12-14) He explained that he lifted his cellphone, but was unable to navigate to the camera application in time to begin recording. (*Id.* at 9-15) Complainant contended that when the officers saw his phone, they told him, "you can't do that." (*Id.* at 16-17) Complainant stated that after he came through the turnstile, the officers "rushed" him. (*Id.* at 19-21) Complainant described two male officers grabbing his biceps and "dragging" him up the stairs and out of the station. He recalled "planting" his feet on the floor and trying to "hold firm" against the officers. (*Id.* at 29-30) Complainant remembered the officers telling him he was being ejected from the MTA, while he repeatedly asked them why. (*Id.* at 20, 27, 31, 38)

After being ejected, Complainant returned to the station to make a complaint against the officers. He recalled feeling his arm "burning" and the woman he was speaking to calling an

ambulance which took him to the hospital. Complainant received [REDACTED]

[REDACTED] (CCRB Ex. 6A at 47-48; CCRB Ex. 5 at 6)

CCRB entered Respondent's body-worn camera footage of the incident into evidence. (CCRB Ex. 1) The footage, which includes the one minute buffer period before Respondent turned on his camera, is summarized below:

00:00-00:17: Respondent speaks with his supervisor, Lieutenant Charles, while observing other officers tending to a man experiencing a medical emergency on the subway station floor.

00:18-00:23: Both Respondent and Lieutenant Charles have their attention diverted to Complainant, who appears to be shouting as he stands right behind the turnstile. Lieutenant Charles engages the Complainant, gesturing to the man experiencing a medical emergency as Complainant shakes his head and waves his arms to make the shape of an "X."

00:24-00:29: Respondent and Lieutenant Charles move closer to Complainant. Respondent points at the Complainant and the space behind him. Complainant's eyes widen as he points to the subway station entryway while exiting the turnstile

00:30-00:43: Respondent points to the subway station exit as Complainant raises both his hands in the air with his palms facing outward. Complainant takes a single step back while continuing to argue with Respondent.

00:44-01:00: Complainant lowers his arms and begins typing on his phone. Respondent grabs Complainant by his right arm and begins ushering him toward the Subway station entryway.

01:00-01:25: Respondent turns on his body-worn camera as he continues escorting an actively resistant Complainant up the entrance stairs with the aid of two other officers. Audio captures Complainant shouting professions of his innocence, along with claims that the officers will have to take him to jail or the precinct.

01:27-01:34: Respondent releases Complainant onto the public sidewalk. Complainant continues shouting and questioning the legitimacy of the ejection. Complainant asks if he was ejected "for taking a video?" Respondent replies affirmatively. Complainant continues shouting as Respondent begins to walk back into the subway station.

01:35-02:08: Complainant descends a few stairs while shouting. Respondent turns around to stop Complainant from descending further. Complainant yells that he was ejected for no reason and Respondent counters, "for blocking the turnstile."

02:09-02:14: Respondent descends the stairs and Complainant can be heard continuing to yell in the distance before Respondent turns off his body-worn camera.

Respondent took the stand on his own behalf and testified that on April 21, 2022, he was assigned to train patrol at Transit District 3. While inside the command, a witness reported that someone was suffering a medical issue in the station before the turnstiles. Respondent went to this area and observed a male individual, in the midst of a medical episode, receiving aid from other officers. Respondent stated that his role was to supervise the scene. (Tr. 17-18) Respondent recalled that Lieutenant Ralph Charles was also on the scene and they were both “diverted” from the ongoing situation by Complainant, who he saw standing in the middle of the first turnstile next to the emergency exit on the paid side of the station, “blocking” it. Respondent described Complainant as “very loud, speaking in an elevated voice and appearing angry.” (Tr. 19) Respondent also observed Complainant holding what appeared to be a cell phone. Respondent asserted that Lieutenant Charles asked Complainant to move away from the turnstile and Complainant ignored that request. After that encounter, Lieutenant Charles instructed Respondent “to go deal with” Complainant, while he returned to handling the situation with the sick person. (Tr. 19-20; 26)

Respondent characterized Complainant’s behavior in the station as “disorderly and a breach of the peace” and alleged that Complainant was “blocking” a turnstile in violation of MTA regulations. Respondent stated that he approached Complainant, informed him that he was violating the Transit Rules of Conduct, and asked Complainant to leave the station. Complainant refused to do so, and Respondent took Complainant by the right arm and escorted him up the stairs and out of the station. Respondent recalled that while being ejected Complainant repeatedly demanded to be told why he was being forced to leave. (Tr. 22) Respondent remembered telling Complainant that he was being removed for being “disorderly” and that Complainant, “just wasn’t in that state of mind to want to listen to what [Respondent] had to

say.” (Tr. 23) He acknowledged that Complainant repeatedly stated to him, “I can record; I’m recording.” (Tr. 46) Respondent confirmed that he replied, “yes,” in response to one of the times Complainant asked if he was being removed for recording. Respondent explained that he responded that way because “it was a futile point and [I] was better off concurring with what [Complainant] was saying to deescalate the situation.” (Tr. 32) Respondent reiterated that Complainant was not ejected for using a recording device, offering, “[t]hat wasn’t the focus of our attention. It was the noise he was making and the commotion, he was being disorderly.” (Tr. 23)

In addition, Respondent entered into evidence an e-mail communication he received from a sergeant assigned to the Transit Bureau Investigations Unit which investigated the incident. Respondent’s use of force and alleged interference with recording were found to be “lawful and proper” and the matter was closed as “exonerated.” (Respondent’s Exhibit A)

Specification One: Improper Ejection

Specification Three: Improper Use of Force

Respondent stands charged with ejecting Complainant from the subway system without police necessity, and with wrongfully using force to eject him. It is undisputed that Respondent and another officer took Complainant by the arms and removed him from the station against his will. Respondent also informed Complainant several times that he was being “ejected” from the system for blocking the turnstile. Since the determination regarding whether Respondent was authorized to use force is dependent on whether Respondent’s ejection of Complainant was supported by police necessity, these specifications will be analyzed together. The initial question for the tribunal is whether Complainant’s behavior prior to being removed from the station violated NYC Rules of Conduct. I find that it did not.

NYCRR Title 21, Section 1050.6 (a) prohibits individuals from performing, “any act which interferes or may tend to interfere with the provision of transit services.” In addition, conduct which constitutes a breach of the peace or impedes movement within MTA facilities and conveyances is prohibited. (21 NYCRR § 1050.7 (i), (j)(4))

Respondent testified credibly that Complainant “appeared very angry” and was speaking loudly enough, even in a noisy New York City Subway station, to gain the attention of Lieutenant Charles. Respondent asserted that Complainant’s calling out to the officers constituted a breach of the peace, and maintained that by standing in the middle of the turnstile, Complainant was “blocking” an entrance to the subway. In addition, Respondent asserted that Complainant was asked by Lieutenant Charles and himself to leave, and that his refusal to do so was an additional violation of MTA rules.

I credit Complainant’s assertion that he was standing at least ten (10) feet away from the aided, near the turnstile when he asked the officers what was happening. Respondent’s body-worn camera recording, as well as footage from another officer on the scene, are consistent with this portrayal of events. Counsel for CCRB acknowledged that where Complainant was standing, in the middle of a turnstile, would hinder another passenger from getting by him. However, the video evidence shows that no passengers were prevented from entering or exiting. At least four other turnstiles were available for use with no lines or people waiting. Indeed, during cross-examination, Respondent acknowledged that, there were other turnstiles available for passengers to use, and that Complainant’s behavior did not interfere with the man receiving aid. (Tr. 27-30). Furthermore, no crowd gathered to watch either the medical episode or Respondent’s interaction with Complainant. (CCRB Ex. 1 at 00:00-00:27; CCRB Ex. 2 at 00:22-00:37)

“Historically, ‘breach of the peace’ has been equated with ‘public inconvenience, annoyance or alarm,’ as used in the disorderly conduct section of the Penal Law, and does not encompass annoying statements to police officers which create no actual risk of causing a public disturbance.” *In re Armell N.*, 28 Misc.3d 528, 533-34 (N.Y. Fam. Ct, Kings County 2010), citing *People v. Munafo*, 50 N.Y.2d 326, 331 (1980). Although Complainant did appear agitated during this incident, he was standing at a significant distance from the officers, and, as acknowledged by Respondent, his yelling did not interfere with them rendering aid. In addition, there was no evidence presented that even one traveler was delayed by Complainant standing near the turnstile. As a result, Respondent did not possess a lawful basis to eject Complainant from the subway and I find him Guilty of Specification 1.

Turning to the force component of the ejection, when determining whether a use of force was reasonable, Patrol Guide 221-01 sets forth a number of factors to consider, including amongst other things, the nature of the crime or circumstances, actions taken by the subject, duration of the action, and whether the subject is actively resisting. In the instant matter, the parties agree that Respondent grabbed Complainant by the arm and removed him from the station against his will, resulting in bruising to Complainant’s bicep.

Counsel for Respondent points to his exoneration after the NYPD’s internal investigation of the use of force as evidence that his actions did not constitute misconduct. However, this tribunal is mandated to conduct a de novo review of the allegations which come before it. It is also worth noting that the investigation conducted by Transit Bureau Investigations Unit was limited to an analysis of the force used and did not evaluate the propriety of the ejection. Given the circumstances, had Respondent’s use of force been in conjunction with a valid enforcement action, it may have been within guidelines and not excessive. In the instant matter, since

Respondent lacked legal authority to remove Complainant, any use of force was unauthorized and improper. For the foregoing reasons, I find Respondent Guilty of Specification 3.

Specification Two: Interference with Recording

Respondent is also charged with interfering with Complainant's use of a recording device during the course of the encounter. It is undisputed that Complainant had a cell phone in his hand continuously, beginning with his first interaction with Lieutenant Charles until he was outside of the transit station. However, during his interview with CCRB, Complainant revealed that he did not record any part of the incident. For the reasons set forth below, I find that no action taken by Respondent constituted an interference with Complainant's right to record.

The Department instructs officers that, "Individuals have a right to lawfully record police activity" as long as the recording does not obstruct or prevent the police from performing their duties. Police officers are specifically prohibited from, amongst other things, blocking the device, instructing the person to stop recording, seizing the device, deleting recordings, and arresting or issuing a summons to an individual **solely** for recording police activity. (Legal Bureau Bulletin Vol. 50 No. 1 [July 2020], *emphasis added*)

During summation, counsel for CCRB explained that they were not alleging that Respondent ejected Complainant because he was recording. Instead, they argued that Respondent's improper ejection of Complainant interfered with his lawful right to record police activity. This argument would be more compelling had Complainant actually been recording or attempting to record at the time he was removed from the station. There appears to have been ample time, approximately twenty seconds, between the time he is first observed on Respondent's body-worn camera footage interacting with Lieutenant Charles and when Respondent first approached him for Complainant to have begun recording. Indeed, Complainant

appears to begin manipulating the screen of his phone only after Respondent first told him to leave.

Complainant did not appear before the tribunal, and therefore was not subjected to questioning regarding this charge. It is undisputed that Respondent escorted Complainant out of the station for blocking the turnstile and being disorderly, and there is no evidence that he attempted to block, touch, or take Complainant's cellphone. Respondent did not tell Complainant that he was not allowed to record, or to stop recording. Respondent did concede that one of the times Complainant asked if he was being ejected because he was recording, he answered "yes." Respondent explained that his hope was that by concurring with Complainant, he could de-escalate the situation. His explanation is consistent with the video footage, which shows an increasingly agitated Complainant yelling repeatedly that he was being removed for recording.

While it is well settled that observers may record police activity, Complainant had ample time to begin recording the initial incident, and if he had, the entire interaction would have been captured by his cell phone. Based on the foregoing, I find that CCRB has failed to prove by a preponderance of the credible evidence that Respondent improperly interfered with Complainant's use of a recording device. Accordingly, I find Respondent Not Guilty of Specification 2.

PENALTY

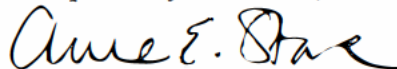
In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *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 was appointed to the Department on July 8, 2008. He has been rated “Highly Competent” on his last three annual performance evaluations and has no formal disciplinary history. He has been found guilty of ejecting Complainant from the transit system without legal authority and improperly using force while doing so. With respect to Specification 1, CCRB has recommended a penalty of the forfeiture of ten (10) vacation days, the presumptive penalty for taking enforcement action without justification. For Specification 3, they are seeking a penalty of ten (10) vacation days to address the force used, with the recommendation that the penalties run concurrently. I agree with their penalty recommendation.

Respondent’s counsel argued for a mitigated penalty based on the fact that Respondent’s supervisor was on the scene. While the presence of a supervisor may warrant mitigation in some situations, I do not believe it is appropriate here. I credit Respondent’s assertion that his supervisor, Lieutenant Charles, instructed him to “take care” of the situation with Complainant. Although Respondent understood this to be a mandate from his supervisor to eject Complainant, Lieutenant Charles did not explicitly order him to do so. Respondent is a supervisor himself, and also an experienced transit police officer. He testified knowledgably and credibly about transit rules, including the rules regarding citizens’ rights to observe and record police officers performing their official functions. Complainant’s yelling in the direction of the officers, while annoying and somewhat distracting, was well within his right to observe and criticize police activity. CCRB’s penalty recommendation is reasonable and consistent with the Matrix. Because the specifications stem from the same act, a penalty of ten (10) vacation days for each specification, to run concurrently, fairly and adequately addresses the misconduct.

Respectfully submitted,



Anne E. Stone

Assistant Deputy Commissioner Trials

APPROVED

JAN 07 2025



JESSICA S. TISCH

POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
SERGEANT PERRY QUINCOSES
TAX REGISTRY NO. 947371
DISCIPLINARY CASE NO. 2023-28950

Respondent was appointed to the Department on July 8, 2008. On his three most recent annual performance evaluations, he received 4.0 ratings of “Highly Competent” for 2021, 2022 and 2023. He has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials