



POLICE DEPARTMENT

January 9, 2023

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Marcelino Roman :

Tax Registry No. 965481 :

105 Precinct :

Case No.

2022-24983

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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-APU:

Fredy Kaplan, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

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

CHARGES AND SPECIFICATIONS

1. Police Officer Marcelino Roman, while assigned to the 105th Precinct on September 9, 2020, at approximately 1300 hours, in the vicinity of 108-50 217 Place, Queens County, engaged in conduct prejudicial to good order, efficiency, or discipline of the Department when he threatened to remove Erlande Ibreus to the hospital without sufficient legal authority. *(As amended)*

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

PUBLIC CONTACT –
PROHIBITED

[*now encompassed by*
A.G. 304-06, Page 1, Paragraph 1]

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 7, 2022. Respondent, through his counsel, entered a plea of Not Guilty. The CCRB called Erlande Ibreus as a witness, and entered into evidence BWC footage from the two police officers on the scene. 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, I find Respondent Guilty, and recommend a penalty of five (5) vacation days.

ANALYSIS

On the afternoon of September 9, 2020, Respondent and his partner responded to a call involving a landlord-tenant dispute at a Queens residence. When the officers arrived, they separately spoke with the tenant, Erlande Ibreus, as well as the landlord and her family. The interactions were captured by the Body-Worn Cameras ("BWC") of the two officers (CCRB Exs. 1-4). It is undisputed that at some point Respondent stated to Ibreus, "If you don't stop it, we're gonna send you to the hospital to get checked out." The CCRB alleges that Respondent was

wrongfully treating Ibreus as an Emotionally Disturbed Person ("EDP"), and that this statement constituted an improper threat. Respondent contends that it was not a threat, and that he merely was concerned that Ibreus was having a panic attack.

Video footage from the BWC of each officer essentially captures the entire interaction at the location. The initial footage from each officer (CCRB Exs. 1 & 2) shows their arrival at the scene. Respondent goes inside to speak with the landlord, while his partner remains outside with Ibreus. She calmly explains how the landlord blocked her from using the kitchen, and even spit in Ibreus's face. According to Ibreus, it was an on-going problem, where she was repeatedly attacked and threatened by the landlord and her family, including by the landlord's daughter the day before. Ibreus stated that she wanted to press charges. Meanwhile, inside the house, the landlord stated that Ibreus rents a room there, but she does not have the right to use the kitchen. That day, the landlord observed Ibreus inside the kitchen, and asked her what she was doing there. The landlord and her family denied spitting on Ibreus.

In the follow-up footage of each officer (CCRB Exs. 3 & 4), they go back outside, and Ibreus can be seen explaining the situation to them as they stand by the entrance gate; she gestures with her hands, but appears relatively calm. There is some discussion about whether a report will be filed, and Ibreus complains that the officers are not helping her. She asks for the officers' names, and they both give her their cards. Respondent's partner asks Ibreus if she wants an ambulance. At that point, the landlord's daughter, whose name also is on the lease, arrives in the driveway, and she and Ibreus exchange heated words. Respondent walks over to speak with the daughter, who explains to him that she is in the middle of eviction proceedings because Ibreus has been scaring her children with her behavior, including sacrificing birds upstairs. Respondent's partner joins them, and they discuss the issue of access to the kitchen

with the daughter, who sounds upset with what they are saying, insisting that she is not going to take it. Respondent's partner states to Respondent that Ibreus is not making sense.

The video footage shows Respondent returning to Ibreus. She appears calm as he explains to her how she can get a copy of the report that will be prepared. Respondent then goes inside to collect information from the landlord. Ibreus walks to the top of the stairs, where she and the daughter in the driveway resume arguing with each other in loud voices. Respondent briefly steps outside to tell Ibreus "we had enough," then returns inside. Ibreus is talking loudly into her phone to her attorney, and also directing comments toward the daughter. At the 11:00 mark, Respondent again steps outside and says to Ibreus, who briefly places her hand to her chest, "You need to stop. You want to go to the hospital? If you don't stop it, we're gonna send you to the hospital to get checked out, okay?" Ibreus continues talking on her phone and appears physically fine. Respondent walks down to the front gate, and Ibreus enters the house.

Ibreus's testimony was essentially consistent with what was seen and said on the video footage. She testified in a calm, convincing manner that one of the landlords blocked her access to the kitchen, threatened her, and spit in her face. Ibreus was particularly concerned about being spit on because of COVID, and she called 911 to report the incident. When the police officers arrived, Ibreus identified herself as the caller, and spoke with Respondent's partner regarding what had occurred, while Respondent went inside to speak with the landlord and her family. The partner informed Ibreus that this was a landlord-tenant matter; Ibreus testified that this upset her because the officers were not addressing her concern and she felt unsafe. Nevertheless, Ibreus remained calm, until the landlord's daughter arrived and screamed threats at her in the officers' presence. (Tr. 19-23, 30-33, 45-48)

According to Ibreus, while she was trying to speak with her attorney on the phone, the daughter continued to scream and argue with her. Respondent came out of the house and stated to Ibreus that if she did not cut it out, he would send her to be evaluated. Ibreus felt like she was being treated as the problem, when she really was the victim. She testified that she has no history of mental health issues, and has never been removed to a hospital for a psychological evaluation. (Tr. 27-29, 37-39, 49-58)

Respondent testified that Ibreus appeared visibly upset when the officers explained to her that this was not an arrestable offense, and that they would instead prepare a harassment report. Respondent acknowledged, though, that Ibreus was calm and rational throughout much of their interaction, and did not pose a danger to herself or anyone else. As Respondent was inside attempting to gather information from the landlord for the report, he heard Ibreus and the landlord's daughter arguing and screaming at each other outside. Respondent was concerned that the argument might escalate into a physical altercation once the officers left, so he stepped outside and said "enough," with the goal of resolving the dispute peacefully; the arguing briefly stopped, and Respondent returned inside. When the screaming resumed, Respondent went back outside and told Ibreus to calm down. Ibreus had her hand clutching her chest and seemed out of breath from arguing, so Respondent, in part based on his years of experience as an Emergency Medical Technician, was concerned that she might be having a panic attack. Respondent claimed that it was out of that concern that he told Ibreus that if she did not stop, she would be sent to the hospital to get checked out. Respondent conceded, however, that he never mentioned that he was worried about Ibreus having a panic attack when he was questioned about his comment during his official CCRB interview on September 29, 2021. (Tr. 67, 70-74, 82, 84, 98-100, 114-30)

According to Respondent, before they arrived at the scene, the officers did a check on the address of the incident, and learned that there had been multiple prior reports involving landlord-tenant harassment. Respondent testified that he believed that at some point he ran a check on Ibreus's name, and an EDP history appeared; Respondent could not, however, provide any specific details, and he did not produce for trial any documents verifying this claim. (Tr. 69-70, 78-79, 102-05, 132-37)

Specification 1 charges Respondent with wrongfully threatening to remove Ibreus to the hospital without sufficient legal authority to do so. Respondent does not dispute that he stated to Respondent, "If you don't stop it, we're gonna send you to the hospital to get checked out." Indeed, the statement was captured by the BWC footage (CCRB Ex. 4, at 11:00). Instead, Respondent claims that the statement was not intended as a threat, but was born out of his concern that she was having a panic attack.

However, after carefully reviewing the video footage, in conjunction with the trial testimony, I am not persuaded by Respondent's explanation. His claim is not consistent with the overall tenor of the interaction, as captured by the video. Neither through words nor actions does Respondent seem to be genuinely concerned that Ibreus is about to have an anxiety attack. Rather, he appears troubled that her loud arguing is interfering with his efforts to de-escalate the situation and gather information from the landlord, and he resorts to threatening her with removal to the hospital. Additionally, his claim at trial, that he feared Ibreus was having a panic attack, was inconsistent with his prior statement to the CCRB, where he never mentioned such a concern when asked to explain why he made the statement to her. Based on the credible evidence, I conclude that when Respondent made that comment to Ibreus, he was wrongfully threatening to treat her as an EDP who he would send to the hospital for a psychiatric evaluation.

Section 221-13 of the Patrol Guide defines an EDP as an individual "who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others." Here, a reasonable view of the video footage does not support a conclusion that Ibreus was an EDP during this incident. Although she was visibly upset, particularly after the landlord's daughter arrived, Ibreus did not behave in a deranged manner, nor did she appear to be a threat to anyone. Respondent, himself, conceded that she was mostly calm and rational throughout their interactions, and that she did not pose a threat of safety to herself or others.

As such, there was no justification for Respondent's threat to Ibreus that she would be removed to a hospital in order to be checked out. This tribunal recognizes that Respondent was attempting to manage a heated dispute, trying to prevent a verbal altercation from escalating into a physical one. Nevertheless, Respondent went too far when he resorted to threatening Ibreus with removal to the hospital. Accordingly, 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 January 10, 2018, has been found guilty of wrongfully threatening to remove Ibreus to the hospital. The CCRB has recommended that Respondent forfeit ten (10) penalty days, the presumptive penalty for this offense.

On the one hand, Respondent crossed the line when he told Ibreus that he was going to have her removed to the hospital if she did not calm down. Under the specific circumstances presented here, this statement constituted an improper threat. An individual who had contacted the police for assistance was wrongfully subjected to a threat of hospitalization, and there must be appropriate accountability.

However, as discussed above, it is important to take into account that throughout this incident, Respondent was attempting to deal with a volatile situation in a measured manner. He kept the parties to the dispute separated, as he and his partner attempted to gather the relevant information. Their efforts to de-escalate were made difficult by the on-going shouting between the parties, which became worse upon the arrival of the landlord's daughter. It was in this context that Respondent made the inappropriate statement to Ibreus, where he threatened to have her removed to the hospital. On balance, a mitigated penalty of five (5) vacation days will fairly and adequately address the misconduct of Respondent, who has no disciplinary record, and has received strong performance evaluations.


Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit five (5) vacation days.

APPROVED

JUN 14 2023

KEECHANT L. SEWELL
POLICE COMMISSIONER

Respectfully submitted,


Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MARCELINO ROMAN
TAX REGISTRY NO. 965481
DISCIPLINARY CASE NO. 2022-24983

Respondent was appointed to the Department on January 10, 2018. On his two most recent annual performance evaluations, he was rated "Exceeds Expectations" in 2020 and 2021.

Respondent has no disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials