



POLICE DEPARTMENT

September 23, 2024

-----X
In the Matter of the Charges and Specifications :

- against - :

Detective Volkan Maden :

Tax Registry No. 956863 :

Narcotics Borough Brooklyn North :

Case No.

2023-28137

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

Before: Honorable Vanessa Facio-Lince
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:

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

To:

HONORABLE THOMAS G. DONLON
INTERIM POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Volkan Maden¹, on or about October 5, 2021, at approximately 2315 hours, while assigned to the 90 Precinct and on duty, in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to good order, efficiency, or discipline of the New York City Police Department, in that Police Officer Maden detained Complainant [REDACTED] 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 Volkan Maden, on or about October 5, 2021, at approximately 2315 hours, while assigned to the 90 Precinct and on duty, in the vicinity of [REDACTED] Kings County, engaged in conduct prejudicial to good order, efficiency, or discipline of the New York City Police Department, in that Police Officer Maden issued a retaliatory disorderly conduct summons to Complainant [REDACTED] without sufficient legal authority.

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

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
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REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 14, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board (hereinafter “CCRB”) called the investigator assigned to this case, [REDACTED] as a witness. In addition, CCRB offered the hearsay statement of [REDACTED] [REDACTED] (hereinafter “Complainant”), the video attached to the complaint (CCRB Exhibit 2), as well as the Body-Worn Camera (hereinafter “BWC”) footage of Respondent and his partners, Officer [REDACTED] and Sergeant [REDACTED]. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police

¹ Respondent was promoted to the rank of Detective in January 2024.

Commissioner's review. Having evaluated all of the evidence in this matter, this Tribunal finds Respondent Guilty of both Specifications and recommends the forfeiture of thirteen (13) vacation days.

ANALYSIS

The following is a summary of the facts that are not in dispute. On October 5, 2021, Respondent and his assigned partners for that evening, Officer [REDACTED] and Sergeant [REDACTED] were on routine patrol in the vicinity of [REDACTED] the 90 Precinct. Complainant was walking on the street accompanied by three friends, two males and one female. Respondent and his partners exited their unmarked police vehicle and approached the group on the street. One of the males in the group began yelling and accusing the officers of harassment. Respondent raised his voice at the group and a verbal argument ensued between the civilians and officers. (Tr. 44-45, 71; CCRB Exs. 3, 4)

At one point during the verbal dispute, Respondent approached Complainant and accused him of cursing and yelling at the officers. Respondent then requested Complainant's identification. Complainant stated that he would provide his identification to Respondent, but did not do so immediately. When Complainant reached for a fanny pack he had draped across his body to allegedly retrieve his identification, Respondent grabbed Complainant's arm and placed him in handcuffs. Officer [REDACTED] was standing with Respondent at the time this occurred, but did not say anything. (See CCRB Exs. 3, 4)

As Complainant was being detained, one of the other males in the group approached Respondent, yelling and cursing at him for handcuffing Complainant. Respondent told the male to disperse and when he failed to comply, Respondent threw him to the ground and placed handcuffs on him as well. While Respondent was handcuffing this other male, Officer [REDACTED]

remained by the police vehicle with the handcuffed Complainant. As this was occurring, Sergeant [REDACTED] was directing the third male in the group and the female to disperse. When they walked toward Sergeant [REDACTED] she advised them that they would be tased if they got any closer. Sergeant [REDACTED] also called for back-up over the radio. The female in the group became belligerent and increasingly uncooperative, and was also arrested. (*See* CCRB Ex. 5)

Complainant was transported back to the precinct where he was issued a summons for disorderly conduct. This Tribunal received Respondent's Exhibit A, which was the summons issued to Complainant. On said summons, the person whose name appeared as the "reporting officer" was Officer [REDACTED]

The following are the hearsay statements made by Complainant over the phone to CCRB investigator, Mr. [REDACTED] [REDACTED] on October 25, 2021.

During the interview, Complainant gave a detailed account of the events that transpired on October 5, 2021 at approximately 2300 hours. Complainant explained that he exited the train station on Montrose Avenue with friends (two males and one female) on their way home from work. (CCRB Ex. 1A at 16-17) As they were walking, Complainant noticed an unmarked police car drive by and "waved" to the officers inside. He asserted that the officer seated in the back right passenger side waved back at him. Complainant claimed that he waved solely with the intention of letting the officers know that the group recognized them even though they were in an unmarked car. Immediately thereafter, the police vehicle made a U-turn, drove on the wrong side of the street and the officers stopped Complainant and his friends. (*Id.* at 22-24)

Complainant recalled being initially approached by a male officer whom he described as being "around 6'2 or 6'4, looking pretty old and having a stocky built." (*Id.* at 24) He then described the second officer to exit the vehicle as a male, with a similar build to the first officer,

roughly the same height, except visibly younger. (*Id.* at 25) Complainant stated that the third officer to exit the vehicle was a female. (*Id.* at 27)

According to Complainant, the first officer to verbally engage him was the first officer to exit the vehicle from the back seat (later identified as Respondent). He added that Respondent aggressively requested his identification. When Complainant attempted to retrieve his ID, Respondent grabbed his arm. Complainant admitted pulling away from Respondent's grasp, and he continued looking for his ID in his fanny pack. At that time, both Respondent and the second male officer grabbed him and threw him up against the car. Complainant asserted that his head was pushed against the hood of the police car while he was being cuffed and that he did not have the opportunity to produce his identification. (*Id.* at 30-33, 37)

Complainant stated that he observed a verbal exchange between Respondent and one of his male friends when his friend attempted to intervene on his behalf. Respondent told his friend to back up and when he did not immediately comply, Respondent slammed him to the ground before handcuffing him. Following the detention of both Complainant and his male friend, Complainant reported that ten or more officers arrived on the scene. The newly arrived officers engaged the remaining individuals who were not cuffed. Complainant stated that the female in the group was also handcuffed and all three were taken to the precinct. Complainant further mentioned that "his arresting officer" was not at the precinct. At the conclusion of the interview, Complainant confirmed that after some questioning by detectives, he was issued a summons and charged with disorderly conduct. (CCRB Ex. 1A at 44-46, 60, 72-73, 79, 81)

Mr. [REDACTED] testified on behalf of CCRB. He stated that he has been employed by CCRB as an investigator since November 2019 and that he was the assigned investigator on this case. He certified that he interviewed Complainant and that the interview was recorded on a

digital audio file (CCRB Ex. 1) and subsequently transcribed (CCRB Ex. 1A). At the conclusion of his investigation, Mr. [REDACTED] documented his findings in a closing report which was approved by his supervisor.

On cross examination, Mr. [REDACTED] was asked about the fact that there were multiple drafts of his closing report that did include allegations against Respondent for an unlawful detainment or an unlawful summons. (Tr. 25-28) Mr. [REDACTED] acknowledged that when he wrote the first draft of his closing report, he had reviewed all available paperwork, viewed all available videos and interviewed all the witnesses involved in this incident. However, Mr. [REDACTED] also admitted that it was not until he received “notes from his supervisor” on the fourth draft of his closing report that his supervisor suggested adding allegations against Respondent. (Tr. 30)

Respondent testified that on the date and time of the alleged incident, he was assigned to the 90 precinct public safety team, but noted that on the date of the incident, he was not working with his regular team. According to Respondent, Sergeant [REDACTED] asked him to work with her and Officer [REDACTED] that day because she “didn’t feel physically safe working with him alone” given the fact that Officer [REDACTED] was inexperienced. (Tr. 43-44)

Respondent recalled that on the night in question, he was sitting in the rear passenger seat of an unmarked police vehicle while Officer [REDACTED] was driving and Sergeant [REDACTED] was seated in the front passenger seat. As they were driving in the vicinity [REDACTED], Respondent testified that Officer [REDACTED] announced that he was going to make a stop and pointed out who he intended on stopping. Respondent added that he did not know what Officer [REDACTED] was stopping the person for, but “[t]here’s a sergeant in the car. It’s not my position to question another officer’s stop. If he says he observed something, it’s not common practice for me to sit there and interrogate him.” (Tr. 45) Respondent claimed that prior

to Officer [REDACTED] stating his intention to make a stop, Respondent had not observed anything himself, but had heard cursing and yelling. (Tr. 46)

After Officer [REDACTED] stopped the car, all three officers exited the vehicle. According to Respondent, Officer [REDACTED] approached Complainant and started speaking to him, as Respondent walked around the car toward them. Respondent asserted that the situation immediately got "out of control" because Complainant's friend started pulling Complainant away when Officer [REDACTED] requested Complainant's identification. Respondent further testified:

He (referring to Officer [REDACTED] doesn't get his ID. Complainant's friend gets more and more aggressive and starts cursing and yelling. The situation is basically getting out of control. And Officer [REDACTED] due to his inexperience doesn't get assertive enough to keep us safe, and in this situation that's quickly getting out of hand. And from my experience, you have to get something like this under control quickly before our safety, you know, is jeopardized. (Tr. 48)

Respondent contended that a crowd was gathering and they were yelling, cursing and pulling Complainant away. He then recalled that Complainant's friend started "balling up his fists," "blading his body" and "stepping in and out," which Respondent interpreted to mean that he was to going to hit him and run away. Respondent described the situation as "a hazardous and unsafe condition . . . to address on the street." (Tr. 49)

Respondent testified that the encounter was escalating and Complainant's friend was "physically threatening." He added:

[REDACTED] and [REDACTED] are not taking charge of the situation as they should be, and I have to step in for my own safety and theirs. I'm not going to allow anyone to get hurt while I'm there, and it's not my obligation to determine [REDACTED] original -- the validity of his original stop, or what his intentions were; but I am covered by the NYPD to make the decision that if a stop is being made, and it's getting out of control, we can now bring them back to the precinct and it could be addressed in the precinct. (Tr. 50)

According to Respondent's testimony, he repeatedly asked Complainant for his identification, but Complainant did not cooperate so he had to be taken to the precinct to determine his identity. He also recalled that he told Complainant's friend to leave many times but he did not comply and was "waving his body with his fist," which Respondent determined to be threatening gestures so he "placed him in cuffs for disorderly conduct." (Tr. 51) Respondent asserted that after the individuals were placed in handcuffs, they were transported to the precinct and he had no further interaction with them. Respondent claimed that because he did not initiate the stop, he did not issue the summons. (Tr. 52)

Respondent was asked to "explain his demeanor" on the BWC. Respondent elucidated that he was asked to work with a team with whom he was unfamiliar and he was thrown into a situation where he was forced "to take charge because the sergeant's doing nothing." He added that the officer who initiated the stop, lacked experience and was "not doing what he's supposed to do." (Tr. 53) Respondent admitted that he got "worked up" because "he is human" and they were being "threatened from all angles." Respondent acknowledged that he was being loud and using expressive language because he had "to take charge and be assertive, otherwise, they will not respect you." (Tr. 53-54) Respondent attributed his behavior on the night of the incident, to a means of gaining compliance of an unruly group.

On cross-examination, Respondent reiterated that although this was not "his stop," he was compelled to take charge of the situation for safety reasons. (Tr. 60) He further added that at the time he stopped Complainant and the other individuals in the group, they were "being disorderly" but he did not have reasonable suspicion to believe that Complainant had committed or was about to "commit a crime." (Tr.62) Furthermore, when asked whether this was a level 1

or level 2 street encounter, Respondent provided an evasive answer and simply stated that it would fall into whatever level Officer [REDACTED] determined that it was. (Tr. 64)

Respondent also testified that officers have discretion to issue a summons “on the street” or at the precinct, but because this group was “getting aggressive, yelling, screaming and pulling the main person away,” that was not an option here. (Tr. 66) He later admitted that besides the group of people that were with Complainant, no “crowd” had formed prior to Complainant being handcuffed. Respondent affirmed that Complainant and the other male in the group who was taken to the precinct were each issued a summons for disorderly conduct, but that no one was charged with obstructing governmental administration, resisting arrest or any other crime.

CCRB Exhibit 3: Detective Maden’s BWC footage

CCRB’s Exhibit 3 is footage from Respondent’s BWC, capturing the encounter between Respondent and the group of four individuals (including Complainant). The first minute of the BWC footage contains no audio. The following is a summary of the relevant portions of the video:

- | | |
|--------------|--|
| 00:33-01:00: | Respondent exits the unmarked police vehicle and approaches the four individuals who are standing on the corner of what appears to be a residential area. The group of four individuals consists of 1 female and 3 males (including Complainant). Officer [REDACTED] exits the driver’s side of the vehicle, but stays close to the vehicle. As Respondent approaches the group, it appears that one of the males in the group (who is wearing a blue vest with a neon yellow stripe) is verbally engaging Respondent while the other members of the group are standing behind him. Respondent grabs the male wearing a blue vest with neon yellow stripe by his hood and pulls him back and away from the group. Officer [REDACTED] points at Complainant and walks toward him. Respondent then points at the male wearing a blue vest with the neon yellow stripe. |
| 01:00-01:31: | When the audio begins, the group can be heard being loud and boisterous while engaging in a verbal dispute with officers. Complainant then ushers the other two males in the group down the street and away from Respondent. The male wearing a blue |

vest with the neon yellow stripe yells at Respondent stating: "Why you doing this shit for? Stop harassing us!" Respondent replies: "Come on tough guy let's do this! I will take you back to the precinct." As Officer [REDACTED] approaches Complainant, Complainant states: "I will give you what you want. You want my ID?" Respondent then addresses Complainant by stating: "You like to yell? What did you say? Get the fuck out of here? Oh, you're a tough guy? Give me your ID and come over here."

01:32-02:00: Respondent proceeds to grab Complainant by the arm and pull him toward the RMP. Complainant attempts to pull away from Respondent's grasp. Respondent yells: "Don't do that to me! You're playing with the wrong guy!" Once Respondent gets Complainant to the car, Officer [REDACTED] walks away from the car and toward the other members of the group who are standing a short distance away. Respondent repeats: "Let me get your ID." Complainant responds: "Alright" and motions toward his fanny pack. Respondent yells at Complainant: "Stop doing that! You wanna go to the precinct?" Respondent proceeds to handcuff Complainant while Complainant responds: "For what? I'm trying to give you my ID." Officer [REDACTED] walks back toward Respondent and helps him handcuff Complainant.

02:01-03:00: As Respondent is handcuffing Complainant, he states: "You wanna play? We know how to play!" The male wearing a blue vest with the neon yellow stripe approaches Respondent and Complainant and Respondent now shifts his attention to this male and says: "Don't get near me." Officer [REDACTED] states: "Back up!" Respondent points at the black male wearing a blue vest and states: "You wanna come too?" The camera is blurred for a few seconds and then Respondent is seen pushing the black male wearing a blue vest to the ground and stating: Cuff him! Respondent then states: "I told you to disperse how many times? You come back and call me a bitch and yelling causing a crowd to form? You think you can do this? You can't do this!" Respondent then stands this male up and escorts him toward the RMP where Officer [REDACTED] is holding the handcuffed Complainant.

03:00-04:10: Respondent points at the third male and the female and states: "You back up or you are going too!" The male and female comply and back away from Respondent. Respondent can be seen holding the handcuffed black male wearing a blue vest against the trunk of the RMP while Officer [REDACTED] is holding the handcuffed Complainant against the side of the RMP. Complainant and the black male wearing a blue vest continue yelling and cursing at the officers. Several other police vehicles begin to arrive.

- 04:11-05:31: Respondent yells at the other male and female stating: "Just leave before you get arrested!" As other officers arrive, Respondent instructs the officers to "check them," referring to Complainant and black male wearing a blue vest. Respondent then states: "Shut up tough guy! Don't forget, you started all this by cursing at us!" Respondent then walks away from them and toward the other male and female who are now standing a few feet away surrounded by other officers.
- 05:32-06:13: Two other civilians approach (a male and female) the area and Respondent yells: "Back up [REDACTED], I'm not trying to take you either!" As other officers are searching Complainant, Respondent walks over to Complainant and states: "Yeah, next time you keep your mouth shut! We gotta teach lessons out here, I guess!" A supervising officer in a white shirt approaches Respondent and asks: "Any outstanding?" Respondent replies: "No." The same supervising officer asks, "Car stop?" Respondent answers: "Nah, just a discon...acting up for no reason."

CCRB Exhibit 4: Officer [REDACTED]'s BWC footage

CCRB's Exhibit 4 is BWC footage depicting the same encounter described above, but from Officer [REDACTED] vantage point. Although the footage is substantially similar to that of Respondent's BWC, CCRB Ex. 4 clearly captures the words exchanged between Officer [REDACTED] Respondent and the group that was stopped. When the audio commences at the 01:00 mark on Officer [REDACTED] BWC, it is Respondent's voice and the voices of the individuals in the group that are predominantly heard. Throughout his interaction with the members of this group, Officer [REDACTED] remains even-keeled and composed. It is evident from the words he uses when addressing the group and his tone of voice that Officer [REDACTED] is attempting to deescalate the situation. Officer [REDACTED] appropriately directs the group to "back up," "chill out," "stop moving" or "relax" at various points during this encounter. At no point during the 07:21 video does Officer [REDACTED] raise his voice or interact in a hostile manner with the group.

It is also apparent, through his words and actions, that Respondent is taking charge of the situation.

Specification 2: Issuing a Retaliatory Summons without Sufficient Legal Authority

Respondent is charged with engaging in conduct prejudicial to good order, efficiency or discipline of the Department in that he issued a retaliatory disorderly conduct summons without sufficient legal authority. Respondent claimed that this was “Officer [REDACTED] stop” and he was just along for the ride. This statement, however, is an uncorroborated factual assertion. Respondent further contends that because his name does not appear on the summons (Resp. Exhibit A), and he was not the officer that physically issued the summons to Complainant, he cannot be found guilty of this specification. The issues before this Tribunal are: 1) Can Respondent be held liable for conduct prejudicial to good order of the Department, if his name does not appear on the summons issued to Complainant?, and 2) was the summons issued to Complainant without sufficient legal authority? This Tribunal finds the answers to both questions to be: yes.

Although the summons issued to Complainant was not authored or entered by Respondent, it is clear to this Tribunal that his actions on the night in question *caused* it to be issued. The term “issue” is defined by Merriam-Webster Dictionary as “the action of going, coming or flowing out; something coming forth from a specified source.” As noted above, Respondent took charge of the encounter with the group immediately upon exiting the RMP. He issued directives to Complainant to produce his identification and when he did not comply in a timely fashion, Respondent made the decision to detain him as evidenced by the fact that he stated to Complainant, “You wanna come to the precinct? Fine,” (CCRB Ex. 3 at 01:50) as he placed handcuffs on him. Moreover, CCRB Ex. 3 shows the moment when a supervising officer

in a white shirt approaches Respondent and asks: "Any outstanding?" Respondent replies: "No." The same supervising officer asks, "Car stop?" Respondent answers: "Nah, just a discon...acting up for no reason." This is a clear indication that Respondent made the determination to detain Complainant for disorderly conduct. The fact that a fellow officer, with less experience than Respondent, wrote the summons and provided it to Complainant, does not change the fact that Respondent's actions were the proximate cause of its issuance. As affirmed by Respondent at the hearing, it is a common practice for one officer to initiate a stop and a different officer to prepare the arrest paperwork. (Tr. 63) This Tribunal concludes, therefore, that the fact that Respondent's name is not on the paperwork, does not absolve him of responsibility for being the source from which its issuance arose.

This tribunal further finds that the summons was issued without sufficient legal authority. The summons charged Complainant with disorderly conduct under Penal Law Section 240.20 (3). That section states: "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof . . . in a public place, he uses abusive or obscene language, or makes an obscene gesture." Guidance for what constitutes disorderly conduct comes from the Department's Legal Bureau Bulletin on "Disorderly Conduct," Vol. 47. No. 2, dated February 2017. The Bulletin notes that there is both a "public harm" requirement and an "intent" requirement: in order for an arrestee to be charged with disorderly conduct, he must have "caused actual or threatened public harm," with "the intent to cause public inconvenience, annoyance, or alarm." Respondent testified that Complainant was being charged with disorderly conduct for his behavior up until the point where he was handcuffed. At issue is whether Complainant's actions constituted disorderly conduct. I find that they did not.

On the one hand, the video footage supports Respondent's contention that Complainant was uncooperative with the officers, in that he did not immediately provide them with his identification and that he was continuously yelling and cursing at the officers. However, under these specific circumstances, that non-compliance did not rise to the level of disorderly conduct. Courts have held that the arrestee's conduct must satisfy the "public harm" element. In other words, "the conduct alleged must be of a public nature and must 'extend beyond the exchange between the individual disputants to a point where it becomes a potential or immediate public problem.'" *People v. Curry*, 70 Misc.3d 35 (App. Term, 2d Dept. 2020), quoting *People v. Baker*, 20 N.Y.3d 354 (2013). In this case, Complainant's offensive language was clearly directed at police officers, but in this particular instance, did not provoke public disorder or risk thereof.

The video footage for the relevant time period, also fails to show that Complainant's intent was to cause public inconvenience, annoyance, or alarm, or that he recklessly created such a risk. Up until the point where he was handcuffed, Complainant's conduct did not rise to the level required by the statute. For example, there were no bystanders visibly present at the scene other than Complainant's friends. Rather, it was evident that Complainant's conduct was limited to statements using coarse language to criticize the actions of the officers. He did not threaten the officers and his offensive comments were not accompanied by provocative acts or other aggravating circumstances. Taken as a whole, Complainant's actions did not create a risk of inciting an immediate or potential public disturbance to satisfy the public harm element of disorderly conduct. Moreover, the fact that Complainant's harsh remarks were directed at Respondent – an experienced member of service trained to defuse confrontations with civilians

like this one – further undermines any inference that there was a threat of public harm.

Therefore, the decision to issue him the summons was without sufficient legal authority.

Additionally, this Tribunal finds that Respondent used the disorderly conduct summons to retaliate against Complainant rather than as a tool to remedy an infraction of the law. Respondent allowed his personal feelings to cloud his judgment as a police officer during his encounter. Respondent, himself, revealed his retaliatory intent more than once as portrayed in CCRB Ex. 3. The first instance occurs immediately after Respondent placed Complainant in handcuffs and stated: “You wanna play? We know how to play?” (CCRB Ex. 3 at 02:00) After Complainant was handcuffed and waiting to be transported to the precinct, Respondent arrogantly and without provocation stated: “Yeah, next time you keep your mouth shut! We gotta teach lessons out here, I guess!” (CCRB Ex. 3 at 05:54) Respondent’s use of the word “we” in that phrase, is an indication to this Tribunal that he and his partner were acting together, to teach Complainant a “lesson” by detaining him and issuing a summons for disorderly conduct. I further find that Respondent’s conduct with respect to the summons was prejudicial to the good order of this Department.

Accordingly, I find Respondent Guilty of Specification No. 2

Specification 1: Detained Complainant without Sufficient Legal Authority

Respondent is charged with wrongfully detaining Complainant without sufficient legal authority. Based upon the relevant credible evidence in the record, I find that Respondent did not have sufficient legal authority to detain and handcuff Complainant.

It is clear from the video evidence that Respondent took charge almost immediately after exiting the car. Respondent was the first of the officers to approach and engage in verbal

discourse with the group on the street, he was the only one giving the group directives in the beginning and he ultimately made the decision to detain Complainant as evidenced by the fact that he stated, “You wanna come to the precinct? Fine.” (CCRB Ex. 3 at 01:50) as he placed handcuffs on him. Moreover, Respondent through his own testimony, reiterated several times that he “had to take charge” because, in his opinion, neither Officer [REDACTED] nor Sergeant [REDACTED] were proactive. Additionally, Complainant’s hearsay testimony, which substantially corroborates the video evidence, supports the premise that Respondent was the person taking the lead in this encounter.

Respondent attempted several times throughout his testimony to divest himself of responsibility for the detention by affirming that it was Officer [REDACTED] decision to stop complainant. However, there is no extrinsic evidence to corroborate this factual assertion and Respondent’s actions prove otherwise. It is quite clear from the video evidence presented that the decision to detain and handcuff Complainant was made by Respondent.

Furthermore, Respondent by his own admission, acknowledged that the only offense he suspected Complainant committed was disorderly conduct. The videos in evidence make it readily apparent that Complainant and his friends were loud, boisterous and disrespectful to the officers including Respondent. The group’s comportment, however, did not rise to the level of disorderly conduct as discussed in the previous section.

This Tribunal can only conclude that the Respondent took the group’s behavior as a personal affront and that he used his authority as a police officer to detain Complainant. Respondent allowed his personal feelings to cloud his judgment as an officer of the law. Accordingly, I find the Respondent Guilty of Specification No. 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. It should be noted that Respondent has no prior formal discipline.

Respondent, who was appointed to the Department on July 9, 2014, has been found guilty of detaining Complainant without sufficient legal authority. He has also been found guilty of the retaliatory issuance of a summons to Complainant. The CCRB has recommended that Respondent forfeit 13 vacation days for the misconduct in this case. Under the facts and circumstances presented in the record, I concur with the CCRB's recommendation.

The presumptive penalty for an unlawful detention, which is akin to a "seizure of person" in the Disciplinary Penalty Guidelines, is three penalty days. The presumptive penalty for an enforcement action involving abuse of discretion or authority is 20 days, the mitigated penalty is 10 days and the aggravated penalty is termination. I find that three penalty days for the unlawful detention is appropriate as is the mitigated penalty of 10 days for the retaliatory issuance of the summons, for a total of 13 consecutive vacation days.

Respondent asserted, without corroboration, that his initial interaction with the group on the street was based upon his reliance on a fellow officer's belief that they were being disorderly. However, as the more experienced officer on scene, albeit not the highest rank, he was expected to attempt to de-escalate the encounter rather than fueling it. Instead, BWC footage shows that

Respondent reacted to the groups' disparaging comments by detaining, handcuffing and causing the issuance of a summons.

The record established that Respondent caused the issuance of a summons as a punitive exercise of his authority as evidenced by his statement to Complainant that he was being "taught a lesson." As a member of the Department since 2014, he is expected to know the core requirements for disorderly conduct and act accordingly. The credible evidence presented at trial shows that Respondent detained and caused the issuance of a summons for disorderly conduct when the facts did not justify it because he was offended by the group's use of coarse language to criticize the officers' actions. Respondent, as a police officer, must learn to diffuse these encounters and not be so quick to personalize civilians' opinions and frustrations. Respondent's responsibility is to enforce the law when laws are violated, but it is not his job to retaliate against people who behave in a vociferous and offensive manner. Accordingly, there must be some accountability for his actions.

On balance, I find Respondent's unblemished disciplinary record for the past ten years of active service to be a mitigating factor. He has had close to 300 arrests in the past 10 years which means he is proactively policing. Additionally, he has consistently received very positive performance evaluations and be awarded over 20 Department medals. The fact that Respondent has had no other formal disciplinary history in his career with the Department and has been promoted to the rank of Detective since this incident occurred, signals to this Tribunal that the misconduct for which he has been found guilty was an aberration of his character.

Taking into account the facts and circumstances surrounding this matter balanced with Respondent's strong employment record over the past decade, I recommend that Respondent forfeit thirteen (13) vacation days.

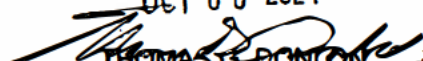
Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

OCT 08 2024



THOMAS G. DONLON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE VOLKAN MADEN
TAX REGISTRY NO. 956863
DISCIPLINARY CASE NO. 2023-28137

Respondent was appointed to the Department on July 9, 2014. On his most recent performance evaluations, he twice received 4.5 ratings of “Extremely Competent/Highly Competent” in 2023 and 2024, and was rated “Exceptional” for 2021. He has been awarded four medals for Meritorious Police Duty and 18 medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials