



POLICE DEPARTMENT

December 21, 2018

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2018-18568
Police Officer Jose Rendon	:	
Tax Registry No. 947942	:	
114 Precinct	:	

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

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Jeannie Elie, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Jose Rendon, on or about September 29, 2017, at approximately 1623 hours, while assigned to 114 PCT and on duty, in the vicinity of [REDACTED] Queens County, wrongfully used force, in that he used physical force, namely pulled Jonathan Delmonte from inside of his vehicle, without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

2. Police Officer Jose Rendon, on or about September 29, 2017, at approximately 1623 hours, while assigned to 114 PCT and on duty, in the vicinity of [REDACTED] Queens County, abused his authority as a member of the New York City Police Department, in that he damaged Jonathan Delmonte's property without sufficient legal authority.

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

PUBLIC CONTACT -
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 15, 2018. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Jonathan Delmonte as a witness. 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 reviewed all of the evidence in this matter, I find Respondent Guilty of Specifications 1 and 2 and recommend a penalty of the forfeiture of ten vacation days.

ANALYSIS

In this case it is undisputed that on September 29, 2017, at approximately 1623 hours, Jonathan Delmonte was involved in a three car collision in the vicinity of [REDACTED] [REDACTED] Mr. Delmonte was driving and was alone in his car which received both front and rear end damage. Respondent at the time of the accident was on duty, in uniform, in a marked SUV. He and a partner were conducting a traffic stop a short distance away from the collision involving Mr. Delmonte's vehicle. Respondent and his partner approached the

scene of the collision, which was in the middle lane of a three lane road. Mr. Delmonte was outside of his vehicle. Respondent told all three drivers to move their vehicles over to the right side of the road. Mr. Delmonte and Respondent differ in their versions of what happened after this point.

Mr. Delmonte testified that he was driving home from work and was stopped in the middle lane of a three lane road when a car hit him from behind and pushed him into a car in front of him. (Tr. 12-13) After the accident he and the drivers of the other two cars got out to inspect the damage. Respondent and another officer came to the scene from where they had been stopped about two car lengths away. They told the drivers to move their cars to the far right, which they all did. Mr. Delmonte moved his car into the front position of the three cars in the right lane. His car was now about three car lengths from its original position. (Tr. 14-15, 18) He said he was the first of the three drivers to move a car and it took him about 30 seconds to do so after receiving the instruction from Respondent. (Tr. 16-17) Mr. Delmonte testified that Respondent moved the police car into a position in the middle lane toward the back of the three cars now in the right lane and the police vehicle was positioned to block traffic in the middle lane. (Tr. 20)

After moving his car to the right lane, Mr. Delmonte again got out of his car because his back and legs were hurting. While outside of the car he called his father since the paperwork for the car was in his father's name and also to tell him what happened. (Tr. 20-21) Mr. Delmonte testified that he was on the driver's side of his car and that no cars were passing him in the middle lane at that time. The other drivers were also out of their cars and Respondent was standing near the middle car, about a car's length away from Mr. Delmonte. (Tr. 22)

Mr. Delmonte testified that while he was on the phone with his father, Respondent yelled at him to get back in his car and Mr. Delmonte loudly yelled, "okay" back at him. Mr. Delmonte got into the car and "slammed" his car door. Mr. Delmonte described feeling "frustrated" at the time. (Tr. 22-23) Mr. Delmonte was still on the phone with his father as he got back into the car. (Tr. 65) Mr. Delmonte further testified that about twenty seconds after he was seated back inside his car, Respondent rushed towards the car, opened the car door and reached over and grabbed him by the top left shoulder and neck area. In the process of grabbing him, Respondent scratched Mr. Delmonte's shoulder and neck area. (Tr. 24-25) According to Mr. Delmonte, Respondent pulled him out of the car and pushed him against the rear passenger door on the driver's side. Respondent then handcuffed Mr. Delmonte. (Tr. 25-27) Mr. Delmonte was then placed in the police car where he noticed that half of his neck chain was hanging out of his shirt. He told Respondent that his chain was falling to which Respondent replied that he shouldn't worry because it wasn't going anyplace. When the chain did fall onto the seat of the police car, Mr. Delmonte maneuvered, while still in handcuffs, to get the chain and put it in his pocket. He testified that the chain had not been broken immediately after the collision or when he got out of his car after the collision and that the first time he saw it was broken was in the police car. A week after the accident, Mr. Delmonte got the chain repaired. (Tr. 27-29) Pictures of the broken chain with a stamp of September 29, 6:40 PM were admitted into evidence. (CCRB Ex. 2C and 2D) A receipt from a jewelry store for repair of a chain dated October 7, 2017, was also admitted into evidence. (CCRB Ex. 3) Mr. Delmonte testified that he only owns this one gold chain which his father gave him as a present for his school graduation. (Tr. 39)

Respondent gave Mr. Delmonte a summons for disorderly conduct and released him at the scene. (Tr. 35) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (CCRB Ex. 1, page 8) Also admitted into evidence were two photos of scratches on Mr. Delmonte's neck with a stamp of September 29, 7:30 PM. (CCRB Ex. 2A and 2B)

Mr. Delmonte went to the 115 precinct that night to make a complaint about Respondent. The poster on the wall at the precinct had information on how to call IAB, which he did the next day. He has never reported anything to CCRB before and he is not suing the city regarding the incident. Respondent had never been handcuffed or arrested before this incident and when he went to court regarding the disorderly conduct summons, the judge dismissed the case. (Tr. 40-42, 62-63)

On cross-examination, Mr. Delmonte acknowledged that at the time he got out of his car after moving it to the right lane, he was in the center lane looking at the damage to his car and there were cars proceeding in the left lane of the road after the police car blocked the middle lane. (Tr. 57) He also acknowledged that the Respondent was screaming at him when he asked him to get back into his car and that he thought that Respondent was being very rude since he could see that Mr. Delmonte was on the phone. (Tr. 58) At that time, Mr. Delmonte felt both physically hurt from the accident and upset about what he perceived to be the officer's loudness and rudeness. (Tr. 59-60)

Respondent testified that he has been a police officer since 2009 and was trained at the academy on safeguarding a traffic accident scene. (Tr. 72-73) On September 29, 2017, he was conducting a traffic stop when he heard and saw the collision involving Mr. Delmonte's car. He and his partner drove their marked SUV to the scene. Respondent described the traffic conditions as being rush hour traffic. He positioned his vehicle at an angle in the far right lane so that it was also covering a portion of the center lane. The three vehicles involved in the accident were in front of him. He activated the emergency lights on the police car. (Tr. 80) Respondent saw three people had exited their vehicles and were standing in the middle lane. Respondent described the traffic as merging into the left lane to pass the police car. The traffic was slowing down as they approached the police car, but the vehicles were speeding up at the point they passed it. (Tr. 81-82) Respondent testified that Mr. Delmonte was on his phone and he asked him to get back into his car and move it to the side of the road. Respondent further testified that while speaking in a normal volume about four feet from Mr. Delmonte, he asked Mr. Delmonte several times to get back into his car and move it. According to Respondent, Mr. Delmonte did not acknowledge the direction he was being given. (Tr. 82-83) Respondent testified that it took Mr. Delmonte approximately 30-45 seconds to get back into his car, and when he did, he sped down the road on the right until he stopped about 200/250 feet away. (Tr. 84-85) Respondent further testified that he then had to walk down the road where traffic was now freely flowing to where Mr. Delmonte was again on the phone outside his car. Respondent again asked Mr. Delmonte to get back into the car and reverse it back to the scene. He asked him this several times while Respondent was standing out in the middle of traffic and Mr. Delmonte remained on his phone continuing to engage in a phone conversation. After about 20 seconds Mr. Delmonte did get back into his car and backed it up close to the scene of the accident. After reversing the

car, Mr. Delmonte got out of his car again and was still on the phone in the area of the center lane. (Tr. 85-86) Respondent approached him and asked him to return to his car. Respondent testified that Mr. Delmonte was uncooperative and ignored him. After asking him several times to get back into the car, Respondent placed his hand on Mr. Delmonte and guided him back to Mr. Delmonte's vehicle. Mr. Delmonte didn't say anything and walked back to his vehicle with Respondent. When they got to Mr. Delmonte's car, Respondent asked him to stay inside the car. Respondent thought that Mr. Delmonte wasn't aware of what was going on around him and wasn't appreciating the danger of where he was standing. Respondent told Mr. Delmonte to get into the car. Respondent thought Mr. Delmonte didn't want to get inside his car so he reached for his handcuffs. Respondent told Mr. Delmonte he was going to place him in handcuffs and place him under arrest. Respondent testified that at that point Mr. Delmonte stepped away, said, "okay, okay, okay," and tried to get into his vehicle, thereby preventing Respondent from arresting him. When Mr. Delmonte leaned away from Respondent, Respondent grabbed him on his shoulder or by the top of his arm. Respondent describes having about a second or two of contact with Mr. Delmonte when he grabbed him with his hand palm down with his fingers slightly separated. (Tr. 87-89, 108, 110) Respondent then gained control of Mr. Delmonte and handcuffed him. Mr. Delmonte was cooperative. Respondent issued him a summons for disorderly conduct for obstructing vehicular traffic. (Tr. 89) Respondent never saw any chain on Mr. Delmonte nor did he hear Mr. Delmonte say anything about a chain during the incident. (Tr. 91)

On cross-examination, Respondent didn't remember asking Mr. Delmonte to get off his phone and acknowledged he was giving him the instructions to move his vehicle while Mr. Delmonte was engaged in a conversation on the phone. (Tr. 94-95, 99) Respondent doesn't

remember any cars honking while Mr. Delmonte was standing outside his car, nor did any other vehicle stop. (Tr. 105-06) Respondent did not see Mr. Delmonte walk into the far left lane of traffic but did see him walk in the center lane in an area near the front bumper of his car. (Tr. 106-07) Respondent acknowledged that the other two drivers were standing outside their vehicles with the other officer. (Tr. 111) Respondent stated that the time from when he came to the accident scene until the time he placed Mr. Delmonte in handcuffs in the police car was a total of about five to eight minutes. (Tr. 99) Also on cross-examination, Respondent testified that he does not recall ever giving any other motorist of an accident a summons for disorderly conduct in his eight years as a police officer. (Tr. 104)

In evaluating this case, I found Mr. Delmonte to be extremely credible. He testified in a calm manner throughout both his direct examination and a fairly lengthy and somewhat aggressive and very detail oriented cross-examination. He never lost his composure, nor did his answers on cross-examination undermine or weaken his direct testimony. Mr. Delmonte also took actions from the time of his encounter with Respondent which were consistent with the testimony he provided at trial. He documented the scratches on his neck within hours after the incident and provided date and time stamped photos. The marks in the photos are consistent with marks that would be made by being grabbed in the manner described by Mr. Delmonte. Mr. Delmonte also reported what happened that same night and the following day. In the notes from the hospital nurse taken within hours after the accident there is documentation that Mr. Delmonte said that a police officer caused his scratches. Adding to his credibility it is important to note that there was no embellishment on Mr. Delmonte's part by attributing any of his other injuries sustained in the accident to a police officer. Also of significance is that Mr. Delmonte did not delay in reporting the incident to IAB either. Mr. Delmonte's testimony is not tainted by any

possible bias that could result from having a monetary stake in the outcome of the case based on any underlying civil lawsuit, as he has filed no such suit. Mr. Delmonte's testimony was also supported by the documentation he provided of pictures of his broken chain, again with a time stamp indicating they were taken within hours of the incident. There was also documentation showing that Mr. Delmonte had a chain repaired shortly after the incident.

In contrast to Mr. Delmonte's testimony, the testimony given by Respondent does not have the complete ring of truth to it. Respondent contended that he feared that Mr. Delmonte was unaware of his surroundings and was in danger of getting hit by cars who might speed back near the center lane of traffic. Yet in actuality Respondent's actions seemed to show very little concern for Mr. Delmonte's safety as a party to a car accident. First of all, Respondent provided no testimony that he took steps to make sure Respondent was capable of responding to his instructions to get into the car. He did nothing to confirm that Respondent even heard him, such as asking him to put down the phone for a minute or even inquiring whether he heard the instruction. Only after testifying that he had no conversation with Mr. Delmonte except telling him several times to move his vehicle, did Respondent respond to a question on cross-examination that he asked Mr. Delmonte at some point if he was injured. According to Respondent, Mr. Delmonte did tell him he was injured. Despite the fact that Mr. Delmonte refused medical treatment at the scene, there was no testimony from Respondent that he made further inquiry about the injuries or ascertained if the type of injuries Mr. Delmonte had would in any way have impacted on his hearing or would have prevented him from instantaneously doing what Respondent told him to. According to his own testimony all Respondent did was repeat his instruction to Mr. Delmonte to get in the car. There is no testimony that Respondent even tried to explain to Mr. Delmonte, an accident casualty who might have been upset or even dazed, that

he was in an unsafe position and that is why he should remain in his car. According to Respondent all he did was tell Mr. Delmonte he couldn't stay in the middle lane.

Instead what we have from Respondent's own testimony is that Mr. Delmonte did essentially comply within 30-45 seconds with the first instruction to get in his car and move it. Again based on Respondent's own testimony, Mr. Delmonte complied within 20 seconds of being told to back up his car after he moved it. And finally, while Respondent's stated goal was to get Mr. Delmonte to go inside his own car, it is at the point where Mr. Delmonte is moving into his car that Respondent, according to his own testimony, grabs this accident casualty as he is again doing what he has been told to do by Respondent. Even if this action on Mr. Delmonte's part of moving into his car was prompted by seeing the handcuffs, he was entering the safe space the Respondent claimed he wanted him to be in when Respondent decided to grab him back out into the roadway.

Respondent testified that from the time he first came on the scene to the time he had Mr. Delmonte in the police vehicle was a total of five to eight minutes. In that short period of time Respondent had to approach Mr. Delmonte, Mr. Delmonte spent time moving his car twice, he got into his car at least two times and was on his way into the car a third time, he was handcuffed and moved to a police car. There is only a very short period of time remaining when Mr. Delmonte could have been standing outside his car while the Respondent was telling him to get into the car. As someone who was just involved in a front and rear end collision, it seems very unlikely that Mr. Delmonte was so disobedient to Respondent for such a period of time that Respondent needed to actually grab Mr. Delmonte out of his vehicle where he was safe and then pull him back into the roadway and handcuff him.

I am crediting Mr. Delmonte's version of events as the more credible version of what happened during the incident and find that CCRB has met their burden. I therefore find that Respondent wrongfully used force to pull Mr. Delmonte out of his car without police necessity. I also credit Mr. Delmonte's testimony in that in the course of pulling Mr. Delmonte out of the car, Respondent damaged his chain without sufficient legal authority. I find Respondent Guilty of Specifications 1 and 2.

PENALTY

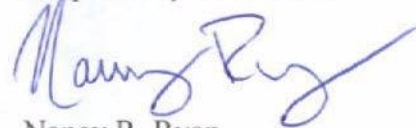
In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 14, 2009. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

CCRB has requested that a penalty of the loss of 15 vacation days be imposed and have cited two cases, Disciplinary Case Nos. 2015-14319 and 2016-15603 in support of their request. Both of those cases however involved an officer punching people in the face. Those facts differ from the facts in this case in which the Respondent grabbed and scratched Mr. Delmonte. The present case is more properly compared to the decision in Disciplinary Case No. 2015-14828, signed October 6, 2017, in which a nine-year police officer, with no prior disciplinary history, forfeited five (5) vacation days for wrongfully striking an unidentified youth in the face with an open hand or Disciplinary Case Nos. 2016-15348 & 2016-16054, signed December 7, 2017, in which a twenty-year lieutenant, with no prior disciplinary record, forfeited 7 vacation days after being found guilty of (i) discourtesy, and (ii) engaging in conduct prejudicial to the good order, efficiency or discipline of the Department for smacking a cellphone out of the complainant's

hand. Based on this more applicable precedent and a review of Respondent's service record, I recommend that Respondent forfeit ten vacation days.

While the recommended penalty of the loss of ten vacation days is higher than the five and seven day penalties cited above, the present case can be distinguished from those two cases. Here Respondent, who was in a position to help an accident casualty, acted instead in what can be seen as an insensitive and unnecessary way. Respondent encountered someone who had just been in a car accident, who had indicated to Respondent he was injured, and who was in the process of doing what Respondent told him to do, and yet Respondent placed this person into handcuffs within minutes after the accident.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

FEB 06 2019



JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSE RENDON
TAX REGISTRY NO. 947942
DISCIPLINARY CASE NO. 2018-18568

Respondent was appointed to the Department on January 14, 2009. On his last three annual performance evaluations, he received 3.5 overall ratings of "Highly Competent/Competent" for 2015 and 2016 and a 3.0 "Competent" rating for 2014. Respondent has received one medal for Excellent Police Duty. [REDACTED]

Respondent has no formal disciplinary history. He was placed on Level 1 Force Monitoring on August 17, 2016, for having received three or more CCRB complaints in one year. Monitoring remains ongoing.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials