



POLICE DEPARTMENT

January 2, 2019

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

- against - :

Police Officer Karim Powell :

Tax Registry No. 953270 :

114 Precinct :

Case No.

2017-17657

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

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Rachel Grinspan, Esq.  
Department Advocate's Office  
One Police Plaza, 4th Floor  
New York, NY 10038

For the Respondent: Eric Sanders, Esq.  
The Sanders Firm, P.C.  
30 Wall Street, 8<sup>th</sup> Flr.  
New York, NY 10005

To:

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

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## CHARGES AND SPECIFICATIONS

1. Said Police Officer Karim Powell, on or about March 29, 2017, while off-duty and within the confines of the 47th Precinct, failed to comply with instructions from uniform members requesting Department identification to establish his identity during a vehicle stop.

P.G. 221-20

CONFRONTATION SITUATIONS

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on November 7 and 29, 2018. Respondent, through his counsel, entered a plea of not guilty to the charge. The Department called Police Officers Derrick Viruet and Ryan Swift as witnesses. 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. I find Respondent guilty and recommend the imposition of a penalty of the loss of ten vacation days.

## ANALYSIS

It is undisputed that on March 29, 2017, Respondent was an off-duty police officer driving a friend's car in an area within the 47 precinct. Police Officers Derrick Viruet and Ryan Swift, both assigned to the 47 precinct at the time, were on-duty, in uniform, and patrolling in a marked RMP. Officers Viruet and Swift encountered Respondent during a car stop. The sole dispute in this case is whether Respondent complied with requests from these officers to establish his identity after his vehicle was pulled over.

Officer Viruet testified that he was working a 1500 by 2335 tour on March 29, 2017. He was assigned to patrol and was the recorder in a marked RMP driven by Officer Swift. While parked on East 212 Street, he observed a motorist heading south on Paulding Avenue who failed to stop at a stop sign. (Tr. 20-21) Officer Viruet and his partner decided to stop the vehicle and activated the RMP's lights and horn siren as they attempted to stop the motorist. (Tr. 22) Initially, they were about one car length behind the motorist and there were no cars between their

RMP and the motorist's vehicle. The motorist did not stop and proceeded to make a right turn on East Gun Hill Road and then a left onto Colden Avenue. (Tr. 23-24, 46) The motorist still did not stop and made a quick right on Magenta Street and then a left turn onto Radcliff Avenue. The motorist finally stopped at the corner of Radcliff Avenue and Duncan Street. (Tr. 25-26)

Officer Viruet testified that his RMP pulled up behind the stopped motorist and through the PA system the officers told the motorist to roll down the windows, turn off the car and put the keys on top of the vehicle. The motorist complied with these instructions. Officer Viruet then approached the passenger side of the vehicle while Officer Swift approached the driver's side. (Tr. 26) Officer Viruet heard Officer Swift identify himself to the motorist, tell the motorist he was being pulled over because he didn't stop at a stop sign and ask for the motorist's license, registration and proof of insurance. Officer Viruet did not see if the motorist showed Officer Swift any type of identification. He did see the motorist lean over to his right side, pull something out of his back pocket and quickly place it back in his pocket. He never saw the motorist hand anything to Officer Swift, nor did he ever hear the motorist say he was on the job. Officer Viruet described Officer Swift as having a "puzzled look" on his face at this time. (Tr. 27-28) Officer Swift told Officer Viruet that the motorist said he was on the job but that he didn't see an I.D. Officer Viruet testified that he removed the keys from the top of the motorist's car and he and Officer Swift went back to the RMP where Officer Viruet called a supervisor. (Tr. 29) The supervisor advised that he would come to the scene and told Officer Viruet to go back to the motorist and find out if he really was a police officer and, if so, to take the I.D. so the supervisor could see it when he got there. Officer Viruet and Officer Swift went back to the motorist and while they were both standing on the driver's side of his vehicle, Officer Swift asked the motorist for his job I.D. (Tr. 30) Officer Viruet testified that in response to this request, the motorist stated, "I showed it to you once already; I'm not gonna show it to you

again.” Officer Swift asked the motorist for the I.D. again more than two times. Officer Viruet then asked the motorist if he could see the I.D. since his partner didn’t see it. According to Officer Viruet, the motorist said, “I showed it to your partner already; I’m not going to show it to you again.....I’ll show it to you when the supervisor comes.” Officer Viruet testified that he then informed the motorist that this was about the Patrol Guide procedure for confrontations and since he and his partner were the ones in uniform, the motorist had to comply when asked to produce his I.D. The motorist said he was still going to wait for the supervisor to come. Officer Viruet then asked the motorist to step out of the vehicle, which he did. Officer Viruet described pleading with the motorist to show them his I.D. if he was really a cop. The motorist still wouldn’t show them the I.D. so the officers placed him in handcuffs and retrieved a police I.D. card from the motorist’s pocket indicating the motorist was Respondent. After the supervisor arrived at the scene and spoke to Respondent, the supervisor ordered Officers Viruet and Swift to remove the handcuffs from Respondent, which they did. (Tr. 30-34)

On cross-examination, Officer Viruet recalled that the Patrol Guide confrontation policy indicates he was to ask for credentials if someone said they were on the job and that if there was a disagreement about the credentials, a supervisor was to be called. (Tr. 39) When asked if Respondent’s actions in first stating that he already showed his I.D. and then requesting that a supervisor be called were in compliance with the confrontation policy, Officer Viruet stated that they were. (Tr. 40) Officer Viruet also testified that the legal basis for handcuffing Respondent was that Respondent identified himself as a police officer but failed to prove it, so Respondent at that time was impersonating a police officer. (Tr. 42) Officer Viruet did not fill out any voided arrest paperwork. (Tr. 43) He acknowledged that while he was pursuing Respondent’s vehicle before it stopped, he did not transmit over the radio that he was following a vehicle as he had been trained to do. (Tr. 45-46) Officer Viruet also acknowledged that he had seen Respondent

about three and a half years before testifying when he saw him have an argument with Officer Vinzo. He testified that he did not know at that prior time that Respondent was a police officer, nor did he remember the incident at the time he pulled Respondent over. He only made the connection when Officer Vinzo saw Respondent at the precinct after this present incident. (Tr. 50-53)

Officer Swift testified about the events leading up to the stop of Respondent's car in a similar sequence to that of Officer Viruet. Upon stopping the vehicle, Officer Swift approached the driver's side of Respondent's car and noticed the window was down. He doesn't recall any music playing at the time. Officer Swift testified that he gave Respondent his name and command, told him he was being stopped for failing to stop at a stop sign, and asked for identification. (Tr. 66-67) When Respondent said he was on the job, Officer Swift asked to see some identification to corroborate that. According to Officer Swift, Respondent then reached into his left front pocket and pulled out something that appeared to Officer Swift to be like a shield wallet and flashed the front part at Officer Swift. Officer Swift couldn't see what had been displayed because there was plastic that had been "hazed over." Officer Swift could not see if there was an I.D. in the wallet. When Respondent put the wallet back into his pocket, Officer Swift asked to take out the I.D. card so he could see it. In response, Respondent kept saying, "Come on. I'm on the job." (Tr. 67) Officer Swift asked Respondent what job he was on and Respondent replied, "the same job as you." Officer Swift described Respondent's demeanor as "cavalier," and "pretty laid back." Officer Swift testified that while he was at Respondent's car window, he never held Respondent's I.D. card in his hand and that no I.D. card was ever physically handed to him. (Tr. 68-69)

Officer Swift testified he received instructions from the desk officer to take Respondent out of the car and retrieve an I.D. if he had one. He asked Respondent to get out of the car,

which he did. They again asked him for an I.D. and Respondent refused to provide one. Officer Swift thinks he asked Respondent for his I.D. no less than ten times. Officer Swift testified that Respondent was placed in handcuffs for "officer safety." He later testified that he was placed in handcuffs because he committed a traffic infraction, didn't present his license and claimed he was a police officer so at that point he could have been arrested for the traffic violation or impersonating a police officer. Officer Swift did not frisk Respondent for weapons. Officer Swift reached into Respondent's pocket and retrieved the wallet. Inside of it he found a New York City Police identification card for Respondent. When the patrol supervisor arrived, Officer Swift gave him the I.D. card and was instructed to remove the handcuffs from Respondent. (Tr. 69-72, 86, 98-99, 104)

On cross-examination, Officer Swift acknowledged that he did not fill out documents indicating he placed Respondent in handcuffs, or that he voided an arrest. He also did not issue Respondent any summons for a traffic violation. (Tr. 79-81, 83) During the initial pursuit of Respondent, Officer Swift did not transmit over the radio that they were involved in a vehicle pursuit. He also acknowledged that he found out after the fact that Officer Viruet called the desk sergeant instead of the patrol supervisor as specified in the confrontation situation protocol. (Tr. 88-90, 103)

Respondent testified that he was driving towards his home in a friend's car that had a New Jersey license plate. Since he used to be a certified mechanic, he was test driving the car to check on a problem. (Tr. 107) He stopped the car on Radcliff Avenue when he first noticed a police vehicle trying to stop him. Officer Swift approached him on the driver's side of his car and asked him for his license and registration. Respondent testified that he told Officer Swift he was on the job. Officer Swift asked to see his I.D. and Respondent reached into his left pocket, and pulled out his I.D. wallet. Respondent showed the wallet to Officer Swift who said he

couldn't see the I.D. Respondent then pulled the I.D. out of the wallet and handed it to Officer Swift. Respondent testified that Officer Swift looked at the I.D. and then handed it back to Respondent. (Tr. 109-112) Officer Viruet then came from the passenger side to the driver's side, took the car keys off the roof, and said, "Fuck that shit." Respondent testified that he immediately recognized Officer Viruet as someone he had encountered about a year and a half to two years ago when they had an encounter over a parking situation. Respondent had placed a plaque on his window and Officer Viruet had asked him if he was a cop. When he responded that he was, Officer Viruet ask to see his I.D. or he was going to ticket the car. Respondent showed him the I.D. (Tr. 114)

After taking the car keys, Officers Swift and Viruet went back to their police car. When they returned to Respondent's vehicle, Officer Viruet, now standing next to Officer Swift, told Respondent to get out of the car. (Tr. 115) Respondent did get out of the car and Officer Viruet then told him to handover his I.D. or he was going to be placed in handcuffs. Respondent testified that he said, "Call the patrol supervisor," and then Officer Viruet told him to turn around and put him in handcuffs. (Tr. 116-17) They told him they called the patrol supervisor. Respondent, who was armed at the time, was standing outside his car in handcuffs for about ten minutes. When the patrol supervisor showed up, Respondent was placed in the back of the patrol supervisor's car. (Tr. 118) After about three minutes, Officer Swift came and said that the patrol supervisor said to remove the handcuffs and they were removed. After another few minutes, a lieutenant arrived at the scene and asked Respondent if he had a gun and an I.D. Respondent gave him his gun, I.D. and his shield. Respondent was then transported to the precinct. (Tr. 120-21)

On cross-examination, Respondent initially testified that he didn't recall if he failed to yield at the stop sign but then agreed that at his Department interview he stated that he probably

had rolled through the stop sign. (Tr. 122-23) He further testified that before he saw the lights from the police car behind him on Radcliff Avenue, he was not listening to any music but he was talking on his cell phone. (Tr. 124) Respondent testified that after he showed the officer who initially approached his driver's side window his I.D., that same officer asked for it "probably two times," after they went to their police car and returned to his car. Respondent's reason for not giving it to them when they asked these times was that he already showed it to Officer Swift. (Tr. 125-26) Respondent also testified that even though he recognized Officer Viruet, he never said anything to him about how they had seen each other and talked to each other before. He never told Officer Viruet that Officer Viruet already knew Respondent was an officer. (Tr. 129)

There is only one specification in this case and the only question to be resolved is whether by a preponderance of the evidence, the Department Advocate has proven that Respondent failed to comply with instructions from uniform members of service requesting to see his Department identification to establish his identity during a vehicle stop. I find that the Department Advocate has met this burden.

Under the Patrol Guide procedure pertaining to confrontation situations, P.G. Section 221-20, when a uniform member of the service comes upon a scene where someone states they are a police officer, as is the situation in this case, that uniformed officer (challenging officer) is to request that person (confronted officer) to give an exact location of the identification and then to produce it in a controlled manner. (P.G. 221-20 -5) The person claiming to be the police officer is to produce the identification card slowly, and if requested to do so, "remove identification card from wallet, holder, etc. and hand it to the challenging officer." (P.G. 221-20 - 7) The challenging officer is instructed to examine the credentials to insure they are valid and that the photo or description fits the individual. The officer is also to remain alert until they are fully satisfied as to the person's identity; return the credentials, if satisfied; make an activity log



entry; and request the response of the patrol supervisor. (P.G. 221-20-8,9,10,11,12) The procedure also notes in its scope section that the burden of proving identity rests with the confronted officer, whether on or off-duty.

In this case I credit the testimony of Officers Swift and Viruet that they asked Respondent for his police identification numerous times and did not receive it in a manner that allowed them to examine the credentials to make sure they are valid. Even assuming Respondent did pull his I.D. out of his pocket, and even if the wallet looked like a law enforcement officer's wallet, if the challenging officers could not clearly see the I.D. with the photo and other details, they would not have been able to insure that the credentials were valid and were correct in asking to see the I.D. again. Respondent, in his own testimony, adds credence to the testimony given by Officers Swift and Viruet in that he confirmed that they asked for his I.D. more than once. On his direct examination, Respondent described Officer Viruet as telling him to hand over his I.D. when the two officers approached his car for the second time. Importantly, however, on cross-examination Respondent clearly stated that it was the officer who initially approached his driver's side, who would be Officer Swift, who asked for I.D. "probably two times after they went to the police car...." The most likely reason the officers would have asked for I.D more than once is that they couldn't see it when Respondent just pulled out his wallet and they needed to actually be able to fully examine the credentials.

I reject the defense suggestion that Officer Viruet was in some way harassing Respondent based on a prior encounter. It does not make sense that Officer Viruet would have called any supervisor about stopping Respondent, or would have requested the patrol supervisor's presence at the scene, if his intention was simply to harass Respondent.

There also was much cross-examination of Officers Swift and Viruet about whether they followed correct police procedures through the encounter. While the defense has suggested their

failure to properly fill out forms or activity logs pertaining to the handcuffing and release of Respondent and their failure to make a radio transmission about a vehicle pursuit goes to their credibility, I find that their acknowledgement of these failures adds in a way to their credibility. They both admitted to knowing what they were supposed to do and also generally conceded to failing to do it. In addition, any failures on their part to perform required activities, merely serve as a distraction from the sole issue here, which is whether Respondent complied with their instructions to provide them with his identification.

In conclusion, for the reasons cited above, I find that Respondent is guilty of Specification 1.

### 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 July 11, 2012. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Prior cases involving the failure of an officer to provide identification upon request involve more than the one charge present in this case. In one case, a nineteen-year police officer, with one prior adjudication, negotiated a penalty of thirty (30) suspension days for interfering in the arrest of two individuals while off-duty, failing to obey all directions from uniformed Members of the Service, failing to produce her Department identification card during a confrontation situation and yelling profanities toward other Members of the Service. *Case No. 1905/10* (March 21, 2013); *see also Case No. 3504/11* (December 10, 2012) (six-year police officer with no prior disciplinary history negotiated a penalty of 30 vacation days for, while off-duty, being discourteous to an on-duty member of the service during which she directed

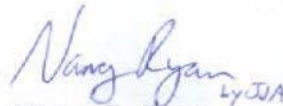
profanities towards the on-duty member, and for failing to immediately provide her Department identification and exit her vehicle upon request from the on-duty member).

Additionally, in *Case No. 70940/96* (March 9, 1998), an eleven-year police officer with no prior disciplinary record forfeited thirty (30) pretrial suspension days for disregarding direct orders of an on-duty sergeant and failing to produce his Department identification after he intervened in an enforcement situation while off duty near his residence. The hearing officer in that case noted that Respondent's "misconduct was, at the very least, a contributing factor in the escalation of a minor summons incident into an ugly scene . . . ." (Decision at 43).

In another case, an eight-year police officer with no prior disciplinary record forfeited 15 vacation days after a mitigation hearing for failing to promptly identify himself as a member of the service during a car stop. He testified that he intentionally waited a couple of minutes before identifying himself because he wanted to ascertain how the on-duty officers would treat him upon seeing his PBA card. In addition, Respondent failed to carry his shield while armed. *Case No. 2013-9397*, (June 18, 2015). And in *Case No. 2017-16838*, (December 28, 2017), with facts somewhat similar to the present case, an eleven-year officer, with no prior disciplinary record, forfeited 10 vacation days after being found guilty of failing to comply with two directives issued by a law enforcement official. Respondent failed to comply with a lawful order to step away from a crime scene. Respondent also failed to provide his police identification upon request. The lieutenant who testified in the case stated that he approached the respondent, identified himself, and requested that he leave. At some point, respondent said "I'm on the job" and the lieutenant asked to see his identification but respondent refused. The lieutenant stated that he renewed his request two more times but the respondent conditioned his tender on the lieutenant showing him his police credentials first.

The Department Advocate has requested a penalty of the loss of twenty vacation days in this case. In the present case, unlike those cited above, it should be noted that Respondent complied with all directives given to him by the challenging officers after he pulled over except to allow them to properly view his police identification credentials in a way that would allow them to insure he was in fact a police officer. Also, Respondent has no prior disciplinary cases. Based on Respondent's record and the fact that this case is more similar to the cases above which impose lower penalties, I recommend that a penalty of the loss of ten vacation days be imposed.

Respectfully submitted,

A handwritten signature in blue ink that reads "Nancy Ryan" with a small "LJR" or similar mark to the right.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

A large, stylized handwritten signature in blue ink, likely belonging to James P. O'Neill.

APR 05 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 KARIM POWELL  
TAX REGISTRY NO. 953270  
DISCIPLINARY CASE NO. 2017-17657

Respondent was appointed to the Department on July 11, 2012. On his last three annual performance evaluations, Respondent received the following: in 2014 and 2015, he received overall ratings of 3.5 "Highly Competent/Competent" and in 2016, he received an overall rating of 3.0 "Competent." [REDACTED]

On June 1, 2017, Respondent was placed on Level 1 disciplinary monitoring as a result of the charges and specifications in the present case; that monitoring remains ongoing.

He has no prior disciplinary history.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials