



POLICE DEPARTMENT

July 2, 2024

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In the Matter of the Charges and Specifications	:	Case Nos.
- against -	:	2023-28197
Police Officer Matthew Bessen	:	2023-28392
Tax Registry No. 967774	:	
75 Precinct	:	

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Deanna Everett-Johnson, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: John Tynan, Esq.
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To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2023-28197

1. Police Officer Matthew Bessen, on or about December 17, 2021, at approximately 2150 hours, while assigned to the 75 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] Kings County, abused [Officer Bessen's] authority as a member of the New York City Police Department, in that, [Officer Bessen] entered [REDACTED] [REDACTED] in Brooklyn 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 Matthew Bessen, on or about December 17, 2021, at approximately 2150 hours, while assigned to the 75 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] Kings County, abused [Officer Bessen's] authority as a member of the New York City Police Department, in that, [Officer Bessen] forcibly entered [REDACTED] [REDACTED] in Brooklyn 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

3. Police Officer Matthew Bessen, on or about December 17, 2021, at approximately 2150 hours, while assigned to the 75 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED], Kings County, abused [Officer Bessen's] authority as a member of the New York City Police Department, in that, [Officer Bessen] threatened to damage [REDACTED] Complainant's property, by threatening to remove her front door, 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

4. Police Officer Matthew Bessen, on or about December 17, 2021, at approximately 2150 hours, while assigned to the 75 Precinct and on duty, in the vicinity of [REDACTED] [REDACTED] Kings County, abused [Officer Bessen's] authority as a member of the New York City Police Department, in that, [Officer Bessen] searched [REDACTED] [REDACTED], in Brooklyn, 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

5. Police Officer Matthew Bessen, on or about December 17, 2021, at approximately 2150 hours while assigned to the 75 Precinct and on duty, in the vicinity of [REDACTED] Kings County, abused [Officer Bessen's] authority as a member of the New York City Police Department, in that, [Officer Bessen] failed to provide Complainant [REDACTED] with a business card without sufficient legal authority.

A.G. 304-11

COMPLIANCE WITH NYC
RIGHT TO KNOW ACTDisciplinary Case No. 2023-28392

1. Police Officer Matthew Bessen, on or about January 25, 2022, at approximately 2325 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the 75 Precinct stationhouse, Kings County, engaged in conduct prejudicial to good order, efficiency, or discipline of the Department, in that, [Officer Bessen] spoke discourteously to [REDACTED] without police necessity, to wit, [Officer Bessen] stated to Complainant [REDACTED] in sum and substance: "You don't have no business here" and "You can get the fuck out, too."

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

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

2. Police Officer Matthew Bessen, on or about January 25, 2022, at approximately 2325 hours, while assigned to the 75 Precinct and on duty, in the vicinity of the 75 Precinct stationhouse, Kings County, abused [Officer Bessen's] authority as a member of the New York City Police Department, in that, [Officer Bessen] threatened Complainant [REDACTED] with the use of force, without sufficient legal authority, by unholstering [Officer Bessen's] Taser during [Officer Bessen's] interaction with Complainant [REDACTED], whereas [Officer Bessen] forced Complainant [REDACTED] to leave the station house.

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

PROHIBITED CONDUCT

PG 200.02

MISSION, VISION, AND
VALUES OF THE NYPD

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 8, 2024, on two separate cases. Respondent, through his counsel, entered a plea of Not Guilty to all the charged misconduct. With regards to both matters, CCRB presented hearsay cases with video evidence. In both cases, Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in both matters, I find as follows:

Case No. 2023-28197

Specification 1 (entry):	Not Guilty
Specification 2 (forcible entry):	Guilty
Specification 3 (threat to damage property):	Guilty
Specification 4 (search):	Guilty
Specification 5 (business card):	Guilty

Case No. 2023-28392

Specification 1 (discourtesy):	Guilty
Specification 2 (threat of force):	Not Guilty

Recommended penalty: Total of twenty-three (23) vacation days

ANALYSIS

Disciplinary Case Number 2023-28197

This case arose out of a complaint made to the Civilian Complaint Review Board alleging that on December 17, 2021, Respondent entered and searched the apartment of [REDACTED] ("Complainant") without legal authority, threatened her with property damage, and, at the conclusion of the interaction, failed to provide her with a business card. In support of its case, the CCRB presented Respondent's and Police Officer [REDACTED] body-worn camera footage. Neither Complainant nor any other civilians who were present appeared before this

Tribunal to testify, but their interactions with Respondent and Police Officer [REDACTED] are captured on the body-worn camera footage. Although Complainant gave a statement to the CCRB, it was not introduced into evidence.

The following facts were presented at trial and are undisputed. Respondent and his partner, Police Officer [REDACTED], received a radio call of a larceny. Upon arrival, Respondent was met outside of an apartment building by the caller, [REDACTED] (“S.A.”), who informed Respondent that Complainant, the mother of his children, had stolen his black workbag, containing his MacBook, iPad, and a cellphone, from his apartment in Queens. (CCRB Ex. 1 at 1:14-1:25) The body-worn camera captured S.A. informing Respondent and Officer [REDACTED] that he was receiving threatening text messages from Complainant. Specifically, she was texting him “crazy stuff . . . she’s going to get me jumped . . . shot . . . she’s going to get people to hurt me . . .” (*Id.* at 1:40-1:50; CCRB Ex. 2 at 1:40-1:47) Respondent and his partner entered the apartment building and Respondent knocked on Complainant’s door several times. (*Id.* at 03:55-04:56) Complainant opened the door, wearing only underwear, while simultaneously asking, “Could you stop banging on my door?” (*Id.* at 4:56) Respondent confirmed her identity and asked, “What’s going on?” Complainant replied, “My boyfriend and I had an argument earlier and he wants to come here and I said no. . . and he said he would make lies on me and beat the shit out of me . . .” (*Id.* at 5:01-5:07)

Respondent explained to Complainant that S.A. was accusing her of taking his property, which she denied. Respondent then asked, “Can we look for it?” to which Complainant replied, “It’s not in here . . . he was never here.” (CCRB Ex. 1 at 5:45-6:15) Complainant then stated, “Let me put on my clothes . . . I have to close my door to put clothes on I have kids in here.” Respondent responded, “the door can stay open and you can go . . . ;” however, the sentence was

cut off when Complainant slammed the apartment door. (CCRB Ex. 1 at 6:45-7:00) Respondent knocked on Complainant's door several times using the butt of his Department radio and she can be heard inaudibly saying something.

A little more than two minutes later, Complainant opened the door, Respondent pushed it, and entered the apartment. (CCRB Ex. 1 at 7:01-8:56) Complainant exclaimed that she closed the door because she wanted to put a shirt on. While Respondent and his partner placed her in handcuffs, Complainant can be heard pleading, "wait, I'm naked . . . wait, wait . . . please, I'm pregnant." (*Id.* at 9:02-9:07) Complainant also reiterated, "I don't have his stuff." Young children can be heard screaming and crying throughout this exchange. (*Id.* at 9:33-9:38) Complainant insisted that she attempted to close the door because she "[felt] uncomfortable" being "naked" and, that Respondent's "foot was at the door." (*Id.* at 10:34-10:42)

Respondent explained to Complainant that "when you slam the door on my fingers, I don't care if your kids are here, you put myself at harm (sic) and now I have to get another unit here to take your door down." (*Id.* at 13:28-13:40) Complainant then admitted to having S.A.'s property and led Respondent and his partner to the fire escape in a bedroom. Complainant gestured toward the window and informed them, "It's right there on the fire escape." Respondent opened the window and retrieved the bag, which was hanging on the guard rail. (*Id.* at 15:47-16:42)

Respondent's partner then spoke to Complainant while Respondent returned the property to S.A., who informed Respondent that he no longer wanted her to be arrested. Respondent returned to the apartment and asked Complainant, who had been crying and could be heard sniffing, if she had paper towels or tissues. He proceeded to check the kitchen area countertop, bathroom, and poked his head into a bedroom while calling out asking where he might find those

items for her. (*Id.* at 39:45-40:45) Respondent's sergeant arrived, interviewed the parties and ordered Respondent to uncuff Complainant. She was not arrested and Respondent left the apartment. (*Id.* at 47:25- 47:39)

Respondent testified that on December 17, 2021, he received the radio run for a "domestic call for larceny, for stolen property." He recounted going to the apartment and encountering Complainant, who answered the door "topless," and was "argumentative and standoffish." (Tr. 26, 28-30) While speaking to her, Respondent placed his foot in the threshold of Complainant's door. He testified that when Complainant "slammed" the apartment door, his left hand and fingers were almost hit. (Tr. 58) Respondent acknowledged that when she opened the door again, several minutes later, he "pushed" the door open so that Complainant, "wouldn't slam it back on us," and also, "there was evidence in the apartment related to the crime that was being alleged." (Tr. 31-32) He stated that in spite of not possessing a warrant, he entered the apartment without Complainant's consent and arrested her based upon probable cause that she possessed stolen property. He also confirmed that there were no emergency circumstances surrounding the radio run. (Tr. 31, 59-61)

During cross-examination, Respondent testified that Complainant's slamming of the door escalated the situation and he was attempting to explain to her the "gravity of the situation" when he told her that another unit could have been called to take down her door. When asked why he did not offer Complainant a business card at the conclusion of the incident, he replied that she did not ask for one. (Tr. 64-65)

Specification 1: Entry without Sufficient Legal Authority

Respondent stands charged with wrongfully entering Complainant's apartment without sufficient legal authority when he placed his foot in the threshold of her doorway while speaking

to her in the course of their first interaction. For the reasons set forth below, I find Respondent's actions did not amount to misconduct under the circumstances presented here.

At issue is whether Respondent's placing of his foot in the apartment door at the outset of the interaction, without fully entering the apartment, constitutes an entry in violation of the rule set forth in *Payton v. New York*, 445 U.S. 573 (1980). In that case, the U.S. Supreme Court "announced a clear and easily applied rule with respect to warrantless arrests in the home: 'the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.' The rule under the New York Constitution is the same." *People v. Gonzales*, 111 A.D.3d 147, 149-50 (2d Dept. 2013), quoting *Payton*, 445 U.S. at 590.

While the Tribunal was unable to identify any New York cases directly on point, other jurisdictions have opined that an officer's act of placing a foot in the door of a dwelling constitutes a violation of Fourth Amendment protections. *See* Disciplinary Case No. 2017-17622 (April 26, 2019), citing *Lineberger v. Tou-Ber Yang*, 2016 U.S. Dist. LEXIS 140581 [W.D.N.C. 2016] (complainant's right to be free from unreasonable searches was violated when . . . "rather than permitting [him] to close the door and terminate the encounter as [he] had the right to do, [officer placed] his foot in the threshold of the door, [and] entered [the] residence, or at least the curtilage of the residence"); *Cupello v. State*, 27 N.E.3d 1122 (Ind. Ct. App. 2015) ("constable unlawfully entered [a] dwelling by placing his foot within the threshold of the apartment door without lawful justification"); *Siedentop v. State*, 337 P.3d 1 [Al. Ct. App. 2014] ("The primary question in this appeal is whether the officer acted unlawfully when he stuck his foot across the threshold to prevent [defendant] from closing the front door of the residence. The answer to that question is yes.")

While Fourth Amendment jurisprudence does provide an instructive guide for the resolution of cases implicating constitutional issues in this forum, it is not always dispositive. As this Tribunal has consistently emphasized, to sanction an employee for misconduct under the Administrative Code, there must be some showing of fault on the employee's part, either that he acted intentionally, or negligently. *See* Disciplinary Case No. 2021-23750 (May 6, 2024), citing *Reisig v. Kirby*, 62 Misc.2d 632, 635 (Sup. Ct. Suffolk Co. 1968), *aff'd*, 31 A.D.2d 1008 (2d Dept. 1969); *McGinle v. Town of Greenburgh*, 48 N.Y.2d 949, 951 (1979).

Under the facts of this case, I find no showing of fault establishing that misconduct was committed. Though it appears that there was a technical violation of *Payton* committed here, it was *de minimis* in nature. Moreover, it is factually significant that Respondent did not initially stick his foot in the door to prevent Complainant from shutting the door and terminating their interaction. Rather, the door was voluntarily opened by Complainant, who engaged with Respondent in conversation, and the placement of his foot did not prevent Complainant from closing the door when she decided that she wanted to do so. In fact, he stepped back from the door at that point, allowing it to close. Under these specific facts, I do not find Respondent's actions rose to the level of sanctionable misconduct.

Accordingly, Respondent is Not Guilty of Specification 1.

Specification 2: Forcible Entry without Sufficient Legal Authority

Respondent stands charged with forcibly entering Complainant's apartment, without sufficient legal authority, when he pushed his way into her apartment after she opened the door for the second time. It is undisputed that Respondent had probable cause to arrest Complainant for removing property from S.A.'s apartment without his permission and also that Respondent did not have a warrant to enter Complainant's apartment. Additionally, he did not receive

consent to go inside. The question for this Tribunal is whether exigent circumstances existed which permitted Respondent to forcibly enter Complainant's apartment; I find that they did not.

The Supreme Court in *U.S. v. Allen* held that, "at a minimum, law enforcement officers violate *Payton* when, in the absence of exigent circumstances or consent, they physically enter protected premises to effect a warrantless search or arrest." 813 F.3d 76 (2016), citing *U.S. v. Stokes*, 733 F.3d 438, 444 (2d. Cir. 2013).

In determining whether exigent circumstances exist courts have set forth the following list of non-exhaustive factors to be considered, "(1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect is reasonably believed to be armed; (3) a clear showing of probable cause . . . to believe that the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that the suspect will escape if not swiftly apprehended; and (6) the peaceful circumstances of the entry." *People v. Paulino*, 131 A.D.3d 65 (1st Dept. 2015), quoting *People v. McBride*, 14 N.Y.3d 440, 446 (2010).

Respondent has been found Not Guilty of unlawfully entering Complainant's apartment by placing his foot in the threshold. Respondent testified, corroborated by the body-worn camera footage, that a couple of minutes passed before Complainant opened the door the second time. When she did, Respondent "pushed the door open" and entered the apartment to arrest Complainant. (Tr. 59; CCRB Ex. 1 at 08:56-09:02)

Although Respondent knew that Complainant was present in her home and possessed probable cause to arrest Complainant for a felony, the alleged crime was not violent in nature. S.A. made allegations that Complainant made threats via text message to have a third party "shoot" or jump" him. On cross-examination, Respondent admitted that he had no reason to

believe that Complainant was armed or that she posed a threat to anyone. (Tr. 61-62)

Complainant's small children were present in the apartment, making it unlikely that she could easily escape. No evidence was presented at the hearing to indicate that Respondent believed Complainant intended to destroy S.A.'s property. Indeed, Complainant's second opening of the door illustrated her intent to at least continue to engage with Respondent. I am not satisfied that the evidence presented in this matter indicated that exigent circumstances were present justifying Respondent's warrantless entry into the apartment.

Accordingly, the Tribunal finds Respondent Guilty of Specification 2.

Specification 3: Wrongfully Threatening Damage to Property

Respondent stands charged with wrongfully threatening Complainant when he stated, "You put myself at harm and now I have to get another unit here to take your door down" (sic). The Tribunal finds that under the circumstances presented, this statement was improper.

Counsel for Respondent contends that his words were simply an explanation of the actions that he believed he could have taken had Complainant not opened her door the second time. As discussed in the analysis of Specification 2, there were no exigent circumstances allowing for a warrantless entry into Complainant's apartment, and as such, there would have been no legal authority to justify removing her front door.

The body worn-camera footage depicts that Respondent was upset with Complainant. Contrary to his testimony, I believe that Respondent said the words in retribution for her slamming the door. Although Respondent alleges that he was simply trying to make Complainant aware that her actions could have injured him, his comments, as well as the intimidating tone he used to convey them, were gratuitous and improper.

Accordingly, the Tribunal finds Respondent Guilty of Specification 3.

Specification 4: Unlawful Search

Respondent stands charged with unlawfully searching Complainant's apartment when he entered her kitchen, bathroom, and one of her bedrooms to locate tissue or paper towels. The issue for the Tribunal is whether Respondent's actions constituted an unlawful search; I find that they did.

It is long established and a "... fundamental principle of the Fourth Amendment to the U.S. Constitution ... that searches ... inside a home without a warrant are presumptively unreasonable." *People v. Scott*, 133 A.D.3d 794 (2d Dept. 2015), citing *Brigham City v. Stuart*, 547 U.S. 398 (2006); *Payton v. New York*, 445 U.S. 573 (1980).

Respondent testified that after her arrest, Complainant was crying profusely. This was corroborated by both Respondent's and Officer [REDACTED]'s body-worn cameras. (CCRB Ex. 1 at 20:47-21:09; CCRB Ex. 2 at 20:47-21:27) Respondent explained that "... there were boogers and snot and she was in front of her children ... I told her I was going to go get paper towels or tissue or toilet paper." (Tr. 63) In his body-camera footage, Respondent is heard calling out to his partner and Complainant, explaining his intention to look for paper towels or tissues. Complainant replies, "I don't have anything." (CCRB Ex. 2 at 39:53-39:57) Body-camera footage then shows Respondent using his flashlight to peer into the kitchen, then proceeding to the bathroom and briefly looking into a bedroom. (CCRB Ex. 1 at 39:55-40:40) The search for tissue in those three rooms lasted approximately 45 seconds. Each of the rooms Respondent glances into are places one would normally expect to find tissues or paper towels. Respondent did not open any drawers, move aside clothing, or look through any bags.

As Respondent's entry into the apartment has been found to be improper, any search of the property resulting from that entry would be improper. Complainant did not ask Respondent

to get anything for her, nor did he ask her if she needed anything. He simply stated his intention to locate paper products, while simultaneously using his flashlight to look in her kitchen. Indeed, Respondent appeared to completely ignore Complainant informing him that she didn't have anything. *See Disciplinary Case No. 2015-15012* (June 8, 2017) ([T]here is insufficient factual and legal support in the record tending to establish any . . . exceptions to the warrant requirement. Accordingly, any search of the apartment was tainted by the initial unlawful entry.") Respondent's actions did constitute a search, which was not supported by exigent circumstances or consent.

Accordingly, I find Respondent Guilty of Specification 4.

Specification 5: Failure to Provide a Business Card

Respondent stands charged with failing to provide Complainant with a business card at the end of this encounter. Respondent contends that he did not provide the card because Complainant did not request one. The question for the Tribunal is whether circumstances existed which required Respondent to offer his business card to Complainant; I find that they did.

Administrative Guide Procedure 304-11 states in relevant part, "For the purpose of the procedure, a business card is to be *offered* for a law enforcement activity, except in cases when a summons is issued or an arrest is made, as follows:

- a. Noncustodial questioning of individuals suspected of criminal activity (**Level 2 Encounter**)
 - b. Stop where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and *where a reasonable person would not feel free to end the encounter* (**Level 3 Encounter**)
 - c. Frisk (**Level 3 Encounter**)
 - d. Search of persons or property, including vehicles"
- (Emphasis added)

A plain reading of this procedure places an affirmative duty upon the uniformed member of service to offer a business card under the appropriate circumstances.

Respondent placed Complainant in handcuffs and testified that she was under arrest. Although she was ultimately not arrested, she was detained, and a reasonable person in the same situation would not have felt that they were free to leave. Additionally, I have found that Respondent's actions in looking for a tissue constituted a "home search." Under the provisions of the Administrative Guide, Respondent was required to offer a business card to Complainant at the conclusion of this encounter.

Accordingly, I find Respondent Guilty of Specification 5.

Disciplinary Case Number 2023-28392

This case arose out of a civilian complaint made by [REDACTED] ("Complainant") alleging that, on January 25, 2022, Respondent spoke discourteously to him and threatened to use force against him by unholstering his conducted electrical weapon ("Taser"). The CCRB presented the audio recording and transcript of the interview with the complainant, [REDACTED] as well as, surveillance video footage of the incident.

The following is a summary of the evidence presented at trial. On January 23, 2022, Respondent and Police Officer [REDACTED] answered a radio-run of an armed burglary committed by multiple men. After arriving at the home, Respondent and his partner arrested thirteen men for possession of the firearm they found there. In addition, there was a fourteen-year-old girl dressed in lingerie at the scene. After further investigation and discussion with the District Attorney's Office, almost all of the individuals were released; however, all of their cellphones were held pending warrants relating to possible crimes involving the teenage girl. (Tr. 35-39; CCRB Ex. 8A at 20-23)

Two days later, on January 25, 2022, at approximately 23:25 hours, [REDACTED] (“Complainant”) accompanied one of the released individuals, [REDACTED] (“T.S.”), to the lobby of the 75 Precinct to retrieve the property taken from T.S. in the course of his arrest¹. (Tr. 40, CCRB Ex. 8A at 14, 23) Respondent returned some property, including jewelry, to T.S., but withheld his cellphone. (Tr. 37-38; CCRB Ex. 8A at 15; CCRB Ex. 7, *Stationhouse Surveillance Lobby Camera #2*) Complainant, T.S., and another individual who had been arrested in the same incident continued questioning why Respondent could not return their phones. (Tr. 38, 67-69; CCRB Ex. 8A at 35-36, 38) Respondent escorted the other individual out of the precinct.

After coming back inside, Respondent told Complainant that since his business in the precinct was concluded he needed to leave. A disagreement ensued. (Tr. 40-41, CCRB Ex. 8A at 38-39; CCRB Ex. 6, *Stationhouse Surveillance Lobby Camera #1*, at 01:12-01:52) As Respondent and Complainant were standing close to one another and moving slowly out of the lobby while continuing to speak intensely to one another, several officers came from inside the precinct. A dispute exists as to whether Respondent attempted to push or merely guide Complainant out the front door of the stationhouse. However, both parties agree that Complainant shoved Respondent’s hand back. (Tr. 41, 48; CCRB Ex. 8A at 45, 52; CCRB Ex. 5, *Stationhouse Surveillance External Camera #1*, at 00:26) Respondent then unholstered his Taser as he continued to walk toward Complainant. (Tr. 41, 54; CCRB Ex. 8A at 16, 51-53; CCRB Ex. 5 at 00:28-00:29)

Complainant was interviewed via telephone by a CCRB investigator, approximately two weeks after the incident, on February 9, 2022. In that interview, Complainant, who manages artists, recounted accompanying his client, T.S., to the 75 Precinct to assist him in recovering

¹ CCRB entered into evidence several recordings from various stationhouse surveillance cameras which have no audio.

personal property taken during his recent arrest. Complainant acknowledged that his client's "jewelry and stuff" was returned to him by Respondent. However, T.S.'s cellphone was being held for "investigation." (CCRB Ex. 8A at 6, 15)

Complainant recalled that his client, along with another individual who had also been arrested, argued with Respondent about the phones for approximately "15 minutes." (CCRB Ex. 8A at 38) Complainant continued, "[Respondent] came out from behind the glass to tell that guy to leave. And then [Respondent] was walking back in. [Respondent] said, 'Better yet, you could get the fuck out too. Because you don't have no business here either.'" (*Id.* at 39) Complainant described Respondent approaching him and getting "in my face... [a]nd [Respondent] was like, 'I told you to leave'... [w]hen [Respondent] went to push me, I pushed his hand off of my chest and told him, 'I asked you not to touch me.'" (*Id.* at 45) Complainant explained that during this encounter, he and Respondent were moving towards and exiting the lobby of the precinct. Once outside Complainant alleged that Respondent pointed his Taser "at my face," while telling Complainant to, "fucking walk off before you hit the ground." (*Id.* at 53)

Although Complainant acknowledged raising his voice during the encounter, his explanation for doing so was simply to get the attention of a sergeant he saw standing nearby. Complainant also informed the CCRB investigator that he had hired an attorney, and was intending to file a lawsuit in relation to this incident. (CCRB Ex. 8A at 11, 44)

Respondent testified that he had worked without going home since January 23, 2022, as a result of the numerous arrests related to the firearm. Respondent recounted that in addition to the gun, "a large amount of drugs, and the defendants' property" were brought back to the precinct. Some of the arrestees, including T.S., came to the command to retrieve their property. Respondent recalled that most of the arrestees were "very upset" about the retention of their

cellphones, but were understanding after he explained to them the “proper channels” to take to get the property released. Respondent stated that T.S. was accompanied by Complainant, whom Respondent believed was T.S.’s attorney. Respondent returned jewelry and other items to T.S., but his cellphone and bullet-proof vest were withheld. (Tr. 36-39)

Respondent described asking Complainant to leave the precinct if he had, “no further lawful business,” which made Complainant “irate” and “angry.” (Tr. 40, 45) Respondent contended that Complainant questioned why he had to leave, and refused to do so. (Tr. 47). During cross-examination, Respondent acknowledged the possibility that he used profanity during this exchange, “... I don't recall if I used profanity. And I said if I did, I'm sorry. But I don't -- I don't recall.” (Tr. 45-46)

Respondent described standing “chest to chest” with Complainant in the vestibule and putting his hand out in order to “motion to where [Complainant] needs to go and leave, and then he pushed my hand away. Slapped my hand away.” (Tr. 48, 53-54) When they were on the sidewalk in front of the 75 Precinct, Respondent admitted pulling out his Taser, “[b]ecause he had just slapped a uniformed police officer's hand away, so before the situation escalated, we use the Taser to deescalate the situation. That's how we are trained.” (Tr. 54) Respondent testified that he believed Complainant left shortly thereafter. (Tr. 41)

Specification 1: Discourtesy

Respondent stands charged with engaging in conduct prejudicial to the good order and discipline of the Department by speaking discourteously to Complainant. He is alleged to have stated in sum and substance: “You don’t have no business here” and “You can get the fuck out, too.”

Patrol Guide section 200-02 requires officers to, “[v]alue human life, respect the dignity of each individual and render our services with courtesy and civility.” It is undisputed that Respondent asked, then instructed, Complainant to leave the lobby of the 75 Precinct on January 25, 2022. What is disputed are the words he used to convey that message.

I find that Respondent made statements that were substantially similar to those in the charges and specifications. I find that informing Complainant that he had no further business in the precinct and instructing him to leave does not, on its face, constitute discourtesy. However, Respondent’s use of profanity when doing so, by telling Complainant in sum and substance “to get the fuck out, too,” was indeed discourteous and constitutes misconduct.

There is no audio to accompany the video recordings of the incident, and the Complainant did not appear before the Tribunal. I did not have the opportunity to observe his demeanor during direct and cross-examination. However, I have carefully reviewed the audio recording and transcript of Complainant’s statement, made shortly after the incident, to the CCRB. As will be discussed with respect to Specification 2, I found some of his statements to be embellished and self-serving. However, Complainant’s recitation of the language used by Respondent when telling him to leave was remarkably consistent. At the outset of his CCRB interview, Complainant stated, “[Respondent] said, ‘you don’t have no fucking business here either. Get the fuck out.’” (CCRB Ex. 8A at 7) Later in the interview, he reiterated that Respondent stated, “you know what? You don’t have no fucking business here either. Get the fuck out;” and subsequently detailed Respondent stating, “better yet, you can get the fuck out too. You ain’t got no fucking business here either.” (*Id.* at 15, 35)

In the course of his testimony, Respondent conceded the possibility that he may have used profanity during his confrontation with Complainant, and both men’s descriptions of the

events are corroborated by the surveillance footage from the lobby of the precinct. In CCRB Exhibit 7, a visibly agitated Respondent is seen escorting another person out of the precinct who appears to be objecting. In that footage from 00:23-00:28, another officer places his hand on Respondent, seeming to hold him back from that individual. CCRB Exhibit 6 shows that after returning from that interaction, Respondent walks past Complainant. Almost immediately, Respondent turns back into the lobby and goes straight to Complainant. During the conversation that ensues, Respondent points towards the exit approximately ten times. At the same time he is speaking animatedly with Complainant, who initially remains where he is standing. Complainant then reluctantly starts moving towards the exit while still engaging in a back and forth with Respondent. (CCRB Ex. 6 at 01:02-01:37)

A review of the evidence presents a scenario of a visibly frustrated Respondent, who more likely than not made some version of the charged statements, and used profanity when doing so. Respondent determined, and indeed the evidence supports his decision, that Complainant's business at the 75 Precinct had concluded. Respondent explained to Complainant and T.S. several times that he could not return the cellphone. There was nothing further to be gained by continuing to go back and forth with them. Respondent possessed the authority to ask him to leave. I disagree with CCRB that simply asking Complainant to leave was discourteous. However, Respondent's use of profanity when doing so was motivated by exasperation, and served no legitimate law enforcement purpose.

For the foregoing reasons, I find Respondent Guilty of Specification 1.

Specification 2: Threatened Use of Force by Unholstering a Taser

Specification 2 charges Respondent with threatening Complainant with the use of force when he unholstered his Taser to compel Complainant to leave the 75 Precinct. I have already

found that Respondent possessed the authority to ask Complainant to leave the precinct since his business there had concluded. The question for the Tribunal is whether Respondent's unholstering of his Taser constituted a wrongful threat of force against Complainant. I find that it did not.

When determining whether the use of force was reasonable, Patrol Guide section 221-01 lists several factors to consider which include: the nature and severity of the crime, the duration of the action, whether the person is actively resisting custody, as well as, the number of officers in comparison to the number of suspects.

In his interview with CCRB investigators, Complainant recounted his interaction with Respondent. He described Respondent putting his hands up as if about to push Complainant, and acknowledged that he pushed Respondent's hand away. Complainant detailed repeatedly asking Respondent not to touch him, while demanding to know why he needed to leave the precinct. (CCRB Ex. 8a at 7, 15, 44-45) Complainant alleged that in the course of compelling him to leave the precinct, Respondent "points his Taser in my face and tells me if I don't walk off, he's going to tase me." (CCRB Ex. 8A at 16)

Respondent admitted that he unholstered his Taser during his interaction with Complainant, in an attempt to, "deescalate the situation from getting more physical." (Tr. 41) External surveillance footage shows Respondent and Complainant bursting out of the front doors of the precinct, with the two speaking aggressively, possibly yelling at one another. Complainant is gesturing at Respondent with his hands and the camera captures the moment when Respondent reaches forward as if to push Complainant and Complainant smacks his hand away. Respondent unholsters his Taser, pointing it for less than a second at an approximate 45 degree angle from the ground in Complainant's direction, before letting his arm drop to his side again. Because of a

pole obstructing the camera's view, it is not possible to determine when Respondent returned the Taser to its holster. (CCRB Ex. 5 at 00:24-00:48)

I find Complainant's version of the interaction to be embellished and self-serving. His description of Respondent pointing the Taser at his face is not supported by the surveillance footage. Complainant downplayed his role in the interaction, painting himself as a quiet bystander, while portraying Respondent as an out-of-control aggressor. Complainant's motives for doing so may have had to do with his intent to file a lawsuit about this incident. Indeed on the date of his interview with CCRB, a couple of weeks after this incident, he had already retained legal counsel.

Respondent, on the other hand, testified credibly that Complainant was "irate" and that he smacked Respondent's hand away from him. Those descriptions were corroborated by the surveillance footage which also shows several other officers coming out of the precinct as the incident progressed. That indicates that they heard a loud argument and were concerned enough to investigate. Respondent's explanation that he withdrew his Taser in the hopes of preventing the situation from devolving into violence was supported by the video evidence, which shows that shortly after, Complainant walked away without further incident.

The CCRB prosecutor correctly pointed out, that under Patrol Guide section 221-08, a Taser, "should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present." However, in reading the procedure in its entirety, it is clear that it guides officers regarding deployment of the Taser, and does not reference the act of merely unholstering it. Nevertheless, I agree with the argument that the unholstering constitutes a "threat of force" and agree that such a threat would be improper if made without a sufficient basis. I disagree with

CCRB that the evidence has shown Complainant's actions as merely peacefully challenging why he had to leave the precinct. I find that the Complainant's behavior towards Respondent, beginning with refusing multiple requests to leave, and culminating in smacking his hand while yelling and gesturing at him, was belligerent and defiant. Although Respondent unholstered his Taser, he never pointed it directly at Complainant. His actions served as a warning, they were measured and achieved Respondent's stated goal of de-escalation of a potentially volatile situation.

For the foregoing reasons, I find Respondent Not Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Disciplinary Case Number 2023-28197

Respondent has been found Guilty of forcibly entering Complainant's home, searching it, threatening to damage her door, and failing to offer her a business card.

Respondent was faced with an accusation of property theft between two people in a familial relationship. There was no allegation of imminent danger of physical injury, and Respondent acknowledged that there were no exigent circumstances present. When Complainant opened her door a second time, Respondent forcibly pushed his way inside. He did so without

legal authority. The Fourth Amendment provides particular protections to individuals in their homes, and entry by police requires a warrant, consent, or exigent circumstances. The Disciplinary Matrix provides for a presumptive penalty of twenty (20) penalty days for an unlawful search/entry, where there is additional proscribed conduct. In the instant case, once Respondent was inside, he threatened Complainant, searched the apartment and failed to provide a business card. I find these additional acts of misconduct constitute additional proscribed conduct, and recommend that Respondent forfeit twenty (20) vacation days to cover the misconduct in case 2023-28197.

Disciplinary Case Number 2023-28392

I have found Respondent Guilty of Specification 1, speaking discourteously to Complainant by using profanity when instructing him to leave the 75 Precinct on January 25, 2022. Respondent told Complainant in sum and substance, “You’ve got no fucking business here, get the fuck out.” CCRB has recommended the presumptive penalty of forfeiture of five (5) vacation days.

While the circumstances surrounding Respondent’s use of profanity appear to have been stressful and aggravating, the annoying behavior of Complainant and the other individuals, does not excuse Respondent’s use of profanity. Police officers are required to treat members of the public with civility and courtesy, which Respondent failed to do.

At trial and when being interviewed by CCRB, Respondent admitted that he may have used profanity during this interaction. It is the hope of this Tribunal that this incident causes Respondent to be more thoughtful about using profane language in the course of his future. I believe that a penalty of three (3) vacation days strikes the correct balance between the inappropriate nature of the misconduct and the challenging events that preceded it.

In sum, as these cases represent two totally unrelated matters, I believe that the penalties for both cases should run consecutively for a total forfeiture of twenty-three (23) vacation days.

Respectfully submitted,

Anne E. Stone RM

Anne E. Stone
Assistant Deputy Commissioner Trials

APPROVED

Edward A. Caban SEP 6 2024

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MATTHEW BESSEN
TAX REGISTRY NO. 967774
DISCIPLINARY CASE NOS. 2023-28197 & 2023-28392

Respondent was appointed to the Department on July 1, 2019. On his three most recent annual performance evaluations, he was twice rated “Exceptional” for 2022 and 2023, and once rated “Exceeds Expectations” for 2021. He has been awarded two medals for Meritorious Police Duty and eleven medals for Excellent Police Duty.

Respondent has no formal disciplinary history. He was placed on Level 1 Force Monitoring in February 2024 for having received six or more CCRB complaints over a five-year period. Monitoring remains ongoing.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials