



POLICE DEPARTMENT

December 15, 2023

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Damian Weber :

Tax Registry No. 967387 :

28 Precinct :

Case No.

2022-25909

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

To:

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

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CHARGES AND SPECIFICATIONS

1. Police Officer Damian Weber, on or about January 21, 2021, at approximately 1640 hours, while assigned to the 28 Precinct and on duty, in the vicinity of 28 West 125th Street, New York County, abused his authority as a member of the New York City Police Department, in that he stopped Rose Melton, without sufficient legal authority.

P.G. 212-11, Page 6, Paragraph 20

INVESTIGATIVE
ENCOUNTERS

P.G. 219-31

LICENSE PLATE READER
DEVICES

2. Police Officer Damian Weber, on or about January 21, 2021, at approximately 1640 hours, while assigned to the 28 Precinct and on duty, in the vicinity of 28 West 125th Street, New York County, abused his authority as a member of the New York City Police Department, in that he drew his gun without sufficient legal authority.

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

(now encompassed by A.G. 304-06, Page 1, Paragraph 1)

PUBLIC CONTACT
PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 3, 2023. Respondent, through his counsel, entered a plea of Not Guilty. The CCRB called the complainant, Ms. Rose Melton, and offered Officer Espinoza and Respondent's Body Worn Cameras (hereinafter "BWC") in evidence. 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 this matter, the Tribunal finds Respondent guilty of both specifications and recommends the forfeiture of ten (10) vacation days.

ANALYSIS

Most of the facts of this case are uncontested. On January 21, 2021, Respondent and his partner, Officer Espinoza, were in their police vehicle in the vicinity of 131st Street in Manhattan.

While they were driving, the license plate reader (hereinafter "LPR") in their RMP alerted them that they may have driven past a stolen car. The LPR registered the license plate affixed to the complainant, Ms. Melton's car, as a stolen plate. When Respondent received the alert from the LPR, he and his partner exited their RMP and approached Ms. Melton as she was exiting her vehicle. As Respondent approached Ms. Melton, he drew his firearm from his holster and held it in what he characterized as a "SUL position" – a manner of holding a firearm that keeps it in a safe direction while allowing an officer to *be prepared* to use the weapon if needed. He then informed Ms. Melton that they received an alert that her vehicle s stolen and ordered her to turn around so that he could handcuff her. Ms. Melton complied and Respondent re-holstered his firearm.

Respondent then returned to his police vehicle and ran Ms. Melton's license plate number through NYSPIN, which revealed that her car was not, in fact, stolen. Respondent proceeded to walk back to Ms. Melton, explain the misunderstanding, and remove the handcuffs he placed on her. Respondent attempted to draft a Stop Report, but Ms. Melton was very upset and unwilling to provide the officers with any further information. Respondent provided Ms. Melton with a business card and departed without taking further police action.

According to the Mobile License Plate Reader Training Manual (CCRB Ex. 5), a LPR is "a specialized camera and computer that is capable of quickly capturing license plate numbers on passing vehicles and then converting them into text that is automatically compared against a 'hot list' of license plates of interest (e.g. stolen, wanted, suspended registration or insurance coverage etc.)." When the LPR alarm is activated, the member of service assigned to the police vehicle is to "verify by checking NYSPIN through [the] radio dispatcher or a Department mobile device that alarm and vehicle status remains active." Because the LPR is not programmed to scan

the state of registration on a license plate, it will activate upon a partial match. Therefore, "it is essential that the LPR operator verify the current status of the vehicle through NYSPIN prior to initiating any law enforcement action." (P.G. 219-31)

Ms. Melton testified that on the date in question, she parked her vehicle on 131st Street, while she was watching videos on her cell phone. The vehicle she was driving at the time was a red Ford Explorer that was owned by her boyfriend, but she used it regularly with his permission. Upon exiting her vehicle, she observed a marked police vehicle stop about two cars away from her and two officers exited. She recalled seeing Respondent draw his gun and tell her to put her hands up because she was being arrested for a stolen vehicle. (Tr. 18)

Ms. Melton recalled being surprised and confused when she was initially approached by the officers and proceeded to question them about their allegation that her car was stolen. She was then placed in handcuffs. Ms. Melton offered to provide the officers with her license and registration in an attempt to prove that her vehicle was not stolen, but the officers refused. A few minutes after being placed in handcuffs, the officers came back and let her go. (Tr. 21-22)

Ms. Melton described feeling upset, embarrassed, afraid, and traumatized by this police encounter. She expressed that she was perplexed by the entire situation and unwilling to provide her identification to the officers after she was released from the handcuffs. (Tr. 21-24) CCRB's Exhibits 1 and 2 corroborate Ms. Melton's testimony. Moreover, this Tribunal had the unique opportunity to observe Ms. Melton's demeanor and body language when she testified and found her to be a credible witness. Having carefully reviewed the video evidence submitted coupled with Ms. Melton's in-court testimony, I have no reason to doubt her veracity.

Respondent testified that on the date of the incident, he had been employed with the Department for roughly 18 months. He explained what an LPR is in general terms and how it

operates based upon his training in the Police Academy. Respondent also testified that he was aware, from his training, that if the LPR is activated, "before taking any action, you have to run that vehicle through the NYPIN system to verify if it is actually stolen." (Tr. 28)

According to Respondent's testimony, on the date in question he was in the recorder position of the RMP and his partner, Officer Espinoza, was the operator. The LPR in their vehicle made a noise alerting them of the nearby presence of a stolen vehicle. A screenshot of the LPR screen on that day showed Ms. Melton's vehicle along with a note that read "out of state stolen vehicle." (CCRB Ex. 3) He then recalled seeing Ms. Melton exit the vehicle so he "exited [his] vehicle, drew [his] firearm, approached Ms. Melton, told her to stop, turn around, put [her] hands behind [her] back, and placed her in cuffs and explained to her the reason why [he] put her in handcuffs." (Tr. 30)

When asked how he drew his firearm, Respondent testified that he drew his firearm in the "SUL position," whereby he had it in front of his chest, facing the barrel down towards the ground. He then stated that the reason he drew his gun was because "to [his] knowledge, this kind of stop would be considered a felony car stop." Respondent further testified that he was trained at the Academy that felony car stops are dangerous and very unpredictable and that he can exercise his discretion to draw his firearm "depending on how he views the situation." (Tr. 31-32)

Respondent estimated that his gun was drawn in the "SUL position" for about five to ten seconds, and that as soon as he realized that Ms. Melton was cooperative, he decided to holster it. He testified that he informed Ms. Melton why he was stopping her immediately after he handcuffed her. He then proceeded to run her license plate through NYSPIN to verify the status of the car and discovered that Ms. Melton's vehicle was not stolen. (Tr. 31, 33-35)

Respondent testified that upon learning that her car was not stolen, he removed the handcuffs from Ms. Melton and asked for her identification so that he could write a "250 stop report," as he is required to do by the Patrol Guide. Ms. Melton refused to provide Respondent with her identification, so he provided her with a business card that included his and his partner's information. Thereafter he left the scene without taking further police action. (Tr. 35-36)

Additionally, Respondent testified that at that point in his career the LPR had never been activated, so this was his first experience with this system. He also stated that while he knew he was supposed to verify the status of a vehicle on NYSPIN prior to taking police action, he simply forgot to do so on that day. Respondent avowed that since that date he has followed proper protocol on any occasion when the LPR registered a stolen vehicle. (Tr. 37, 45-46)

Patrol Guide 219-31 clearly delineates the procedure for members of service utilizing the LPR system. Respondent's actions on the date of the above-mentioned incident were a clear departure from the procedures outlined by the Patrol Guide and the training that he received at the Police Academy. In any paramilitary organization, an officer's deviation from proper procedure can yield undesirable consequences, including erosion of public trust. While members of service are not expected to be infallible, they are expected to follow protocols before taking police action that intrudes upon citizens' rights.

It is undisputed that Respondent did not follow the guidelines for the LPR system. Had he done so, he could have avoided stopping Ms. Melton altogether. Respondent's disregard of the rules constitutes sanctionable misconduct. I, therefore find Respondent Guilty of Specification 1.

Similarly, it is uncontested that Respondent drew his firearm upon exiting his RMP and approaching Ms. Melton. Respondent testified that he was taught in the Police Academy that felony car stops (which he believed this to be) are "dangerous and very unpredictable."

Respondent drew his firearm in what he categorized as the "SUL position," whereby his gun was pointed down and not at Ms. Melton. Furthermore, his firearm was drawn for approximately ten to fifteen seconds as he approached Ms. Melton before Respondent holstered it. Respondent suggested that members of service have the discretion to draw their weapon "depending on how [the officer] views the situation." (Tr. 31-32) However, after carefully reviewing the BWC footage and assessing the testimony of both Ms. Melton and Respondent, this Tribunal finds that Respondent exercised poor judgment when making the decision to draw his weapon without verifying the status of the alert before approaching.

Respondent testified that he believed Ms. Melton's car was stolen when he exited his RMP and therefore this was a "felony car stop." However, he missed a crucial step in the process by not verifying the status of the alert before taking police action – a step that the Patrol Guide specifically underscores must be completed before any enforcement action. Had Respondent taken the additional step of cross-referencing the alert with NYSPIN, Respondent would have learned that Ms. Melton's car was not stolen and he could have avoided the encounter altogether. Instead, Respondent prematurely took enforcement action which resulted in a police encounter that caused unnecessary alarm to a civilian when he drew his weapon.

In addition, even if this were a "felony car stop" as described by Respondent, officers should use force proportionate with the reaction of the motorist being stopped. Patrol Guide 221-01 ("Force Guidelines") states at the outset that: "Force may be used when it is reasonable to ensure the safety of a member of the service... In all circumstances, any application or use of force must be reasonable under the circumstances. All members of the service at a police incident must use reasonable force, employ less lethal alternatives and prioritize de-escalation, whenever possible." In determining whether the use of force is reasonable, members of service

can consider a variety of factors to analyze the situation. One of those factors is the immediacy of the perceived threat or harm to members of service, bystanders or the subject themselves. In this case, there was no indication that Ms. Melton posed a threat to the safety of Respondent or anyone else. Ms. Melton's demeanor was cooperative and she was not acting in an aggressive manner during her initial interaction with the Respondent or the three other officers. Moreover, the Patrol Guide further provides: "The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present." (P.G. 221-01, page 3) Based upon a careful review of the BWC footage and consideration of Respondent's testimony, this was not the case on the date in question. As such, I find Respondent 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.

Respondent, who was appointed to the Department on January 3, 2019 and has no formal disciplinary history in his near five-year tenure, has been found Guilty of stopping Ms. Melton and drawing his firearm without police necessity.

The CCRB has recommended a penalty of thirteen (13) vacation days; the presumptive penalty of three (3) days for the unlawful stop charge and the presumptive penalty of ten (10) days for the unlawful threat of force for taking out his handgun. Counsel for Respondent

suggested re-training his client rather than imposing the forfeiture of any vacation days because this was simply a mistake on his client's part and officers are not "infallible." (Tr. 52, 58-59)

Members of service are not infallible, but they are held to a higher standard than ordinary civilians. In order to maintain good order and discipline within the Department, officers are expected to follow the protocols and standards demarcated in the Patrol Guide with fidelity. An officer's failure to do so, even when it does not constitute nefarious conduct, can have a negative impact on the civilian involved and a deleterious effect of the Department's reputation in the community. Respondent missed an essential step in the LPR process and subsequently used poor judgement in his encounter with Ms. Melton, all of which culminated in a negative police interaction.

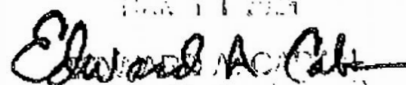
I am in agreement with the CCRB that this Respondent's misconduct warrants the presumptive penalty promulgated by the Disciplinary Guidelines for each of the specifications. However, I am recommending that they run *concurrently* for a total of ten (10) vacation days, rather than a consecutive thirteen (13) days. This is a significant penalty that is designed to address the misconduct without being unnecessarily punitive in nature.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

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MAY 11 2024

POLICE OFFICER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER DAMIAN WEBER
TAX REGISTRY NO. 967387
DISCIPLINARY CASE NO. 2022-25909

Respondent was appointed to the Department on January 3, 2019. On his two most recent performance evaluations, he was rated “Exceptional” for 2022, and “Exceeds Expectations” for 2021. He has been awarded two medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials