



POLICE DEPARTMENT

August 8, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-27455
Police Officer Mohammad Abdelfattah	:	
Tax Registry No. 965915	:	
Housing PSA 3	:	

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For the Respondent: Craig Hayes, 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

1. Police Officer Mohammad Abdelfattah, on or about June 15, 2021, at approximately 1946 hours, while assigned to PSA 3 and on duty, in the vicinity of 582 Park Avenue, Kings County, was discourteous, in that he said to Person A in sum and substance, “Don’t do that shit in my face,” without sufficient legal authority.

A.G. 304-06, Page 1, Paragraph 2

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
VALUES OF NYPD

2. Police Officer Mohammad Abdelfattah, on or about June 15, 2021, at approximately 2000 hours, while assigned to PSA 3 and on duty, inside the 79 Precinct Stationhouse, Kings County, abused his authority as a member of the New York City Police Department, in that he strip-searched Person A without sufficient legal authority.

P.G. 208-05, Page 4, Paragraph C(4)

ARRESTS – GENERAL
SEARCH GUIDELINES

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 30, 2023.

Respondent, through his counsel, entered a plea of Not Guilty. CCRB offered body-worn camera (“BWC”) footage in support of the charges. Respondent testified on his own behalf and offered a transcript of Person A’s (“Complainant”) CCRB interview in evidence.

(Respondent’s Ex. A) 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 Not Guilty.

ANALYSIS

This case involves a car stop that occurred at approximately 1946 hours on June 15, 2021, in the vicinity of 582 Park Avenue in Kings County. Respondent and his partners, Officers Melo and Santos, conducted a traffic stop of a black sedan that made an illegal U-turn,

had tinted windows that appeared darker than the legal limit and parked in front of a fire hydrant. (Tr. 16-17) Respondent and his partners approached the driver of said vehicle, Complainant, and asked for his license and registration. CCRB's Exhibit 1 shows that Respondent used the word "shit" during his initial interaction with Complainant. Respondent is also charged with conducting an improper strip search of Complainant inside the 79 Precinct.

The first issue in this case is whether Respondent's use of the word "shit" was discourteous. The second question before this Tribunal is whether Respondent engaged in misconduct by conducting a strip search without legal authority. For the reasons set forth below, I find that Respondent's use of coarse language did not rise to the level of sanctionable misconduct. Furthermore, under the specific circumstances presented here, I find that the search conducted inside the precinct holding cell area was not a strip search.

Specification 1: Discourtesy

The parties stipulated to the admission of CCRB's Exhibit 1, a video recording obtained from Officer Melo's BWC, which captured Respondent and his partners' activity on the date and time in question. CCRB's Exhibit 1 depicts Respondent and two other officers approaching Complainant's vehicle as he is seated in the driver's seat. There is a brief verbal exchange between Complainant and another officer about the traffic violation. Complainant denies any wrongdoing on his part and disputes that he made an illegal U-turn. Complainant then rolls up the window of his car which appears to be tinted. Respondent reacts to this by stating: "Don't do that shit in my face" (CCRB Ex. 1 at 1:10) and proceeds to open the driver's side door. Complainant then questions why Respondent opened his door and Respondent repeats: "Don't do that shit in my face. Give me your license." (*Id.* at 1:16)

Complainant exits the vehicle of his own accord and continues to argue with the officers who were attempting to obtain his pedigree information from him. (*Id.* at 1:20) Officers then place Complainant in handcuffs, “for their safety” they say, as he continues to be noncompliant with the officers’ request to produce his license. (*Id.* at 1:25) A few onlookers begin to gather around the officers and Complainant while this is occurring. As the crowd gathers, the discourse between the officers and Complainant becomes more contentious. Complainant asks people in the crowd to record the interaction and threatens to sue the officers. (*Id.* at 1:58-2:53)

Shortly thereafter, the officers decide to take Complainant back to the 79 Precinct to issue him the summonses. Complainant becomes visibly agitated when he is informed that he will be brought to the precinct. (*Id.* at 9:40) The interaction between Complainant and the officers escalates and becomes volatile. Some of the onlookers attempt to intervene and prevent the officers from taking Complainant into custody. Specifically, a female wearing a blue shirt physically engages with Respondent and is ultimately restrained by him (*Id.* at 9:46). Complainant is yelling as he attempts to break free from the officer’s hold and a melee ensues with members of Complainant’s family who had arrived. (*Id.* at 9:50) At this point, the footage becomes shaky and hard to see. It appears, based upon the angle depicted, that Officer Melo’s BWC falls to the ground facing up and it is not retrieved for a few minutes.

It is undisputed that Respondent used coarse language when he initially spoke to the complainant. The Patrol Guide calls for uniformed members to interact with the public “in a professional manner,” and using profanities deviates from that standard. This Tribunal, however, has recognized that profane language does not always rise to the level of misconduct, due to the intensity of the situation. *See, e.g., Case No. 2015-14379* [May 23, 2017] (use of profanity by

officer solely for the purpose of getting a suspect to comply with a lawful order issued during stressful street arrest situation did not constitute actionable misconduct).

Respondent testified at trial that he and his partners approached Complainant's car and "attempted to request his documents for the violations he committed but he wasn't complying." (Tr. 17) He further stated that when the Complainant rolled up his windows he had safety concerns. Respondent described his concerns were: "That he may reach into around the car and I could no longer see inside the vehicle" because the windows were tinted. (Tr. 17-18) He added that he has performed car stops in his career that turned into violent or dangerous situations. (Tr. 18) When questioned on direct examination why he used profane language, Respondent replied: "Due to the fact that it was a high-stress situation, and it was dangerous, and that he may be reaching around the car for objects that may hurt me or hurt my partners." (Tr. 18) He further testified that in his experience using a "tougher tone" is a method to gain a person's compliance. (Tr. 19) Indeed, the video evidence, as well as Respondent's credible testimony, established that this car stop did escalate rapidly with little warning.

In the transcript of his telephonic CCRB interview (Respondent's Ex. A), Complainant provided his account of the events to a CCRB interviewer. He stated that on the date and time in question he was visiting his mother and looking for parking. As he pulled into a parking spot, an unmarked police car pulled up alongside him. He admitted that he rolled up his windows and exited his car. It is notable that he does not mention the fact that Respondent and his partners approached his vehicle and were talking to him about the traffic infraction *before* he rolled up his window or the fact that Respondent used the word "shit" when speaking with him. Complainant went on to describe his interaction with police and how it escalated quickly resulting in an altercation. He stated: "I tried to give my property to my mom at first. And then, he tried to

smack my hand down. I mean, that's when the altercation started happening. And they pushed it down. Then, they arrest my brother up, saying that he was obstructing with the evidence that he took the key to my car but he didn't even have the key. They locked me up, locked my brother up." (Respondent's Ex.A, p. 6) He alleged that the police had tampered with the camera he had set up in his vehicle which he believed captured this incident.

CCRB argued that there was no legitimate law enforcement purpose for Respondent's use of profane language and that it was not attached to a command. (Tr. 59) In supporting this contention, they cite to *Disciplinary Case No. 2018-18951* [Nov. 20, 2019], in which respondent was found guilty of using discourteous language when she addressed parents who were arguing inside of a police precinct by stating: "You guys have a child, both of you do. Excuse me. Don't talk, I am talking. You both have a child, both of you should be concerned about, better than fucking each other and bothering each other. Enough is enough." I find CCRB's reliance on this case misplaced. The circumstance in that case involved a respondent, who was a domestic violence officer, raising her voice and using inappropriate language in addressing the complainants within the lobby of a police precinct. This officer was mediating a verbal dispute between two civilians in a fundamentally controlled environment. Within this context, her gratuitous use of the word "fucking," was an unprofessional and discourteous attempt at dispute resolution.

Conversely, Respondent in this case initiated a car stop of a driver who committed a traffic infraction and was driving a car with dark tints. It was apparent from the video that at the time that Respondent said "don't do that shit," it was a spontaneous reaction to Complainant's rolling up his tinted car window. Complainant's action reasonably elevated Respondent's concern for his safety given that he could not clearly see what Complainant was doing inside his

car. The objective of the words spoken by Respondent was to communicate his directive to Complainant to not close the window while the officers were engaged in the lawful performance of the police function of issuing a summons. I find that contrary to CCRB's assertion, the use of the word "shit" *was* attached to a command. While the language was unbecoming, and should not be part of a police officer's normal vernacular, the circumstances presented at that moment absolve Respondent from discipline for using it. I therefore find that CCRB has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that the language used by Respondent under these circumstances was discourtesy warranting discipline.

Specification 2: Strip Search

Specification 2 charges Respondent with conducting a strip search of Complainant without sufficient legal authority. Under the specific circumstances presented here, I find that the search that occurred inside the precinct holding cell area was not a strip search.

Section 208-05 of the Patrol Guide defines a strip search as one "in which an individual's undergarments (e.g., bra, underwear, etc.) and/or private areas are exposed, or in which an individual's clothing is removed, lifted up, or pulled down to expose undergarments or private areas." Here, it is undisputed that Respondent searched between the three layers of clothing that Complainant was wearing (joggers, thermals and boxers) to retrieve the key that Complainant had on his person. This search was conducted in the holding cell area rather than in the bathroom as directed by the desk Sergeant. However, based upon a careful review of the video evidence and Respondent's testimony, I find that the limited exposure of the waistband of Complainant's boxers did not equate to a strip search as defined above.

CCRB's Exhibit 1 at 23:00 shows Respondent entering the 79 Precinct with Complainant. Once in front of the desk sergeant, Respondent conducts a search of the

Complainant and collects his personal effects to be vouchered. The desk sergeant tells Respondent to use a “wand” (metal detector) to scan Complainant. While Respondent is scanning Complainant, he is alerted to the presence of a metal object inside Complainant’s pants. Respondent asks Complainant what the metal object is and Complainant responds “a key inside my pants.” (*Id.* at 30:54) Respondent attempts to retrieve the key from Complainant’s pants but is unable to do so. At this point, Respondent is instructed by the desk sergeant to take Complainant to the bathroom of the holding cell area and continue his search there. (*Id.* at 31:39)

In the holding cell area, Respondent continues to search for the key in the Complainant’s joggers. CCRB’s Exhibit 1 shows that there are two individuals being held in the cells and one other uniformed officer present while Respondent is searching Complainant. At no point during the search are Complainant’s undergarments and/or private areas exposed.

According to his testimony, Respondent located the key when he conducted his initial search in front of the desk sergeant. However, he could not remove it because the “O” ring was attached to a layer of clothing that made it difficult for him pull it out without ripping Complainant’s clothing. (Tr. 37) Respondent then took Complainant to the holding cell area where he continued to search between the two outermost layers of Complainant’s clothing for the key (his joggers and thermals). CCRB’s Exhibit 1 corroborates Respondent’s statement that at no point did Complainant lower or remove his joggers or thermals, thus exposing his undergarments (his boxers) or any private areas. (Tr. 26) When asked why he did not conduct the search in the bathroom of the holding cell area, Respondent stated: “So the reason I didn’t use the bathroom was because I realized that the key is not in his underwear, I pretty much came to the conclusion that there’s no need to conduct a strip search and there was no strip search that was going to be

done. So a regular search can be conducted anywhere within the cell area without needing to use the bathroom.” (Tr. 48)

In the CCRB interview of Complainant, the interviewer addressed the topic of Complainant’s interaction with police once they arrived at the precinct. Complainant stated: “They took property out like in front of a sergeant, they put us in the holding cell. They did fingerprints and stuff like that. Like the normal process” (Respondent’s Ex. A, p. 17) Again, it is worth mentioning, that Complainant said nothing about a strip search and characterized his dealings with police at the precinct as “the normal process.” In fact, he made no reference to any perceived irregularities regarding the search conducted inside the precinct.

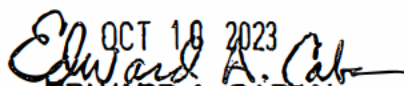
CCRB argued that the video evidence depicts that the waistband of Complainant’s underwear was exposed during Respondent’s search in the holding cell area. Although that was not readily apparent to this Tribunal, even accepting that as true, it does not convert this into a strip search as defined by the Patrol Guide 208-05. Respondent followed proper police protocols following the arrest and search of an individual. Accordingly, I find Respondent not guilty of Specification 2.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

OCT 18 2023

EDWARD A. CABAN
POLICE COMMISSIONER