



POLICE DEPARTMENT

April 7, 2022

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In the Matter of the Charges and Specifications
- against -

Captain Kurtis Rose
Tax Registry No. 946196
Narcotics Borough Manhattan North

Case No.
2019-20026

Police Officer Justin Hoff
Tax Registry No. 953969
Emergency Services Unit Squad 4

Case No.
2019-20024
-----X

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For Respondent Rose: Louis C. La Pietra, Esq.
La Pietra & Krieger, P.C.
30 Glenn Street, Suite 105
White Plains, NY 10603

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

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2019-20026

1. Captain Kurtis Rose (while possessing the rank of Lieutenant), on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he detained **Minor B** without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

2. Captain Kurtis Rose (while possessing the rank of Lieutenant), on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he detained **Minor A** without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

Disciplinary Case No. 2019-20024

1. Police Officer Justin Hoff, on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped **Minor B** without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

2. Police Officer Justin Hoff, on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped **Minor A** without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

3. Police Officer Justin Hoff, on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped **Minor C** without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

4. Police Officer Justin Hoff, on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped individuals without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16

INVESTIGATIVE ENCOUNTERS

5. Police Officer Justin Hoff, on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx 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. 221-01 & 221-02

USE OF FORCE

6. Police Officer Justin Hoff, on or about March 24, 2018, at approximately 2025 hours, while assigned to 048 PCT and on-duty, in the vicinity of East 188th Street and Belmont Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he frisked an individual without sufficient legal authority.

P.G. 212-11, Page 5, Paragraph 18

INVESTIGATIVE ENCOUNTERS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on January 24 and March 3, 2022. Respondents, through their respective counsel, both entered pleas of Not Guilty to the subject charges. The CCRB called **Minor A** and **Minor B** as witnesses. Respondents testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows: as to Respondent Hoff, I find him Not Guilty of the charged misconduct; as to Respondent Rose, I find him Guilty of both specifications against him, and recommend a penalty of 20 vacation days.

ANALYSIS

A 911 call in the early evening hours of March 24, 2018, alerted police that a group of approximately five males was chasing another individual in the vicinity of 188 Street and Belmont Avenue in the Bronx. The caller, who provided his name and phone number, stated that one of the individuals possessed a machete, and another was carrying a stick. Several police officers, including Respondent Hoff, quickly responded to the location, where Respondent Hoff observed approximately four or five individuals, two of whom were holding sticks. The officers stopped and frisked the individuals, including [Minor A] and [Minor B] who on the day of the incident were ages 14 and 8, respectively. Respondent Rose, who was a lieutenant at the time, arrived on the scene a few minutes later, and instructed his officers to take [Minors A and B] to the stationhouse to await notification of their parents. Respondents face a number of charges based on their actions at the location.

[Minor A] who is now 18 years old, testified that while he was on his way to get something to eat, he ran into several friends: [Minor B] [Minor C] ([Minor B]'s older brother), [Minor D], and another individual. After buying food at Kennedy Fried Chicken on 187th Street and Cambreleng Avenue, they were heading to a park a couple of blocks away. On the way, they observed some sticks on the ground, and four or five of the boys, including [Minor A], picked them up to play with. [Minor A] described the sticks as pieces of wood, approximately 14 inches in length. They ran back and forth, waving their sticks around, but [Minor A] insisted they did not chase anyone else. (Tr. 37-39, 87-90, 96-97)

Before they even made it to the park, several police cars arrived on 188th Street. [Minor A] testified that he and his friends were already in the process of putting down their sticks because they were done playing. The officers emerged from their vehicles, one or two of them pointed

their guns at **Minor A** and his friends, and ordered them to face the wall. **Minor A** and his friends all complied, and they each were quickly patted down over their clothes by the officers; **Minor A** had a boxcutter in his vest pocket that he carried for protection, but he did not take it out while they were playing, and it was not discovered by the police during the pat-down. According to **Minor A** a female officer initially said that they were going to be released from the scene, but then a “white shirt” arrived and instructed the officers to take **Minor A** and **Minor B** to the stationhouse. Both **Minors A and B** were placed in handcuffs, and taken to the 48 Precinct; **Minor B** was crying, and **Minor A** tried to reassure him that everything would be okay. At the precinct, they were placed in the juvenile room for one or two hours, until parents arrived and they were released. **Minor A** acknowledged that a lawsuit against the City in connection with this incident was settled for \$45,000.00. (Tr. 39-54, 68, 72-73, 85, 91-95, 98-99)

Minor B who is now 12 years old, testified that on the way to the park, he and his friends found “sticks that, like, basically fell off the tree, like, tree branches,” which they picked up. They ate, left the park, and began playing with the sticks. **Minor B** maintained that he did not have a stick, and that his friends who were carrying sticks held them down at their sides, and did not wave them around or chase anyone else. The group was stopped by several police officers, most of whom had their weapons drawn. **Minor B** and his friends were told to face the wall, and they were patted down. At first, the officers had their weapons facing down, but when **Minor B** said to them, “What did we do? We didn’t do anything,” two or three of the officers raised their guns and pointed them at **Minor B** and his friends. **Minor B** testified that they had dropped their sticks about 10 seconds before the police arrived, though in his interview with the CCRB on April 5, 2018, he stated that it was only after the police officers told them to put the sticks down that they did so. (Tr. 112-17, 120, 134-38, 143-46, 150-53, 168-71)

According to **Minor B**, he and his friends were about to be let go by the police, but someone arrived on the scene and instructed that **Minors A and B** be taken to the stationhouse. He and **Minor A** were handcuffed, placed in a police vehicle, and driven to the 48 Precinct, where they remained in the juvenile room until their parents arrived more than an hour later. (Tr. 117-23, 126)

A recording of the 911 call that led to the police response, along with the accompanying transcript, were admitted into evidence as CCRB Exs. 2 & 2A, respectively. The caller, who identifies himself and provides a callback number, states that he is observing several people running back and forth in the vicinity of Belmont Avenue and 188 Street. Specifically, he saw five individuals chasing another male. One of the five individuals had a machete, and another had a long stick like a bedrail. The caller provided a description for one of the individuals: a male Hispanic, about 5'6", in his 20's, wearing an orange hoodie, black durag, grey sweats, and white and black sneakers.

The ensuing radio run, along with a transcript, were admitted into evidence as CCRB Exs. 1 & 1A, respectively. The dispatcher relays the information provided by the caller, including the one description given. About six minutes later, an officer tells the dispatcher that the lieutenant is on the scene, and they have two individuals under arrest.

A photograph of 188th Street (CCRB Ex. 5) shows the block where the stop occurred. Both **Minors A and B** marked with their initials the approximate location where they were patted down. (Tr. 55-56, 124-25)

Body-worn camera ("BWC") footage from Police Officer Loperfito, one of the officers on the scene, was admitted as CCRB Ex. 3. In that footage, **Minors A and B** are seen being handcuffed and walked to an RMP. **Minor B** is visibly upset, asking for his mother; **Minor A** tries to

reassure him that they will be okay. One of the police officers explains that they are being brought to the precinct because they were seen with sticks in their hands, and that their parents will be called and they will be let go. **Minor B** insists he did not have a stick. They arrive at the precinct and are escorted to the desk. **Minor A** is dressed in a black hoodie with a black vest, while **Minor B** is wearing a red winter coat and a wool hat. Each of them is searched in front of the desk, and their pedigree information is taken.

Respondent Hoff testified that at the time of the incident, he was assigned as a neighborhood coordinating officer, tasked with patrolling the 48 Precinct to address community conditions. At approximately 2020 hours, he heard a call over the radio for a crime in progress, which was occurring about 1½-2 blocks away (*See* CCRB Exs. 1 & 2). Within 20-30 seconds of hearing the call, Hoff and his partner, who were in uniform and driving a marked RMP, responded to the incident, the first officers to do so. (Tr. 197-205, 212)

As he slowly drove his RMP, Hoff observed a group of approximately four or five youths who matched the radio description, “frantically” running back and forth on the street and in between parked cars. They appeared to be “fleeing away” from the corner identified in the radio run. Hoff exited his vehicle and stated, “Police, don’t move.” The youths “kept jumping in and out from the sidewalk, between cars, and back to the sidewalk,” in a manner that seemed “alarming.” Hoff testified that he moved to within 10 feet of the individuals, hoping to see if they had weapons in their hands; it was dark, and initially he could not see what objects they were holding, so he shined his flashlight to get a better view. Hoff observed the “silhouette of a long object,” which one of the individuals was holding by the outside of his leg. Hoff ordered the youths to show their hands, but they did not comply. (Tr. 204-09, 214-15, 222-29, 243-45, 252-53)

Since Hoff was concerned that the object he observed could be a machete or some other weapon, he drew his firearm, and pointed it in a “low ready” position, angled toward the ground and not directly at any of the youths. They immediately stopped running and placed their hands in the air, and Hoff heard the sound of wood hitting the ground. Hoff testified that he immediately holstered his firearm, which had been out for approximately two seconds, and moved closer to the individuals, who he noticed were young and out-of-breath, and talking back and forth to each other. Hoff had them place their hands against the wall, and frisked one of the individuals, whom he had seen holding a stick, to make sure he did not have any additional weapons, while his partner frisked the other four; the frisk lasted five seconds, and nothing was recovered. Hoff asked the youths what they were doing, and they responded that they were just hanging out and playing. (Tr. 209-15, 228-33, 252)

Additional officers arrived on the scene, including the patrol supervisor, Respondent Rose. Hoff testified that he told Rose what he had observed, and pointed out to Rose the two individuals whom he had seen carrying sticks. Hoff observed the sticks at the feet of the youths, which were similar to wall paneling but broken and pointy; he did not vouch for them or take any photographs. (Tr. 216-18, 237-38, 241, 249-50, 254)

Respondent Rose, who was the platoon commander at the time of the incident, testified that he was aware of a precinct condition, voiced by members of the community, involving groups of youths ranging in age from six to eighteen. Specifically, there recently had been multiple radio runs for youths committing criminal and disorderly acts in the area, including arson, robbery, assault, fighting, and damage to property. (See Resp. Ex. A, documenting crimes in the area) (Tr. 259-62, 312)

When Rose heard the radio call, he responded to the scene because he was concerned someone's life might be in danger. Upon arrival, he observed several police officers speaking with approximately five youths. The youths denied that they had attacked anyone. Rose testified that he spoke with Hoff and Police Officer Lin to find out what was happening at the location. The officers informed him that they had observed the youths running in the street, and that a couple of them possessed sticks and were fighting with them. Rose observed on the ground two boards, similar to bed slats; they were approximately three feet long and four-to-six inches wide, with jagged edges. The officers pointed out to Rose the two individuals who had been fighting with these sticks, **Minors A and B**. Rose could not recall which of the two officers provided each piece of information, since he spoke with them collectively, and the incident occurred four years earlier. (Tr. 275-81, 287-90, 298-302, 305-07)

Based on the information he was provided, Rose directed that the two individuals in question, **Minors A and B**, be brought to the stationhouse, where the youths could properly be identified, and their parents notified. Rose testified that he could not leave the juveniles, who had just been fighting with sticks, unattended at the scene. It was important that the parents be made aware of their sons' activities, with the hope of preventing **Minors A and B** from "going down a path where they do worse and worse things." At the precinct, juvenile reports for disorderly conduct were prepared by Officer Lin, and they were released to their parents. (Tr. 281, 290-94, 302, 319-22, 326-28)

Both Hoff and Rose came across as professional and responsible on the witness stand. Their description of events was consistent and logical, and I credit their accounts of what occurred. Despite their young age, both **Minor A** and **Minor B** answered questions willingly on the witness stand as they described the incident. There were, however, multiple attempts by each of

them to minimize their actions. Even though **Minor A** admitted at trial to having a stick, he initially stated to the CCRB investigator on April 5, 2018 that he was with his friends, and “they” had picked up sticks, while **Minor A** told them, “Let’s not play with sticks, because somebody could get hurt.” (Tr. 79-80). **Minor A** also testified that the decision to drop their sticks had nothing to do with the arrival of the police; under the circumstances, I find it incredible that the youths coincidentally just happened to drop their sticks only seconds before the police arrived. Similarly incredible was **Minor B**’s testimony that they held the sticks down at their sides the entire time without ever waving them around, and that they dropped the sticks 10 seconds before the police arrived. **Minor B** also testified that he did not have a stick, even though the credible evidence established that Hoff observed **Minor B** holding one.

With that in mind, we turn to the specifications, beginning with the charges against Respondent Hoff, who was one of the initial officers who responded to the scene.

Specifications 1-4 charge Hoff with wrongfully stopping several individuals: **Minor B**, **Minor A**, **Minor B**’s older brother **Minor C**, and additional friends of theirs. Section 212-11 of the Patrol Guide states that a stop may be conducted “only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor.”

It is undisputed that Hoff did stop the individuals in question. He responded to the location within seconds of receiving a radio call that there was a group of individuals with weapons, including a machete, chasing a male. Upon his arrival, he observed individuals matching the description, who appeared to be fleeing away from the corner identified in the radio run. He saw the individuals “frantically” running back and forth on the street and in between

cars. Hoff exited his RMP, identified himself as a police officer, and ordered the individuals to stop.

On the one hand, Hoff did not ultimately discover any corroboration that a third person was, in fact, being chased or menaced. Although two sticks were recovered, the officers did not find a machete at the scene. Nevertheless, at the time he initiated the stop, Hoff had a reasonable expectation, based on the 911 call, from a caller who identified himself and provided a callback phone number, that there was a group of armed individuals committing a crime. This information, coupled with Hoff's observations at the location, provided reasonable suspicion that these were the individuals who were the subject of the 911 call. As such, Hoff possessed sufficient legal authority to stop the individuals, and I find him not guilty of Specifications 1-4.

Specification 5 charges Respondent Hoff with drawing his gun without sufficient legal authority. Section 221-07 of the Patrol Guide states that the decision to draw a firearm "should be based on an articulable belief that the potential for serious physical injury is present."

As discussed above, Hoff arrived on the scene with the reasonable expectation that the individuals he observed had been armed with a machete and a stick as they chased another male. It was dark, and Hoff could not see if the individuals were, in fact, holding any of the weapons identified in the 911 call. With the aid of his flashlight, Hoff saw the silhouette of a long object in the hands of one of the individuals, which he reasonably believed might be a weapon. He ordered the youths to show their hands, but they did not comply.

Fearing that the object he observed might be a machete, or some other weapon, Hoff, who was standing within 10 feet of these individuals, drew his firearm, and pointed it down in a low ready position. This action produced immediate results, as the youths stopped running and placed their hands in the air. Hoff heard the sound of wood hitting the ground, which turned out

to be one of the two sticks recovered. Once he gained compliance, Hoff quickly re-holstered his firearm, which had been out for approximately two seconds.

Under these specific circumstances, I find that Hoff acted reasonably in drawing his firearm. At the time he did so, Hoff had an articulable belief that there was a potential for serious physical injury. Accordingly, I find him not guilty of Specification 5.

Specification 6 charges Respondent Hoff with frisking an individual without sufficient legal authority. Section 212-11 of the Patrol Guide states that a frisk is authorized when a police officer “reasonably suspects the person is armed and dangerous. This includes situations in which the officer reasonably suspects that the person has committed, is committing, or is about to commit a violent crime, or when the officer observes something on the person that he reasonably suspects is a weapon.”

Here, Hoff acknowledged that he did frisk one of the stopped individuals, while his partner frisked the others. Hoff had the individual place his hands against a wall, and frisked him; the frisk lasted only five seconds. Hoff testified that he frisked the individual because he had observed him holding a stick, and was concerned that there might be additional weapons.

As discussed above, the individual frisked by Hoff was part of a group suspected of chasing another male while they were carrying weapons, including a machete and a stick. The group initially refused to comply with the officer’s command to stop and show their hands. Hoff observed two of the individuals holding sticks, which they eventually dropped to the ground. Although ultimately no machete was found at the scene, at the time of the frisk events were still rapidly unfolding, and Hoff was in a precarious position with a reasonable concern for his safety.

Given the violent nature of what was described in the 911 call, Hoff’s initial interaction with the non-compliant suspects, and his observations as to the pointy sticks that two of the

individuals were holding, it was not improper for him to frisk the individual. Accordingly, I find Hoff not guilty of Specification 6.

With respect to Respondent Rose, Specifications 1 and 2 charge him with wrongfully detaining **Minor B** and **Minor A** respectively. Whereas the charges against Respondent Hoff dealt primarily with the basis for the stop, the charges against Rose focus instead on the aftermath of that stop.

Rose did not witness any of the conduct leading to the stop of the individuals. After hearing the radio call, he arrived on the scene several minutes later, and spoke with Officers Hoff and Lin, who apprised him of what had transpired. The officers informed him that they had observed the youths running in the street, and that a couple of them possessed sticks and were fighting with them. The youths denied that they attacked anyone. Rose observed two sticks lying on the ground. The officers pointed out to Rose the two individuals who had been in possession of the sticks, **Minors A and B**

When confronted with this situation, Rose made the decision to have **Minors A and B** handcuffed and transported to the stationhouse, where juvenile reports were prepared by Officer Lin. This portion of the encounter was captured by the BWC footage (CCRB Ex. 3), which shows each of the youths being placed in handcuffs, brought to an RMP, and transported to the stationhouse. Eight-year old **Minor B** is particularly distraught, and can be heard crying and asking for his mother. As they are escorted in front of the desk officer inside the precinct, Lin can be heard stating that the youths have been brought to the stationhouse for “playing with sticks.”

Indeed, there was no reliable evidence that the youths had been doing anything more than playing with sticks. The 911 caller was not brought to the scene, and there was no evidence that any of the officers attempted to contact the caller for further clarification as to what had

transpired. There was no corroboration that the youths had, in fact, been chasing another individual, as opposed to just playing amongst themselves. Under these specific circumstances, Rose's decision to have two youths, ages 8 and 14, handcuffed and brought to the precinct, constituted an improper use of his authority.

Despite his good intentions in terms of getting their parents involved, Rose's actions in this matter were not a reasonable or proper response to the information he possessed. The record has established, by a preponderance of the credible evidence, that Rose wrongfully detained

Minors A and B Accordingly, I find Rose guilty of Specifications 1 and 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 Rose'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 Rose, who was appointed to the Department on January 7, 2008, has been found guilty of wrongfully detaining two youths. The CCRB has recommended a penalty of 30 vacation days. For the reasons discussed below, I recommend that a lesser penalty be imposed.


The presumptive penalty for an enforcement action involving an abuse of discretion or authority is 20 penalty days. On the one hand, this tribunal is mindful of Respondent Rose's strong record with the Department. Also, Respondent Rose appeared genuinely motivated by his belief that by bringing **Minors A and B** to the stationhouse, and making their parents aware of their behavior, he might steer them away from engaging in worse conduct, particularly in a

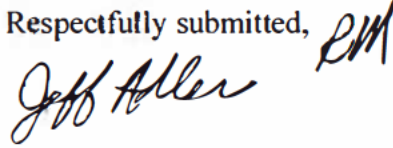
neighborhood where there was a community problem with youths engaged in criminal activity. At the same time, it is extremely troubling how Respondent Rose wrongfully subjected two youths, ages 8 and 14, to being handcuffed and transported to the stationhouse, and there must be appropriate accountability. Given Respondent Rose's years of experience, more is expected of him in situations such as these, and so, on balance, the presumptive penalty is warranted.

However, under the specific circumstances presented here, it would be unfair to impose consecutive penalties. The Disciplinary Guidelines note that concurrent penalties may be appropriate where the effort to maintain a balance between punishment, deterrence and remediation is undermined by consecutive penalties. The totality of the circumstances should be considered to ensure a just outcome. In this case, Respondent Rose essentially made one poor decision, to have **Minors A and B** handcuffed and transported to the Precinct. Once their parents arrived, the youths were promptly released. As discussed above, I credit that Respondent Rose's action was largely motivated by a desire to deter the youths from getting involved in worse conduct.

As such, concurrent penalties of 20 vacation days for each of the two counts are appropriate to address the misconduct in this matter. Taking into account the totality of the facts and issues in this case, I recommend that Respondent Rose forfeit a total of twenty (20) vacation days.

APPROVED

SEP 07 2022

KEECHANT L. SEWELL
POLICE COMMISSIONER

Respectfully submitted, 

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
CAPTAIN KURTIS ROSE
TAX REGISTRY NO. 946196
DISCIPLINARY CASE NO. 2019-20026

Respondent was appointed to the Department on January 7, 2008. On his three most recent annual performance evaluations, he received 4.5 overall ratings of “Extremely Competent/Highly Competent.”

Respondent has no disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials