



POLICE DEPARTMENT

September 10, 2021

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

Police Officer Ahmed Abdalla :
Tax Registry No. 948580 :
Midtown Precinct North :

Case No.
2017-18317

Police Officer Bernice Pacheco :
Tax Registry No. 935448 :
Midtown Precinct North :

Case No.
2017-18320

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

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Steven Guerrero, Esq.
Sharon Cheren, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondents: Craig Hayes, Esq.
Worth, Longworth & London, LLP
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New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2017-18317

1. Said Police Officer Ahmed Abdalla, while on-duty and assigned to Midtown North Precinct, on or about May 24, 2017, at approximately 2112 hours, in the vicinity of [REDACTED] New York County, did wrongfully interfere with Joseph Waldo's use of a recording device.

P.G. 208-03, Page 10, Additional Data

ARRESTS-
GENERAL PROCESSING

Now Encompassed by P.G. 203-29

WHEN A MEMBER OF THE
SERVICE ENCOUNTERS
AN INDIVIDUAL OBSERVING,
PHOTOGRAPHING, AND /OR
RECORDING POLICE ACTIVITY
GENERAL REGULATIONS

2. Said Police Officer Ahmed Abdalla, while on-duty and assigned to Midtown North Precinct, on or about May 24, 2017, at approximately 2112 hours, in the vicinity of [REDACTED] New York County, did improperly issue a summons to Joseph Waldo.

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

PUBLIC CONTACT -
PROHIBITED CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2017-18320

1. Said Police Officer Bernice Pacheco, while on-duty and assigned to Midtown North Precinct, on or about May 24, 2017, at approximately 2112 hours, in the vicinity of [REDACTED] Street, New York County, did wrongfully interfere with Joseph Waldo's use of a recording device.

P.G. 208-03, Page 10, Additional Data

ARRESTS-
GENERAL PROCESSING

Now Encompassed by P.G. 203-29

WHEN A MEMBER OF THE
SERVICE ENCOUNTERS
AN INDIVIDUAL OBSERVING,
PHOTOGRAPHING, AND /OR
RECORDING POLICE ACTIVITY
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on July 15, 2021. Respondents, through their counsel, both entered pleas of Not Guilty to the subject charges. The Department called Joseph Patrick Waldo as its sole witness. 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, the Tribunal finds Respondent Pacheco Not Guilty of the sole specification with which she is charged and finds Respondent Abdalla Not Guilty of Specification 1 and Guilty of Specification 2. The Tribunal recommends that Respondent Abdalla forfeit ten (10) vacation days in connection with Specification 2.

ANALYSIS

It is undisputed that on the evening of May 24, 2017, at approximately 9:12 p.m., uniformed members of the service responded to an emotionally disturbed person ("EDP") at the Fountain House, a facility for persons with mental illness on [REDACTED] in Manhattan. Mr. Joseph Patrick Waldo testified that, at the time, he was in his living room watching television when he noticed police lights outside near the Fountain House. He left his apartment, approached the Fountain House, and observed a "middle aged, black man being carried out...in handcuffs" to an ambulance. He then began recording video with his cell phone. (Tr. 29)

At trial, Waldo testified that upon arriving at the scene, with his cellphone camera in hand, the EDP was not yelling or screaming. He remembered between four (4) and eight (8) officers, as well as ambulance personnel, were present. The area was not blocked off with police tape or anything else. When asked by the EDP's sister why he was filming, he told her that it was for her brother's safety. (Tr. 27-33, 53, 70, 85-91)

Respondent Abdalla approached Waldo and said, "Step back. Step back." Waldo conceded that Respondent Abdalla told him he could film if he stood away. According to Waldo, Respondent Abdalla told Waldo that he was not backing up and told him to "get all the way back." Other civilians were standing around and Waldo did not understand why only he was being pushed back. He asserted that Respondent Abdalla acted in an intimidating manner by puffing out his chest to force him back. Although Respondent Abdalla never actually touched Waldo, he stated that Respondent Abdalla was mere inches away and would have "walked right into" Waldo if he did not cooperate by moving back. Respondent Abdalla eventually forced Waldo "about 75 feet back." (Tr. 33-36, 92, 98-99)

Wanting to get closer to the ambulance to film the EDP being put in the ambulance. Waldo returned to Fountain House. Respondent Abdalla again noticed Waldo and said, "I told you to get back. Get back.", and raised his voice. Respondent Abdalla activated his flashlight and pointed it at Waldo and into the camera. and "puffed out his chest" again. Respondent Abdalla was yelling and Waldo, who felt threatened, complied by stepping back. Respondent Abdalla then removed his flashlight and shined it in a manner "alternating between the camera and my face, but mostly the camera." After crossing the street, he spoke to an older man about what he had seen. At this time, Waldo stopped filming. He later restarted filming and estimated a gap of approximately nine minutes between the video recordings. (Tr. 37-42, 61, 65, 85-86)

Waldo testified that he had one last interaction with Respondent Abdalla that evening. After Respondent Abdalla entered a police vehicle and continued making eye contact with him, Waldo displayed his middle finger at Respondent Abdalla. According to Waldo, Respondent Abdalla then "made a beeline for me." Respondent Abdalla aimed his flashlight at Waldo's camera and asked, "Why are you acting disorderly?" Respondent Abdalla's flashlight was in a

strobe mode that Waldo said made it impossible for him to record video. A female officer (Respondent Pacheco) also approached with her flashlight out, and Respondent Abdalla took Waldo's ID. No bystanders approached or watched Waldo's interactions with the officers, and Waldo did not raise his voice. Respondent Abdalla gave Waldo two citations: one for disorderly conduct and the other for jaywalking. Waldo denied ever congregating with other individuals as stated in the summons. (Tr. 43-49, 63, 67)

On cross-examination, Waldo admitted that on social media he has made posts in the past suggesting that some police officers "made fascist actions." His Facebook photograph is a picture of himself in a jacket that says, "Fuck the Police." Waldo acknowledged retweeting a post calling Commissioner Shea the "fascist NYPD leader." He asserted, "The NYPD has a history of troublesome encounters with emotionally disturbed people." Waldo further acknowledged that he has been arrested in the past for activities at protests. He conceded that he had filmed crime scenes in the past and was familiar with police establishing a perimeter, but explained that when he saw other people walking closer he assumed that he could be where they were allowed to be. On the advice of counsel, Waldo waited until after his criminal case was resolved before reporting the incident to CCRB. Waldo said he may have seen Respondent Abdalla after the incident, but did not recall saying anything to him other than "Officer Abdalla." (Tr. 73-74, 80-81, 95, 106-09)

The video evidence captured by Waldo's cellphone depicted the following events:

Video 1- (Dept. Ex. IA):

| | |
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| 00:00: | It is dark outside. An RMP is seen parked behind an ambulance, both with their emergency lights flashing. A male in handcuffs is standing next to a police officer at the front of the RMP. A woman, identified at trial as the EDP's sister, is heard asking, "Ah, what're you doing?" A male voice, identified at trial as Waldo's, answers, "Filming." The sister asks, "For what?" Waldo answers, "For myself." She asks, "Why?" Waldo interrupts |
|--------|---|

her, "Because I'm a citizen." She answers, "No that's not right, don't do that," The sister moves between the camera and the ambulance. Waldo interjects, "I'm doing this for your brother's safety." The female civilian responds, "He's schizophrenic. It's not police brutality." Waldo responds, "Then this is not their jurisdiction because the NYPD does not know how to deal with mental illness, they don't." She replies, "They punched him in his ribs." Waldo responds, "Are you serious? Just now?"

- 00:58: Waldo is heard calling out, "Sir, sir." Another male voice, identified at trial as that of Respondent Abdalla, is heard saying, "Sir, can you step aside please?" Respondent Abdalla continues, "You can film all you want, but step aside." Respondent Abdalla steps in front of the camera stating, "all the way back sir, all the way back." Waldo takes several steps backwards, saying, "I'm moving back." Waldo appears to slow his pace backwards. Respondent Abdalla continues, "all the way back, I'm telling you to move back now, move back now." Waldo again takes several steps back, stating, "I'm moving back, I'm obeying your orders. I'm moving back." Respondent Abdalla retorts, "You're not moving back all the way where those people are, all the way over there." Waldo says, "You think this is too close to the scene." Respondent Abdalla replies, "Yes, yes, I determine that." Waldo comments, "Officer Abdalla?" Respondent Abdalla responds, "Officer Abdalla, shield number 7927," moving his shield and name plate towards the camera. Respondent Abdalla repeats, "over there" and walks away. Waldo repeats Respondent Abdalla's name and spells it.
- 01:30: Waldo continues to point his camera at the ambulance and the officers. At this point, Waldo is the length of two brownstone-sized buildings away from the scene. Waldo moves back further to where others are standing.
- 01:50: Waldo takes several steps forward and engages the zoom feature on his cellphone camera. The EDP remains in handcuffs at the front of the RMP. Waldo inches closer to the scene.
- 03:00: Waldo moves forward again towards the ambulance as the EDP is being placed inside. Waldo returns to the position he was standing in at the outset of the video and walks to the side of the ambulance.
- 03:20: The female civilian moves in front of the camera and appears to relay information to the officers. Waldo interrupts, "Sounds like more than just pepper spray." The female civilian asks, "Is he going to the hospital or y'all just taking him to jail?" A male lieutenant appears on screen and answers, "No, he's going to the hospital, as far as I know right now." The lieutenant then points his finger in the direction of Waldo and asks, "You are?" Waldo responds "I'm a citizen." The lieutenant responds, "Okay."

Waldo interjects, "Who has every right to film you." The lieutenant replies, "Okay" and waves at the camera "Hey, how are ya."

03:38: The female civilian asks, "Can I sit in there with him?" The lieutenant responds, "No, not yet. They'll probably allow you to go." Waldo interjects, "You should know that your charges kicked him in the ribs." The female civilian interjects, "punched him in the ribs when he was restrained." The female civilian again asks, "Am I allowed to go inside, so you guys don't have to hit him anymore." The video ends (at 04:14).

Video 2- (Dept. Ex. 1B):

00:10: The camera, which appears to be mere feet from seven officers standing near an RMP, pans out to show other officers and the ambulance. Waldo begins to count the officers, announcing "ten and a sergeant."

01:12: Respondent Abdalla is heard stating, "Sir, I told you to step over there, alright?" He then shouts in an agitated manner, "It's an active crime scene!" and continues, "No, I don't need you to talk to anyone." Waldo moves back. Respondent Abdalla walks with him as he moves back, advising, "I need you to step aside, I'm not going to tell you again, you can record all you want, but don't interfere, that's all I'm asking, thank you." Waldo interjects, "I'm not interfering, I have not been interfering." Respondent Abdalla responds, "I told you earlier to step over there," pointing down the street, "and you came back." Waldo retorts, "And how was I interfering there?"

01:30: Respondent Abdalla activates his flashlight and points it towards Waldo, explaining, "I told you to step aside, over here," then points his flashlight down the street, reiterating, "we have an active crime scene here, we have police equipment that's missing, alright, I need you to step aside." Respondent Abdalla is a few paces away from Waldo. The camera appears to be level with Respondent Abdalla's head. Waldo appears to move into the street. Respondent Abdalla immediately shouts, "Not in the street." Waldo responds, "I'm crossing the street." Respondent Abdalla again states "Not in the street, cross at the sidewalks, not here." Waldo crosses to the other side of the street and ends the video (at 01:55).

Video 3- (Dept. Ex. 1C):

00:00: The video begins with Respondent Abdalla shining his flashlight in Waldo's direction, obscuring a portion of the video frame. Respondent Abdalla is heard stating, "Why are you acting disorderly right now sir." Waldo responds, "I have every right to do that constitutionally." Respondent Abdalla continues, "You walked over there and [inaudible]." Respondent Abdalla points at the roadway. Waldo interjects, "Because that has been protected in the Supreme Court." Respondent Abdalla states,

"I need your [D right now." Waldo continues, "I'm standing over here, I flicked you off." Respondent Abdalla states, "You crossed in the middle of the street, right? Didn't you?" Waldo continues, "And you got out of the car, you got out of the car." Respondent Abdalla interjects, "I need your ID, I need your ID right now." Respondent Abdalla continues to point his flashlight towards Waldo, obscuring a portion of the video frame. The camera pans slightly to the left revealing Respondent Pacheco standing next to Respondent Abdalla.

00:23: Respondent Abdalla's flashlight switches to strobe mode. At this time, the flashlight is positioned to the side of the camera and the strobe effect does not significantly obscure the recorded image.

00:29: Respondent Abdalla appears to lower his flashlight as he receives Waldo's ID. As he does so, Respondent Pacheco removes her flashlight and shines it at Waldo. Waldo states, "Be careful with it please, it's almost breaking. Excuse me." Respondent Abdalla directs him, "Standby." Respondents Abdalla and Pacheco, and an unknown third officer, walk away from Waldo and into the street. Waldo's camera pans to an unknown civilian male. Waldo asks the civilian, "Now you see this? Now can you witness right now and tell me on video what I was doing?" The civilian responds, "Just sitting here and talking to me, nonchalant, and then they came over and said 'hey, you, you, you.' They should look at you and tell you are not a rowdy person." Waldo says, "And for the record, I put my hand up with my middle finger in the air when he looked at me." The civilian responds, "Oh did you, I didn't see that." Waldo continues, "And that's why he came out of his car with his flashlight." The civilian interjects, "Oh, he was in the car?" Waldo continues, "In the car, he was looking at me. He came out of the car with his flashlight. And I am constitutionally protected. That is free speech to be able to put my middle finger up. That's been protected by . . ." The video ends (at OI: 18).

The parties stipulated to the admission of the summonses for disorderly conduct (Dept. Ex. 2A) and jaywalking (Dept. Ex. 28) and to the admission of copies of the relevant memo book entries of Respondent Abdalla (Dept. Ex. 3) and Respondent Pacheco (Dept. Ex. 4). The narrative portion of the disorderly conduct summons reads: "At T/P/O Defendant was congregating with at least six or more other[s]. Defendant was told to disperse multiple times and refused and returned to location. Defendant was with a group of others while officers [were] dealing with EDP and refuse[d] to disperse." The narrative portion of the jaywalking summons

reads: "At T/P/O Defendant was observed crossing the street other than the cross walk while cross walk was available and he walked in the middle of [an] active lane. Defendant was with a group of others while officers were dealing with EDP and refused to disperse."

In his activity log, Respondent Abdalla made the following entry in connection with Waldo: "2125 make stop [of] Joseph Waldo [DOB recorded] male was told multiple times to back up and not to interfere with officers. He moved back and return[ed] again[,] multiple times refused lawful orders and jaywalked in the middle of the street in active lane of traffic. 2 summonses issued to [defendant,] jaywalking and Discon." Respondent Pacheco made no entries in connection with Waldo or the incident at the Fountain House; her entries that day state only that she was assigned as the lieutenant's driver. (Dept Exs. 3 & 4).

Respondent Abdalla testified that he arrived to the scene in uniform, along with his trainee, Police Officer McCormick. They responded to an "85" (Need Additional Unit) and were the second RMP on scene. He saw two officers "struggling with an individual." An ambulance was already on scene. Both officers were suffering the effects of pepper spray¹ and told Respondent Abdalla that they could not see anything. Respondent Abdalla assisted in handcuffing the EDP and ordered a second ambulance for the injured officers. Once they had the EDP in handcuffs, Respondent Abdalla and the other officers got him an ambulance and helped one officer retrieve pepper spray, a flashlight, and other equipment he had dropped. (Tr. 117-21, 125)

Respondent Abdalla testified that he is accustomed to having civilians film him and understands that "everyone's allowed to film any incident." He explained, however, that officers may establish guidelines, such as how far away people should stand, depending on the

¹ At trial, Respondent Abdalla explained that the officers had deployed pepper spray, but because of "bounce[] back" had been injured by their own spray (Tr. 149).

circumstances of the crime scene. In this case, Respondent Abdalla needed to retrieve the police equipment, so he told Waldo that he was welcome to film, but to move back. Respondent Abdalla was still looking for the dropped equipment when Waldo returned. He allowed people to walk by as long as they did not linger. Respondent Abdalla admitted that Waldo was not combative or yelling, nor did he intervene. (Tr. 122-27, 141-42)

Respondent Abdalla told Waldo to get out of the street because the Midtown area has a high instance of pedestrians struck by vehicles. Respondent explained that his Command was putting a particular emphasis on addressing jaywalking in order to reduce fatalities as part of the citywide Vision Zero program. He urged Waldo to use the sidewalk. Over the course of several minutes, Respondent Abdalla saw Waldo repeatedly walk into the middle of the street and stand between cars. Respondent Abdalla waited until the ambulance left before stopping Waldo because he was dealing with too many other tasks beforehand. (Tr. 127-32)

For safety, he used his flashlight during the approach because "it was very dark" and he was using the flashlight to follow Waldo's hands as he was trained. He kept the flashlight on until Waldo handed over his ID. He issued Waldo summonses for jaywalking and disorderly conduct based on his repeatedly walking into the street despite the multiple orders to stop. Respondent Abdalla conceded that he did not issue a summons to the EDP's sister, even though he had had to tell her multiple times to get back as well. (Tr. 127-37, 143, 145, 150-54)

A few months later, Respondent Abdalla encountered Waldo again at the scene of an accident. Waldo approached him and said, "'Abdalla, I fucked you with CCRB.'" Respondent Abdalla told him he was busy and asked him to leave. Similarly, about a year later, Waldo displayed his middle finger to Respondent Abdalla and called him a "piece of shit." Respondent Abdalla did not answer. (Tr. 137-39)

Respondent Pacheco testified that she arrived at the scene with a lieutenant. At that time, approximately three other RMPs were on scene. Respondent Pacheco assisted the injured officers with getting into an ambulance. She also helped keep people on the sidewalk per her lieutenant's instructions. Waldo was recording while standing "right in the middle of the street." Respondent Pacheco told the crowd to move, but did not speak directly to Waldo. She witnessed Respondent Abdalla repeatedly tell Waldo to move back and went to assist him. She pulled out her flashlight for safety because the lighting was poor. She aimed it towards Waldo's hands so she could see what he was holding. Respondent Pacheco denied trying to prevent Waldo from recording. (Tr. 160-66)

Respondent Pacheco stated that when Waldo was standing in the middle of the street and not complying with "several" orders to move out of the street, "[t]here were several ambulances coming [for] the other officers [and] [t]hey weren't able to get by." (Tr. 158-68, 171, 174-77, 189-90)

FINDINGS

Both Respondents are charged with wrongfully interfering with the use of a recording device by Waldo. Respondent Abdalla is further charged with improperly issuing a summons to Waldo. Although the latter specification does not specify which of the two summonses was improperly issued, the Department stipulated in closing that it is not contesting the propriety of the jaywalking summons, only the disorderly conduct summons (Tr. 204-05).

It is well-established that members of the public have the right to record members of law enforcement in public places (A.G. 304-21). That right, however, does not supersede public

safety. Administrative Guide Section 304•21² instructs members of the service that limitations may be placed on the right to observe and record police action where the member of the public is "intruding into the physical space necessary to perform police operations and refusing to obey an order to move back," or "engaging in passive behavior that prevents an officer from taking enforcement action." If "[a]ctual interference with the performance of an official police function" occurs, A.G. 304•21 further instructs that an arrest for the crime of Obstruction of Governmental Administration (Penal Law section 195.05) may be made.

At trial, the Department clarified that the behavior of Respondents that it believed unreasonably interfered with Waldo's right to record was the improper use of their flashlights, which the Department averred were used to obstruct Waldo's video recording. The preponderance of the evidence does not support the Department's position. Indeed, there is scant evidence that Respondents used their flashlights for an improper purpose.

Rather, the preponderance of the evidence establishes that Waldo, from the very outset of the video recordings he made, did not seek to maintain a reasonably safe distance from the obvious police action underway. Waldo placed himself in front of the entrance to the Fountain House where the EDP was being taken into custody and where, according to Respondent Abdalla, he was attempting to find and retrieve Department property. After being asked to move back, it is undisputed that Waldo returned to the same position. It is also not reasonably in dispute that it was dark outside. Where, as here, an individual is not being cooperative with a lawful and reasonable request of police officers and is present under poor lighting conditions, it is entirely reasonable for an officer to utilize a flashlight to better illuminate that individual.

² At the time of the alleged mis conduct, the content of A.G. 304-21 appeared in Patrol Guide procedure 203-29. P.G.203-29 was moved to A.G. 304-21 in June 2021.

Furthermore, there is no evidence that either Respondent used their flashlights in a manner evidencing an intent to obscure Waldo's recording. Both Respondent Abdalla and Respondent Pacheco consistently testified that they pointed their flashlights at Waldo's hands, which they stated were both positioned at or near the height of the camera. Most telling, the officers only aimed their flashlights in Waldo's direction when verbally interacting with him. They did not continue to shine their flashlights in his direction when their conversation ceased. Indeed, at no time did the officers shine their flashlights in the direction of Waldo's recording device in a manner unconnected to an effort to either give instructions to Waldo or take enforcement action against him. And, when engaged in these police actions, they do not linger in order to use their flashlights in an unnecessary manner.

Accordingly, I find Respondents Not Guilty of Specification 1, respectively.

Specification 2 in Disciplinary Case No. 2017-18317 charges Respondent Abdalla with improperly issuing Waldo a summons for Disorderly Conduct. Penal Law Section 240.20(5)-(6) states, "A person is guilty of disorderly conduct when. with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, ... [h]e obstructs vehicular or pedestrian traffic ... or [h]e congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse."

The preponderance of the evidence suggests that Respondent Abdalla improperly issued a Disorderly Conduct summons to Waldo. There is scant evidence that Waldo, with the intent to cause public inconvenience or public harm, was congregating with other persons, much less "six" persons as Respondent Abdalla wrote in his narrative. Rather, Waldo testified credibly, as supported by the video evidence, that he was not congregating with persons; rather he was acting on his own with the primary purpose of filming police activity.

While both Respondents claimed at trial that Waldo engaged in Disorderly Conduct by being present in the middle of an active roadway "multiple" times and was asked to leave the roadway "multiple" times, Respondent Abdalla did not base the issuance of the summons for Disorderly Conduct on such facts. In neither the narrative portions of the Jaywalking or Disorderly Conduct summonses, nor in Respondent Abdalla's memo book entries, does he describe Waldo as being present in the "middle" of an active roadway more than once, remaining in an active roadway, or disobeying multiple orders to leave an active roadway. Rather, Waldo is only described as crossing an active roadway in a place other than at a crosswalk. While there are gaps in Waldo's video recordings, he is depicted on the videos as entering the roadway only once, and only to cross the street. Furthermore, despite a robust examination of Waldo, neither the Department, nor Respondent, asked Waldo whether he had stood in the "middle of the street" more than once or whether he had ignored multiple orders to leave the street. If this had indeed formed the basis for the issuance of the Disorderly Conduct summons and was known to the Department prior to trial, it is unusual that such a lengthy examination of Waldo would not have included a single question about what amounted to the crux of the Specification 2 according to Respondent Abdalla.

Additionally, at the beginning of the third video, when Respondent Abdalla approaches Waldo to ask him for his ID, Respondent Abdalla remarks "Why are you acting disorderly *right now* sir" (emphasis added). Respondent Abdalla does not claim that Waldo was being disorderly previously as he claimed at trial. Indeed, at trial, Respondent Abdalla did not claim that Waldo engaged in any disorderly conduct when he approached him to issue him summonses; rather, he claimed that Waldo had acted in a disorderly fashion long before he approached him and he

decided to wait until the ambulances left and the scene was "safe" to approach Waldo. (Tr. 133-34)

In sum, while Respondent Abdalla may have articulated, *at trial*, a good faith basis to issue a Disorderly Conduct summons to Waldo, the preponderance of the evidence did not support that such reasoning motivated Respondent Abdalla's actions *at the time* the summons was issued. Rather, the preponderant weight of the evidence supported Waldo's version of events as to the issuance of the disorderly conduct summons.

Accordingly, Respondent Abdalla is found Guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history was also 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 Abdalla was appointed to the Department on July 6, 2010, and has one prior disciplinary matter. In *Disciplinary Case No. 201 4-11400* (Jan. 29, 2015), Respondent Abdalla negotiated a forfeiture of five (5) vacation days for refusing to provide his name and shield number and improperly issuing a summons for disorderly conduct to an individual who approached him to criticize him for smoking while in uniform.

In the instant disciplinary matter, Respondent has been found guilty of improperly issuing a summons for disorderly conduct. The Department Advocate's Office has recommended a forfeiture of twenty (20) penalty days in connection with both Specifications I and 2; Respondent, however, has been found Not Guilty of Specification 1.

The Disciplinary Guidelines establish a presumptive penalty of twenty (20) vacation days for "Enforcement Action involving Abuse of Discretion or Authority." The conduct encompassed by this disciplinary category, however, is broad. From a civilian perspective, the invasiveness and dangers attendant to an improper arrest or search are typically far greater than those normally associated with the improper issuance of a summons. Indeed, the Department traditionally applies lower penalties (in the range of 2-5 vacation days) for the improper issuance of a summons.³

There is ample reason for the base penalty in the instant matter to be mitigated. Waldo's behavior in this matter justified enforcement action. He failed to leave an area in which bona fide police activity was underway and disobeyed a lawful order to leave the area. While the summons ultimately issued by Respondent was improper, the decision to engage Waldo was entirely appropriate under the circumstances. Furthermore, there is no evidence that Respondent Abdalla treated Waldo in a discourteous manner or engaged in any additional misconduct in connection with the improper issuance of the summons. Accordingly, the Tribunal finds that a base penalty of the forfeiture of five (5) vacation days is appropriate in this matter.

A penalty enhancement, however, is warranted in connection with Respondent's prior disciplinary history. Where a member's prior disciplinary matter resulted in a penalty of five (5) vacation days, the progressive discipline policy established in the Disciplinary Guidelines would ordinarily only require a penalty enhancement where the time period between the prior discipline and the instant discipline is three (3) years or less (here, it is over six (6) years). The Disciplinary

³ See, e.g., [Improper issuance of summons cases:] *Disciplinary Case No. 2015-14572* (May 4, 2017) (2VD); *Disciplinary Case No. 2015-13/ 16* (April 13, 2017) (2VD); *Disciplinary Case No. 2013-9872*, (June 17, 2015) (2VD); *Disciplinary Case Nos. 2018-19720 & 19721* (Feb. 12, 2021) (5VD); *Disciplinary Case No. 2018-18854* (May 22, 2020) (5VD); *Disciplinary Case No. 2014- /2669* (Sept. 13, 2016) (5VD); *Disciplinary Case No. 20 /4- /2503* (July 27, 2016) (5VD); *Disciplinary Case No. 20 /4 -11400*, (Jan. 29, 2015) (5VD).

Guidelines, however, instruct that any time limitations for the purposes of progressive discipline “do not apply to prior disciplinary history establishing patterns of misconduct.” Here, the similarities between Respondent’s prior disciplinary matter and the instant matter constitute a pattern of misconduct. In both disciplinary matters, Respondent reacted to criticism by a private citizen with the issuance of a summons. Accordingly, the Tribunal recommends a penalty enhancement of five (5) vacation days in connection with Respondent’s prior disciplinary history.

For the foregoing reasons, the Tribunal recommends that Respondent Abdalla forfeit ten (10) vacation days in connection with Specification 2.

Respectfully submitted,



Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED



JAN 14 2022
KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER AHMED ABDALLA
TAX REGISTRY NO. 948580
DISCIPLINARY CASE NO. 2017-18317

Respondent Abdalla was appointed to the Department on July 6, 2010. On his three most recent annual performance evaluations, he twice received overall ratings of "Exceeds Expectations" for 2018 and 2019, and received an overall rating of "Exceptional" for 2020. Respondent Abdalla has been awarded four medals for Excellent Police Duty.

In 2015, Respondent Abdalla forfeited five (5) vacation days after he pled Guilty to (i) refusing to provide his name and shield number upon an civilian's request, and (ii) issuing said individual a summons without sufficient legal authority.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials