



POLICE DEPARTMENT

November 23, 2022

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Gregory Acerra :

Tax Registry No. 952380 :

Strategic Response Group 5 :

Case No.

2021-24480

-----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, 10<sup>th</sup> Floor  
New York, NY 10007

For the Respondent: Stuart London, 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

1. Police Officer Gregory Acerra, on or about November 22, 2019, at approximately 1835 hours, while assigned to SRG 5 and on duty, in the vicinity of the Mass Arrest Processing Center at 1 Police Plaza, New York County, used offensive language, in that he made remarks about Person A's gender identity, in substance: "It's a she," "It's a girl," "Put it with the females," without police necessity.

P.G. 203-10, Page 1, Paragraph 1  
[now encompassed by A.G. 304-06,  
Page 1, Paragraph 2]

PUBLIC CONTACT  
PROHIBITED CONDUCT

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 3, 2022.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The CCRB offered the hearsay statement of the arrestee, and submitted Body-Worn Camera ("BWC") footage from Respondent as well. 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 reviewed all of the evidence in this matter, I find Respondent Not Guilty.

## ANALYSIS

This case involves Respondent's interaction with a transgender individual whom Respondent arrested during a protest in Harlem on November 22, 2019. It is alleged that when Respondent brought the individual ("the arrestee"), who presents as male, for arrest processing, he deliberately used offensive language by telling the officers who were lodging the arrestee, "It's a she, put it with the females."

The arrestee did not appear to testify at trial. Instead, the CCRB offered into evidence a sworn recorded statement made by the arrestee to the CCRB, in person, on January 22, 2020

(CCRB Exs. 1 & 1A). It is well-settled that hearsay evidence is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross examine, and the court can observe the witness's demeanor. In the absence of live testimony from the arrestee here, this tribunal carefully considered his prior statement, in conjunction with the other evidence presented at trial.

In that interview, the arrestee stated that he was handing out flyers as part of a protest against police brutality. At some point, the arrestee observed a group of officers jump one of the protesters. As the arrestee screamed at the officers to get off of the protester, he was grabbed and brought to the ground by Respondent and placed in handcuffs. The arrestee stated that his memory of the details was "kind of like a big blur," that he was dazed and confused and may have suffered a concussion when he was thrown down. He did, however, maintain that he entered the street from the sidewalk only after police officers pushed him there. When asked whether he physically touched any of the officers trying to apprehend the other protester, the arrestee insisted that he did not. (CCRB Ex. 1A at 3-4, 8, 19, 23, 27-28, 34-37)

After he was arrested, the arrestee told Respondent that his identification, which showed him as female, was wrong, and that he is a male who prefers to be addressed as "sir."

Respondent had a male officer pat down the arrestee at the scene. The arrestee then was brought by van to One Police Plaza to be processed, and was about to be placed into a cell with other males. According to the arrestee, Respondent intervened and stated, "No...it's a she, it's a girl, like put it with the females." The arrestee alleged that Respondent said this in front of the other arrestees and police officers, which was humiliating and potentially dangerous. The arrestee was

then placed with the females. Four or five hours later, he was issued two disorderly conduct summonses, for disobeying a lawful order and blocking vehicular traffic (CCRB Ex. 4), and released from custody. (CCRB Ex. 1A at 5-7, 50-52, 56, 60-61, 68, 71)

There is no video footage of the interaction between Respondent and the arrestee at the time he was being processed at One Police Plaza. However, footage from Respondent's BWC (CCRB Ex. 2) does capture some of their interaction at the arrest location. At approximately 9:58, Respondent asks for the arrestee's identification, which he provides. The arrestee clarifies for Respondent that the name on the identification is wrong. At 19:47, Respondent brings the arrestee to the bus in order to have him transported for arrest processing. When the officer at the bus asks whether the arrestee has been searched, Respondent first clarifies with the arrestee whether he prefers "ma'am" or "sir." The arrestee answers that he prefers "sir," and Respondent informs the bus officer, "I haven't frisked him yet."

Respondent testified that he observed the arrestee interfering with the apprehension of an individual in the street by jumping on a sergeant's back. As Respondent pulled the arrestee off the sergeant, the arrestee struck Respondent in the face. Respondent guided the arrestee to the ground and placed him in handcuffs. Respondent testified that the BWC footage from another officer at the scene (Resp. Ex. A), shows the moment where the arrestee first moves into the street. The scene captured by the footage is chaotic, and not very clear, but at the 0:55 mark, an individual, who Respondent identified as the arrestee, appears to maneuver past the hood of a parked car as he enters the street from the sidewalk. At 2:50 and 3:10, Respondent can be seen standing in the street holding onto the arrestee. (Tr. 28-29, 44-46, 50-54, 56)

Respondent testified that after the apprehension, the arrestee provided identification, which contained a female name. The arrestee informed Respondent that the name was wrong,

and told Respondent the correct name. Respondent inquired as to the arrestee's preferred gender, asking if he preferred "ma'am" or "sir." The arrestee indicated he preferred "sir," which is how Respondent addressed him. (Tr. 30-31, 38-39, 59-60, 64, 71-72)

The arrestee was transported to One Police Plaza for arrest processing. Respondent testified that he informed the processing officer that the arrestee was biologically female, but identified as male. According to Respondent, he wanted to be sure that the processing officers had the relevant information before they decided where to lodge the arrestee; Respondent, himself, had no say in the decision where to lodge him. Respondent insisted he never stated, "It's a she, put it with the females." (Tr. 33-35, 54-55, 60-62, 72-76)

Respondent acknowledged, though, that it was possible he had misspoken and referred to the arrestee as "she" or "female" to other police officers, outside the presence of the arrestee. Respondent also acknowledged that during his interview with the CCRB on March 10, 2020, he mistakenly referred to the arrestee as "she" multiple times. Respondent issued two summonses to the arrestee using the female name on the arrestee's state-issued identification, since he wanted the summonses to match the name on the ID. (Tr. 31, 66-69, 74, 77-80)

Specification 1 charges Respondent with using offensive language regarding the arrestee's gender identity, in that he stated "It's a she, it's a girl, put it with the females." Section 203-10 of the Patrol Guide prohibits the use of discourteous or disrespectful remarks regarding another person's gender identity/expression. Members of the service are required to address the public using pronouns, titles of respect, and preferred names "appropriate to the individual's gender identity/expression as expressed by the individual."

The allegation here is that when he brought the arrestee to One Police Plaza, Respondent stated to the arrest processing officers, "No...it's a she, it's a girl, like put it with the females."

To prove this charge, the CCRB relies upon the uncorroborated hearsay statement of the arrestee, who did not appear to testify. Although the arrestee claimed that Respondent made that statement, his description of events was not subjected to cross examination, and his credibility was not challenged. For instance, there was no opportunity to explore with the arrestee his account of his arrest, including his dubious claims that he did not enter the street on his own, and that he never touched another police officer before being handcuffed. Although the majority of the interaction between Respondent and the arrestee, as captured in the BWC, appeared to be amicable, the arrestee was not questioned about whether he felt any animosity toward his arresting officer, and how that may have influenced his accusation against Respondent. Additionally, the arrestee acknowledged he felt dazed and confused following his arrest, yet did not have to answer questions about how that may have impacted his perception of what occurred afterward.

Respondent, meanwhile, took the witness stand and testified in a detailed, logical manner about his interactions with the arrestee. Respondent answered questions willingly, as he credibly described what transpired. To the extent that Respondent may have referred to the arrestee as “she” to other officers outside the arrestee’s presence, or during his interview with the CCRB, I credit Respondent’s explanation that any such statements were inadvertent mistakes. Moreover, the BWC footage from the scene of the arrest shows Respondent treating the arrestee with respect and professionalism, as he clarifies with him his preferred gender. In front of the police officer at the bus, Respondent asks the arrestee how he identifies, and then specifically says to the bus officer, “I haven’t frisked him yet.” Indeed, there is no indication from Respondent’s interactions with the arrestee at the arrest scene that he would later make the offensive statement of which he is accused.



The burden rests with the CCRB to prove it's accusation by a preponderance of the credible evidence. I find that the arrestee's uncorroborated hearsay statement did not meet that burden. Moreover, I credit Respondent's description of events, including his firm denial that he ever made the statement attributed to him by the arrestee. Accordingly, I find Respondent not guilty.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**

DEC 28 2022  
  
KEECHANT L. SEWELL  
POLICE COMMISSIONER