



POLICE DEPARTMENT

March 25, 2024

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

- against - :

Lieutenant Francy Monestime :

Tax Registry No. 946018 :

Office of Management Analysis & Planning :

Case No.

2021-23750

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For the Respondent: Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

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

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CHARGES AND SPECIFICATIONS

1. Lieutenant Francy Monestime, on or about July 28, 2019, at approximately 2020 hours, while assigned to the 43 Precinct and on duty, in the vicinity of East 183rd Street and Ryer Avenue, Bronx County, abused his authority as a member of the New York City Police Department, in that he stopped **Complainant** without sufficient legal authority.

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

INVESTIGATIVE
ENCOUNTERS

2. Lieutenant Francy Monestime, on or about July 28, 2019, at approximately 2020 hours, while assigned to the 43 Precinct and on duty, in the vicinity of East 183rd Street and Ryer Avenue, Bronx County, wrongfully used force, in that he tackled **Complainant** to the ground without police necessity.

P.G. 221-02, Page 2, Prohibition 11

USE OF FORCE

3. Lieutenant Francy Monestime, on or about July 28, 2019, at approximately 2020 hours, while assigned to the 43 Precinct and on duty, in the vicinity of East 183rd Street and Ryer Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he arrested **Complainant** without sufficient legal authority.

P.G. 208-01, Page 1, Paragraph 3

LAW OF ARREST

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

PROHIBITED
CONDUCT

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

4. Lieutenant Francy Monestime, on or about January 15, 2020, at approximately 1013 hours, while assigned to the 43 Precinct and on duty, inside of 100 Church Street, New York County, provided a false official statement to the CCRB.

P.G. 203-08, Page 1

MAKING FALSE
STATEMENTS

(now encompassed by A.G. 304-10, Page 1, Prohibition 2)

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 4, 2024, and January 31, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called CCRB Investigator Alexander Opoku-Agyelang, and

██████████ (hereinafter “Complainant”) as witnesses, and introduced body-worn camera footage of the incident as well as Respondent’s CCRB audio interview and transcript. Respondent called Captain Anderson Ortiz, introduced the hearsay transcript of Police Officer Tamara Wynaar’s CCRB interview, and 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, I find Respondent Not Guilty of Specifications 1, 2, and 4. I further find Respondent Guilty of Specification 3 and recommend a forfeiture of fifteen (15) vacation days.

ANALYSIS

CCRB alleges that, on July 29, 2019, Respondent tackled Complainant to the ground unnecessarily while stopping and arresting him without legal authority. The CCRB also contends that during his official interview, Respondent made false statements when he said that other officers were chasing Complainant, and when he was hesitant to conclusively identify himself and the location of the incident when he was shown body-worn camera footage of the incident.

The following is a summary of facts that are not in dispute. On July 29, 2019, at approximately 2000 hours, several plainclothes officers, including Police Officer Rivera, approached a man on Ryer Avenue near 183 Street in the Bronx. A struggle ensued and a firearm was recovered from the man’s waistband area. A group of approximately ten men gathered on the sidewalk watching that scene play out. Several of them called out to “chill.” Officer Rivera yelled, “Back the fuck up” several times, and transmitted over his Department radio, “. . . Bronx units up, Ryer Avenue.” In response, a call went over the radio of officers in need of assistance involving a firearm at that location. (CCRB Ex. 1; Tr. 69, 118, 131-32)

Respondent, who was a sergeant at the time of the incident, was working as part of the Bronx Dominican Day Parade detail when he heard the radio call for help. He drove there with Officer Wynaar and another officer. Upon arrival, Respondent ran towards the Slattery Playground. (Tr. 132-33; Resp. Ex. D at 9) Complainant was also running, and they both ran through the basketball courts. Respondent tackled Complainant in the playground area, near a flagpole. Complainant scraped his knee as a result. (Tr. 69-71, 1323-4) Several other officers rushed to the playground and bystanders in the park informed them that Complainant was eleven years-old. They told the officers that Complainant was simply watching the police activity and ran because he got “scared.” (CCRB Ex. 2 at 01:00-01:42; CCRB Ex. 3 at 01:45-01:57; CCRB Ex. 4 at 01:02-01:14)

The officers determined that Complainant had not engaged in any criminal activity; nonetheless, Complainant was handcuffed, escorted by Respondent and Officer Wynaar out of the playground, and placed into a police vehicle. At the same time a radio transmission was made by the “46 CO” stating, “Borough crime has one under, not looking for anybody else, no shots by or at MOS, absolutely no further here, K. Matter of fact, start getting everybody 98 from this location.” (CCRB Ex. 8 at 01:08-01:20, Tr. 75-76, 134, 140, Resp. Ex. D. at 28) Complainant was taken to the 46 Precinct and later released to his mother. (Tr. 76-77, Resp. Ex. D at 30-32)

In support of its case, CCRB called Complainant Ptah Dickerson as a witness. Complainant is now a sophomore in high school, who resides out of state. He appeared remotely before the Tribunal. Complainant testified that on July 28, 2019, he was playing basketball with his friends in a park at the corner of 183 Street and Ryer Avenue. Down the street from the park, there was an “altercation” between a group of kids and some police officers. Complainant recalled, “... they started throwing bottles and stuff at the cops and arguing.” (Tr. 69)

Complainant acknowledged that he left the basketball court and walked to the sidewalk for “two or three minutes” because he was “curious” to see what was going on. (Tr. 84) He remembered hearing calls for back up coming from police radios, and “[t]hen soon as the backup came all the kids start running, so I ran away.” (Tr. 69, 82) On cross-examination Complainant recalled that he ran from the sidewalk into the park when he “saw all the police starting to come.” (Tr. 86) Complainant explained that he ran because, “. . . there was a whole bunch of people coming towards me, and I said let me run, I got scared, so I ran.” (Tr. 81) He recalled stopping and looking back and seeing, “. . . a cop coming towards me . . . The cop ran towards me full speed and took me down to the ground, slammed me to the ground.” (Tr. 69-70) Complainant recalled “yelling” at Respondent that he was just a kid and he “hadn’t done anything.” Respondent replied, “You’re not supposed to run.” (Tr. 75)

Complainant recounted that his knees and elbows were scraped during the encounter. He stated that he was handcuffed and placed in a police car. Complainant testified that he was taken to the precinct where he was “handcuffed to a bench” for “about an hour” until his mother came and got him. (Tr. 75-77) Complainant confirmed that the City of New York settled a lawsuit concerning this incident brought by Complainant’s mother on his behalf for \$150,000.00 (Tr. 80, 97)

Respondent took the stand in his own defense. He was appointed in 2008 and promoted to Sergeant in 2014. At the time of this incident, he was the Integrity Control Officer in the 43 Precinct. Respondent’s duties as ICO included reviewing Stop Reports and body-worn camera recordings. In 2019, Respondent was again promoted to Lieutenant and currently works in the Office of Management, Analysis and Planning (“OMAP”). (Tr. 127-28)

Respondent testified that on July 28, 2019, at around 2000 hours, he heard a 10-85 with a firearm call on the radio at Ryer Avenue and 184th Street. He elaborated, "It's a call for help. And in this case, you can hear the officer screaming. So you could hear that it was like a serious call for help, especially when there's a firearm involved." (Tr. 131-32) Respondent recollected that he was fairly close, and that he, Officer Wynaar, and another officer drove to the location. They arrived about a minute later, and from the window of the car he saw Complainant "running away from the police towards my direction." (Tr. 132) Respondent stated that he "stepped out of my vehicle and I engaged [in] a pursuit." He explained, "From my perspective, it looked like [Complainant] saw me and then turned into the park. So I engaged pursuit in that direction." (Tr. 133) Respondent stated that he decided to run after Complainant because, "[i]n a situation where you are responding to a location and you see officers in pursuit of an individual, you stop that individual, based on my training and experience." (Tr. 137) He described chasing Complainant through the park, while instructing him to stop. At the rear of the park, Respondent caught up to Complainant, "grabbed him, and we fell to the ground." (Tr. 136)

He recalled placing Complainant in handcuffs because "based on the information I had. I received a 10-13 or 10-85 call. Firearm involved. I approached the scene. I see somebody running away from police. I had every reason to believe he was the individual that was armed with the firearm." (Tr. 137) Respondent looked for the officers he saw running after Complainant, "Usually in these situations, an officer shows up and takes the person they were pursuing. That didn't happen." (Tr. 134) He walked Complainant out of the park, and saw that there was a crowd, which had the "potential...to turn violent." Respondent asserted that there were NYPD executives present who told the officers who were present to go "98," which he defined as, "Resume your assignment... go 98 means clear the scene." (Tr. 139) Respondent

acknowledged that, although he had no evidence that Complainant was involved in the incident which caused the “85” to be called, he instructed Officer Wynaar to take Complainant to the precinct and release him to his mother. (Tr. 140, 167) He explained his decision, “For one, the captain had just told us to go ‘98.’ And two, we were in the middle of a volatile situation. So there was potential for him to get hurt. And three, he was already injured. So, you know, the precinct was only a block away. It made sense to just release him more safely at the precinct location.” (Tr. 140) He described Complainant’s injury as an “abrasion to his knee.” (Tr. 141)

Respondent instructed Officer Wynaar to give Complainant’s mother his business card and inform her, “that I was the one who came in contact with her -- her child.” (Tr. 143) Respondent testified that he was prevented from going to the precinct himself because another 10-85 came over the radio and two officers responding to it got into a motor vehicle accident in close proximity to the park. Respondent stayed to address that situation. By the time he arrived at the precinct, Complainant’s mother had already picked him up. (Tr. 142) Before the end of his tour he documented the incident in his activity log, prepared a Stop Report, and a Threat, Resistance, and Injury (“TRI”) Report. (Resp. Exs. A, B, C)

Officer Wynaar was not available to testify before the Tribunal. Respondent instead chose to present her September 23, 2020 CCRB statement in the form of a written transcript. Officer Wynaar stated that on the date of the incident she was working with Respondent at the Bronx Dominican Day Parade. She recalled that an “85” came over the radio. She and Respondent, along with another unidentified officer, drove to the location and, “[M]y supervisor proceeded to run towards where all the other officers were, where the incident took place at the park” (Resp. Ex. D at 9) She described the scene, “It was so many officers there. So there were literally officers everywhere.” (*Id.* at 17) After exiting the vehicle, Officer Wynaar recalled that

she did not immediately follow Respondent because she stopped to help another officer pick up a body-worn camera which had fallen. She recalled, “By the time I caught up with my supervisor, he was already on the ground trying to put handcuffs on the, on the person.” (*Id.* at 10) When asked for further details about her observations upon arriving at the scene, the following exchange occurred:

CCRB Investigator: Okay. At—when you first get out of the car, did you observe officers in pursuit—foot pursuit of anybody?

Officer Wynaar: I don’t recall. I just—when I got out the car, I just proceeded to follow my supervisor.

CCRB Investigator: Right. So you don’t recall the—

Officer Wynaar: There was just, there was just—there was officers running from everywhere, so.

(Resp. Ex. D at 19-20)

Officer Wynaar described helping Respondent handcuff Complainant, because he was “tensing up.” She characterized Complainant as “upset, crying, scared”, and recounted that, “I tried to calm him down. I told him he wasn’t in trouble. That we were going to call his mom.” (*Id.* at 22) She explained that shortly after arriving on the scene, “We then realized he wasn’t involved in the fight the ‘85’ was called for. My supervisor told me to just take him to the precinct and wait for his mom to pick him up. And that’s what I did.”(*Id.* at 10)

Officer Wynaar recollected that “white shirt” supervisors on the scene ordered the officers present to resume their duties.(Resp. Ex. D at 24) She acknowledged that Complainant was not being arrested nor was he endangered in a manner necessitating a referral to New York City Administration for Children’s Services (“ACS”). (*Id.* at 30) Officer Wynaar transported Complainant to the 46 Precinct, where he remained in handcuffs, in the “juvenile room” until his mother came. (*Id.* at 31) Following Respondent’s instructions, she offered Complainant’s

mother Respondent's NYPD business card and she added her information to the card at the request of Complainant's mother. (*Id.* at 43)

Respondent also called Captain Anderson Ortiz to testify at the hearing. On the date of this incident Captain Ortiz was a lieutenant temporarily assigned to the 40 Precinct. He was working at the Bronx Dominican Day Parade detail and was in the vicinity of Ryer Avenue and 183rd Street when he heard a "10-13 or 10-85" being called from that location. (Tr. 117) Captain Ortiz stated "I remember it -- I remember thinking it was very serious... [t]he officer sounded in distress. They were screaming on the radio. And from what I remember, it was an extremely urgent call." (Tr. 118) He described arriving at the location as one of the first officers to respond, "I saw a group of officers trying to detain or -- or stop another group of males. And then they took off running northbound on Ryer Avenue." (Tr. 119)

Captain Ortiz then "observed the group fleeing. And I then observed the officers who were there giving chase. So I also gave chase under the presumption that those officers were trying to apprehend these individuals and they needed help apprehending them." (Tr. 120) Although he acknowledged that he did not know what crime he was wanted for, Captain Ortiz pursued and detained a male Hispanic who "broke off the group." (Tr. 121, 123) He admitted that he did not recall if there was an African- American boy running, and he did not remember seeing Respondent on the date of the incident. (Tr. 123) Captain Ortiz explained that he does not know Respondent and met him for the first time on the morning of this hearing. (Tr. 122)

Specification 1: Unlawful Stop

Respondent stands charged with stopping Complainant without legal authority to do so. It is undisputed that Respondent did stop Complainant, and that Complainant was not involved in any criminal activity on the date in question. The issue before the Tribunal is whether, based on

the information he possessed, as well as the observations he made, it was reasonable for Respondent to pursue and stop Complainant. After carefully reviewing the credible evidence, I find that Respondent's actions were reasonable.

Patrol Guide Section 212-11, paragraph 20, sets forth that an officer may detain an individual when they possess "[R]easonable suspicion that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor." Reasonable suspicion is defined as "[T]he quantum of knowledge sufficient to induce an ordinarily prudent and cautious man under the circumstances to believe criminal activity is at hand" *People v. Acevedo*, 102 A.D.2d 336 (1st Dept. 1984), quoting *People v. Cantor*, 36 N.Y.2d 106, 112-13 (1975).

Pursuits are considered as intrusive as detentions and thus an officer must possess, at least, reasonable suspicion to justify chasing an individual. *People v. Martinez*, 80 N.Y.2d 444, 447 (1992). When reviewing the propriety of Respondent's pursuit of Complainant, the Tribunal must consider whether or not the action was "...justified at its inception and whether or not it was reasonably related in scope to the circumstances which rendered its initiation permissible." *Cantor*, 36 N.Y.2d at 111.

It is undisputed that at approximately 2020 hours on July 28, 2019, on Ryer Avenue near the Slattery Playground, plainclothes officers called for assistance over the radio while arresting a man for possession of a firearm. Multiple officers, including Respondent and Captain Ortiz, rushed to that location upon hearing the 10-85 transmission. Respondent, Captain Ortiz, and Complainant each testified that the calls for help sounded urgent, and that the police response was large. (Tr. 69, 84-85, 118, 131) Officer Wynaar's hearsay statement, as well as the video evidence, are consistent with these accounts.

Both Captain Ortiz and Respondent admitted that they possessed limited information about the incident when they arrived on the scene. Each of them heard officers “screaming” on the radio transmission, and knew that the call for help involved a firearm. (Tr. 118, 131-32) Upon arriving at the scene, completely independent of one another, both men joined other officers who were already involved in pursuits. Each explained that the decision to pursue was based upon the critical nature of the calls for help, the involvement of a firearm, and the observations of other officers giving chase. They each described assisting officers who appeared to be chasing a potential suspect as consistent with training they received from the NYPD.

I credit Respondent’s testimony that he observed Complainant running and saw other police officers running behind him, apparently giving chase. Indeed, his version of events is quite similar to Complainant’s, and has remained consistent since the date of the occurrence. Complainant admitted that he stepped out of the park and onto the sidewalk to see what was going on down the street. He saw people yelling and throwing bottles at the police and heard the officers calling over their radios for backup. Complainant testified that he ran back into the park when he saw a crowd of people, including police officers rushing towards him. I believe, particularly in light of the concerns about a gun, that it was reasonable, for Respondent to conclude that those officers were chasing Complainant because they believed he was involved in the criminal activity which had precipitated the “85.” I also credit Respondent’s assertion that his training and experience supported the decision to pursue Complainant without hesitation in order to assist his fellow officers. That testimony was echoed by Captain Ortiz.

This finding is consistent with NYPD precedent. In *Disciplinary Case No. 2014-11244* (June 18, 2015), this Tribunal held “To sanction an employee for misconduct under the Administrative Code, there must be some showing of fault on the employee's part, either that he

acted intentionally (*Reisig v. Kirby*, 62 Misc.2d 632, 635 [Sup. Ct. Suffolk Co. 1968], *aff'd*, 31 A.D.2d 1008 (2d Dept. 1969), or negligently. (*McGinigle v. Town of Greenburgh*, 48 N.Y.2d 949, 951 [1979]). Mere mistakes or errors of judgment, lacking in willful intent and not so unreasonable as to be considered negligence, are not a basis for finding misconduct.” *Ryan v. N.Y. State Liquor Auth.*, 273 A.D. 576, 581 (3d Dept. 1948) Although, it quickly became clear that Respondent was mistaken about the suspect, and that Complainant was ultimately not found to be involved in criminal activity, his actions lacked willful intent and were not negligent. In light of the information Respondent possessed and the surrounding circumstances, his pursuit of Complainant was supported by reasonable suspicion and was within the bounds of the law. For the foregoing reasons, I find Respondent Not Guilty of Specification 1.

Specification 2: Unlawful Use of Force

Respondent stands charged with wrongfully tackling Complainant to the ground without police necessity. Respondent’s stop of Complainant has been found to be justified, and he admits that he used force when he brought Complainant to the ground. The question for the Tribunal is whether that use of force was reasonable. I find, based upon the totality of the credible evidence that it was.

Patrol Guide Section 221-01 sets forth that “[f]orce may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life... or when it is reasonable to place a person in custody or to prevent escape from custody.” Additionally, “[i]n determining whether the use of force was reasonable, the trier of fact must allow for police officers’ frequent need to make “split-second” judgments about how much force is necessary “in circumstances that are tense, uncertain, and rapidly evolving.” *Pacheco v. City of New York*, 104 A.D.3d 548 (1st Dept. 2013), citing *Graham v. Connor*, 490 U.S. 386 (1989).

Given the information he had, as well as his observations of Complainant, Respondent possessed reasonable suspicion to stop Complainant, who appeared to be fleeing from other officers. He did so by bringing Complainant to the ground. Respondent has continuously acknowledged using force against Complainant. Indeed, he completed all of the required documentation on the date of the incident. Respondent also instructed Officer Wynaar to give his NYPD business card to Complainant's mother, in order to "let her know I was the one who forcibly took him to the ground." (CCRB Ex. 5 at 33-34)

The Tribunal acknowledges that Complainant was 11 years-old at the time of the incident and significantly smaller than Respondent. These facts must be weighed against Respondent's perception that Complainant, who at that moment he suspected of possessing a gun, was fleeing from police through a crowded playground. These facts required Respondent to make a quick decision about how best to stop Complainant and take him into custody. Respondent's use of force, while upsetting because of Complainant's age, was a rational, measured response to the circumstances given the information possessed by Respondent. For the foregoing reasons, I find Respondent Not Guilty of Specification 2.

Specification 3: Unlawful Arrest

Respondent's initial detention of, and the force used, to stop Complainant have been found to be warranted. However, those specifications deal with the information which formed the basis for Respondent pursuing and forcibly stopping Complainant. The third specification deals with the actions taken by Respondent once he realized that Complainant had not committed any crime. Specification 3 charges that Respondent arrested Complainant without sufficient legal authority by restraining him in handcuffs and having him transported to the precinct. The questions for the Tribunal are whether these actions constituted an arrest, and if so, whether

Respondent possessed probable cause to justify that arrest. I find that Complainant was arrested, and that the detention was made without the requisite legal authority.

Patrol Guide Section 208-01, paragraph 3, states that an officer may make an arrest without a warrant when, “reasonable cause exists that arrested person committed the crime.”

The accounts of the events which happened after Complainant was initially stopped are similar, and are all corroborated by the video evidence. Respondent, Complainant, and Officer Wynaar each described Complainant being escorted out of the park in handcuffs, and placed in a RMP. Respondent and Officer Wynaar recalled that there were individuals at the playground who knew Complainant and stated that they would call his mother. Indeed on CCRB Ex. 3 at 02:30-02:41, Complainant can be heard giving his mother’s phone number to another observer as he is being walked out of the park.

Respondent admitted that he instructed Officer Wynaar to take Complainant back to the precinct to be released to his mother because “It made sense to just release him more safely at the precinct location.” (Tr. 140) On cross-examination, he denied that these actions constituted an arrest, “I detained [Complainant]. But we did not prepare any arrest paperwork or anything on him.” (Tr. 166)

During summation, Respondent’s counsel cited the provisions of Patrol Guide section 215-01, Children or Minors Requiring Care and/or Shelter, as support for her client’s decision to have Complainant removed from the scene to the precinct. The relevant section provides, “A child/minor less than eighteen years of age may require care and/or shelter for the following reasons: (d) Sick, injured, lost or stranded who resides outside of the city and parents or persons legally responsible for care and/or shelter cannot arrange for return to residence.”

I disagree with Respondent's reliance on this Patrol Guide section. While it is true that Complainant, who was 11 years-old, had a scraped knee, there was no evidence that he resided outside of the city. Indeed, it was clear from all of the evidence that Complainant was known by several people at the park, and that he lived nearby. No evidence was presented that Complainant faced any danger if he remained in the playground area or the basketball court. On the contrary, several body-worn camera videos indicate that he was at the playground with his friends, and there were many other children and adults present. Indeed, the scene inside the park seems remarkably calm, in comparison with the street and sidewalk outside of the gates. (CCRB Ex. 3 at 01:00-01:42)

Since Complainant was subjected to a level 3 forcible stop, Respondent was obligated to follow Patrol Guide 212-11. That procedure requires an officer to "[r]elease the person immediately after completing the investigation if probable cause to arrest does not exist."¹ There is no exception to this mandate based upon age. Although Respondent did prepare a Stop Report, as required, that procedure required him to release Complainant as soon as he knew that Complainant was not involved in any criminal activity.

Upon realizing that Complainant was injured as a result of the forcible takedown, Respondent had several options, none of which required transporting Complainant, in handcuffs, to the precinct. He could have removed the handcuffs, asked for Complainant's information, offered him his business card, called for EMS, and explained to Complainant that he was free to leave. Respondent could have directed his officers to offer Complainant a ride to his home or sent an RMP to his home to apprise his mother of the events that had transpired.

¹ This guidance appears in each version of the procedure. In the procedure published in October 2018, it appears in paragraph 33; in the current procedure it is contained in paragraph 36.

I believe that Respondent wanted to speak with Complainant's mother to let her know what had transpired, and to take responsibility for it. Indeed, Officer Wynaar's statement to the CCRB confirmed that was Respondent's intention. However, it is quite troubling that Complainant was brought back to the precinct, and waited in handcuffs for at least a half an hour, until his mother arrived. Those actions have the hallmark of an arrest for which Respondent knew that he did not possess probable cause and violate Patrol Guide 208-01.

Accordingly, based upon the credible evidence, I find Respondent Guilty of Specification 3.

Specification 4: False Official Statement

Respondent has been charged with making a false official statement during the course of his June 15, 2020 interview with the CCRB. Specifically, the CCRB alleges that when shown body-worn camera footage from the incident Respondent did not positively identify himself or the location of the incident. CCRB also alleges that Respondent falsely asserted that other officers were chasing Complainant when he arrived on scene at the location of the "10-85" firearm radio run. In order to prevail on this charge, CCRB must prove that Respondent intentionally made statements that he knew to be untrue and which were material to the outcome of the investigation of this incident. (*See* A.G. 304-10, formerly P.G. 203-08)

In support of this specification, CCRB directed the Tribunal's attention to the transcript of his interview, which was admitted into evidence as CCRB's Exhibit 5. I reviewed the transcript of the interview, as well as the accompanying recording of it, paying particular attention to the pages specified by CCRB. I watched the body-worn camera footage, as well as examining the documentation which Respondent presented. I find that CCRB has failed to meet

its burden of proof by a preponderance of the credible evidence that Respondent made false official statements in the course of his June 15, 2020 interview.

CCRB called Investigator Opoku-Agyelang to the stand. He testified that he is employed by CCRB as an investigative manager responsible for overseeing investigations and signing off on case closing reports. He conceded that although he was familiar with Respondent's case, he was not the investigator nor was he present for any interviews, including Respondent's. (Tr. 40) The individuals who interviewed Respondent and were assigned to investigate the alleged misconduct have both left their employment with CCRB. (Tr. 40-42) Investigator Opoku-Agyelang stated that while was aware that Respondent gave an "opening statement" during his interview with CCRB which detailed his interaction with Complainant, he was unsure which videos had been shown to Respondent during that interview. (Tr. 48, 55-56) Investigator Opoku-Agyelang acknowledged that at the time Respondent was interviewed about this matter, in January of 2020, CCRB policy prohibited officers from reviewing video of an incident prior to being interviewed. (Tr. 43-44)

Investigator Opoku-Agyelang testified that during the closing of the investigation a decision was made to charge Respondent with making a false statement. He described the factors which led to the decision, "the transcript, and all of the evidence, was that [Respondent] saw other officers chasing [Complainant] into the park and he exited to, you know essentially follow-up on that pursuit by other officers." (Tr. 61) He also made the following statement regarding Respondent's equivocal identification of himself and the location of the incident, and how CCRB determines what constitutes a false statement, stating: "Again, something [like] a video footage showing -- a video footage that could potentially not corroborate an officer's statement that the officer denies being in, or doesn't deny, but doesn't affirmatively acknowledge being him in a

scenario where you would expect the officer to be able to say, oh, yeah, that is me, that is the incident we're referring to, then if the officer doesn't do that in that scenario where you would expect them to do, then it could a false official statement. . ." (Tr. 62-63)

Respondent testified that he was interviewed, in person, by CCRB investigators about this incident on June 15, 2020. (Tr. 153, 177) He described giving a "narrative" of the events and then being asked follow-up questions. (Tr. 154) Respondent remembered being shown body-worn camera recordings, which he had not seen prior to being questioned. (Tr. 155) He admitted that upon first viewing the videos, he was not able to conclusively identify himself or the location. At trial, he explained:

Q. Do you recall what answer you gave when they asked if you could 100 percent definitively identify yourself in that video?

A. Yes. I told them it could be me, but I was not sure.

Q. Why did you give that answer?

A. That was based strictly on the quality of the video, which was very bad.

Q. Was that a truthful answer?

A. Yes.

Q. Now, at one point, shortly thereafter, they asked you whether or not you recognized the location, mainly the park or the basketball court area where you were. Where that was depicted in the video. And they asked whether or not you recognized that as being the location of the occurrence. You indicated that you weren't sure, right?

A. Yes.

Q. Why did you give that answer?

A. That answer was given because I didn't spend a lot of time in that park. I hadn't been there before. And this interview happened months after the incident. So there was not really a way for me to remember whether that was the park or not.
(Tr. 156-57)

Respondent was asked on cross-examination to identify himself on CCRB's Exhibit 2. He answered, "I'm going to acknowledge that it's me because I've seen it so many times and based on the fact that the officers who were saying they were there at the time were there, and it's the right time stamp and appears to be similar circumstances. So I'll concede that it's me...But if you're basing it strictly on the video, you can't tell who that is." (Tr. 170) Respondent reiterated that, in the course of his CCRB interview, he never denied having a physical altercation with Complainant and that when he met the investigators he was not attempting to mislead or make a false statement. (Tr. 157)

Patrol Guide Section 203-08², page 1, prohibits member of the service from "[i]ntentionally making a false official statement." This same section enumerates specific instances in which false statements may arise, including but not limited to, "lying during . . . an interview pursuant to Patrol Guide 211-14 during 'Investigations by Civilian Complaint Review Board.'" When reviewing an allegation that an officer made a false statement, the first consideration is whether the underlying incident in question did in fact occur. The second is whether the officer made material deviations from the actual incident or intentionally misrepresented the actual events in question in an attempt to mislead. *Disciplinary Case No. 2013-9978* (May 23, 2016); *Dept. of Correction v. Reuter*, OATH Index Nos. 1497/12, 1499/12, 1707/12 (Sept. 26, 2012), citing *Dept. of Correction v. Rodriguez*, OATH Index No. 277/06 (March 29, 2006).

With regard to Respondent's alleged failure to identify himself and the location of the incident, Respondent acknowledged repeatedly during his CCRB interview that he was present at the location. He admitted that he stopped Complainant and forcibly took him to the ground.

² Now encompassed in Administrative Guide 304-10

Indeed, he told the investigators that he documented the incident in his activity log as well as preparing both a Stop Report and a TRI report on the date of the incident. It is undisputed that the first time Respondent viewed body-worn camera footage of the incident was at the end of his CCRB interview.³ Respondent explained that he was not familiar with the command, let alone the park where the incident occurred.

Upon viewing the body-worn camera footage, he told the investigators that he couldn't be certain that the location depicted on the body camera was where the incident took place. After reviewing Officer Davis's body worn camera video, Respondent asserted, "There was an individual I saw earlier, may have been me but it wasn't clear. So, I couldn't, I couldn't say for certain." (CCRB Ex. 5 at 47) Within the context of his open admission that he was present, and that he stopped Complainant with force, neither of these statements constitute material deviations from the facts of the actual incident. When asked on the stand what answer he gave when he had been asked if he could definitively identify himself in the body-worn camera video that he was shown, Respondent answered "Yes. I told them it could be me, but I was not sure." He was then asked by his counsel, "Why did you give that answer?" Respondent answered, "That was based strictly on the quality of the video, which was very bad." (Tr. 156)

Respondent's statement about the video not being clear and that he wasn't certain of who the individual was did not strike the Tribunal as an attempt to mislead or misrepresent the facts. Rather, from Respondent's vantage point, seeing the video for the first time, there were some visual quality issues that made a positive identification of himself difficult, if not impossible. I have watched the body-worn camera footage, in particular the videos shown to Respondent on cross-examination. The general quality of the recordings is less than ideal, the images are

³ While it is clear that Respondent was shown CCRB Ex. 2 during his interview, it is not clear from the interview transcript, and no evidence was presented regarding which other videos he was shown.

somewhat blurry, and the definition is not sharp. Additionally, Respondent and Complainant are in the background of the video, several feet from the officers whose cameras captured the incident. At the point where the recording of was paused (CCRB Ex. 2 at 00:54) during the interview and at trial, the best that could be said was that the person appeared to be an African-American man in an NYPD uniform.⁴ I believe Respondent, seeing the video for the first time almost a year after the incident, answered the questions candidly. His uncertainty about the location and inability to conclusively identify himself did not constitute intentional false statements about facts material to the investigation.

CCRB also alleges that during his official interview Respondent falsely stated that he observed police officers chasing Complainant, prompting Respondent's pursuit; I disagree. Although there was no body-worn camera footage which showed officers chasing behind Complainant, other evidence indicates that there were officers chasing civilians at the scene. Captain Ortiz testified that he heard officers screaming over the radio, transmitting a 10-13 or 10-85 in the vicinity of Ryer Avenue. (Tr. 117-18) He described what he saw when he arrived "There were other officers there as well, from what I remember. I -- I saw a group of officers trying to detain or -- or stop another group of males. And then they took off running northbound on Ryer Avenue." (Tr. 119) Officer Wynaar told the CCRB investigators that there were officers running everywhere. (Resp. Ex. D. at 19) Complainant admitted during his testimony that he ran because there was a crowd of people, including police officers, running towards him. (Tr. 71) All of these accounts are consistent with Respondent's statements to the CCRB, his documentation of the incident, as well as his testimony before the Tribunal.

⁴ When reviewing other body-worn camera footage presented at trial, there are some in which Respondent is easily identifiable; however, CCRB was only able to assert that Respondent was shown CCRB's Exhibit 2 (Officer Davis's body-worn camera) during his interview.

During his interview, Respondent also told CCRB investigators that upon joining the foot pursuit, he suddenly heard the officers chasing Complainant, giving him commands to stop. He also stated that he ended up in the “lead” of the chase, and at that point was unsure of whether other officers were behind him. (CCRB Ex. 5 at 13-18) It makes sense that Respondent would get out of his vehicle and, upon seeing that other officers appeared to be chasing Complainant, would join in the pursuit in order to assist his colleagues.

The Tribunal carefully observed Respondent on the witness stand. His testimony was thoughtful and meticulous. He did not embellish his recollection of what occurred, and what he did on the date of the incident. His statements to the CCRB did not constitute a denial of the incident or of his involvement. Respondent’s testimony did not materially deviate from the facts contained in the record. Based on the foregoing, I find that CCRB has failed to prove by a preponderance of the credible evidence that Respondent made false official statements to CCRB in violation of Patrol Guide 203-08. I therefore find Respondent Not Guilty of Specification 4.

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.

Prior to trial, CCRB recommended a penalty of 63 vacation days for all of the charges. However, at the conclusion of the trial CCRB requested that Respondent, if found guilty of all of the charges, have his employment with the NYPD terminated.

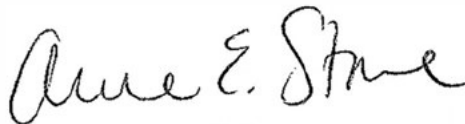
Respondent, who was appointed to the Department on January 7, 2008, has been found Guilty of Specification 3 and Not Guilty of the remaining specifications. Specification 3 charges Respondent with arresting Complainant without legal authority. Under the Disciplinary System Penalty Guidelines (“Disciplinary Matrix”), the penalty for improper/wrongful seizure of a person ranges from a mitigated penalty of training to an aggravated penalty of 15 vacation days.

While I credit Respondent’s testimony that he instructed Officer Wynaar to take Complainant to the precinct because he wanted to ensure his mother was aware of what happened, there are several factors which argue in favor of an aggravated penalty. At the time of this incident Respondent had been a sergeant for approximately five years. His role at the 43 Precinct included review of Stop Reports and related body-worn camera footage. Respondent made the decision, and instructed Officer Wynaar to have Complainant brought back to the precinct, even though he had determined that Complainant was not involved in any criminal activity. Respondent observed Complainant, who was handcuffed, being placed into a police vehicle. Officer Wynaar described Complainant as scared, crying, and upset. (Resp. Ex. D at 22) Body-worn camera footage shows Complainant standing inside the precinct handcuffed up against a wall. (CCRB Ex. 1 at 16:21-16:28) Although Respondent did not accompany Complainant to the precinct, as the supervisor in this situation he was responsible not only for the actions of his subordinates, but for the well-being of this minor.

The Tribunal recently found a supervisor guilty of wrongfully detaining two minors, under similar circumstances. *See Disciplinary Case No. 2019-20026* (Sept. 7, 2022) (Fourteen-year captain with no disciplinary history forfeited 20 vacation days for detaining two juveniles without sufficient legal authority. While the Tribunal found the initial stop of the boys to be proper, this respondent’s decision to have the two youths handcuffed and brought to the precinct

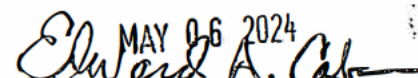
constituted an improper use of his authority. The respondent in this prior case appeared genuinely motivated by his belief that by bringing the youths to the stationhouse and making their parents aware of their behavior might steer them away from engaging in worse conduct. At the same time, it is extremely troubling how this respondent, with his years of experience, wrongfully subjected two juveniles to being handcuffed and transported to the stationhouse as a means of deterrence.) Here, Complainant's age, as well as the nature and duration of the incident, are additional aggravating factors. Complainant, who was just 11 years-old at the time of the incident, testified that this encounter was traumatic for both himself and his mother. The lengthy detention, while handcuffed, of a child who Respondent knew was innocent of any wrongdoing, is shocking. These facts contradict Respondent's explanation that he wanted to ensure Complainant's safety, and argue in favor of an aggravated penalty. Taking into account the totality of the facts in this matter, the imposition of the aggravated penalty set forth in the Disciplinary Matrix is warranted. I therefore recommend that Respondent forfeit fifteen (15) vacation days in connection with Specification 3.

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials

APPROVED


MAY 06 2024
EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
LIEUTENANT FRANCY MONESTIME
TAX REGISTRY NO. 946018
DISCIPLINARY CASE NO. 2021-23750

Respondent was appointed to the Department on January 7, 2008. On his three most recent annual performance evaluations, he received 4.0 overall ratings of “Highly Competent” for 2020, 2021, and 2022. He has been awarded one medal for Meritorious Police Duty and five medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials