



POLICE DEPARTMENT

August 6, 2024

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Joshua Ganshaw :
Tax Registry No. 966072 :
75 Precinct :

Case No. 2022-26847

Police Officer Adam Pawelic :
Tax Registry No. 966766 :
75 Precinct :

Case No. 2022-26848

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

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

For the Respondents: Craig Hayes, Esq.
Worth, London & Martinez, LLP
111 John Street, Suite 640
New York, NY 10038

To:

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

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-26847

1. Police Officer Joshua Ganshaw, on or about May 22, 2021, at approximately 1145 hours, while assigned to the 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that he pointed his gun at [the complainant] without police necessity.

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

USE OF FORCE

2. Police Officer Joshua Ganshaw, on or about May 22, 2021, at approximately 1145 hours, while assigned to the 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he frisked [the complainant] without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 36

INVESTIGATIVE
ENCOUNTERS

3. Police Officer Joshua Ganshaw, on or about May 22, 2021, at approximately 1145 hours, while assigned to the 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he searched [the complainant's] person without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE
ENCOUNTERS

4. Police Officer Joshua Ganshaw, on or about May 22, 2021, at approximately 1145 hours, while assigned to the 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he conducted a search of the vehicle in which [the complainant] was an occupant without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40

INVESTIGATIVE
ENCOUNTERS

Disciplinary Case No. 2022-26848

1. Police Officer Adam Pawelic, on or about May 22, 2021, at approximately 1145 hours, while assigned to the 075 PCT and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that he pointed his gun at [the complainant] without police necessity.

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

USE OF FORCE

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on June 27, 2024. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The CCRB introduced into evidence the hearsay statement of the complainant, as well as the Body-Worn Camera (“BWC”) videos of each Respondent. 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 evaluated all of the evidence in this matter, I find as follows:

Respondent Pawelic:

Specification 1 (wrongfully pointing firearm): Not Guilty

Respondent Ganshaw:

Specification 1 (wrongfully pointing firearm): Not Guilty

Specification 2 (frisk): Not Guilty

Specification 3 (search of person): Guilty

Specification 4 (search of vehicle): Guilty

Recommended penalty for Respondent Ganshaw: Training

ANALYSIS

At approximately 1145 hours on May 22, 2021, Respondents were on patrol in Kings County when they received a radio call for an automobile larceny in progress a few blocks away. The call included a description of the vehicle: a white Lincoln MKX with an out-of-state license plate. Moments later, Respondents stopped an off-white Lincoln MKX with a New Jersey plate

near the intersection of [REDACTED] Although it turned out that the operator of the vehicle (“the complainant”) was the lawful owner, the parties are in agreement that the act of stopping the car was lawful. It is alleged, however, that during the course of the stop, both Respondents wrongfully pointed their firearms at the complainant. Additionally, Respondent Ganshaw faces charges for conducting an improper frisk and search of the complainant, and for searching his vehicle without sufficient legal authority.

The complainant did not appear to testify. Instead, the CCRB offered into evidence the transcript of a phone interview conducted by the CCRB on June 7, 2021. (CCRB Ex. 1) 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 witness demeanor. In the absence of live testimony from the complainant here, this tribunal carefully considered his prior statement, in conjunction with the other evidence presented, including the video footage.

In his statement, the complainant stated that he was driving his 2008 Lincoln MKX, which he described as having a tan, milk-like color, when police pulled him over. Multiple police officers “swarmed” the complainant, with their guns drawn and pointed at him. The complainant, who had done nothing wrong, was “kind of like in a shock.” The officers yelled for him to exit his vehicle and he complied. They informed him that they had a report of a stolen car, but the complainant told them that it was his car and he had the title. One of the officers patted him down and removed his wallet, which contained his driver’s license. They asked if they could search inside the vehicle in order to retrieve the registration, and the complainant

consented. The officers confirmed that the complainant was the owner, handed him a business card, and departed. (CCRB Ex. 1 at 5-11, 14, 17, 20-24, 28)

The encounter between Respondents and the complainant during the car stop was captured by the Body-Worn Cameras (“BWC”) of Respondents. In that footage (CCRB Exs. 2 & 3), Ganshaw can be seen emerging from the RMP, and he immediately points his firearm at the driver’s side window of the Lincoln, shouting, “Put the car in park.” Pawelic also exits the RMP, positions himself in front of the Lincoln, and points his firearm at the windshield. Ganshaw opens the driver’s door, and the complainant, the sole occupant, raises his hands in the air. A sergeant on the scene reaches through the front passenger door and removes the complainant’s seatbelt, as Ganshaw lowers his firearm, approximately 20 seconds after he first raised it, and Pawelic appears to lower his as well. The sergeant asks where he got the car, and the complainant answers, “It’s my car.” The sergeant tells him that there was a report of a stolen car in the area. The complainant steps out of the car.

Once the complainant is outside the vehicle, the video shows Ganshaw patting him down. He asks the complainant if he can go inside his pocket to get his ID, and the complainant says yes. After he does so, Ganshaw also asks if he can go in the glove compartment to retrieve the registration, and the complainant tells him yes to that as well. Ganshaw leans into the car and removes the registration, which he compares to the complainant’s driver’s license to verify that the complainant is the owner. The sergeant and Respondents again explain to the complainant why he was stopped, and Pawelic hands him a business card with the names of the officers. The officers and the complainant exchange fist bumps, and the encounter concludes.

Respondent Ganshaw testified that he and Respondent Pawelic were on patrol in their RMP when they heard a radio run for a stolen vehicle in progress. The vehicle was last seen on

[REDACTED]. There was no indication from the call whether any weapons were involved. Near [REDACTED] they observed a Lincoln MKX that matched the description they had just received, and Ganshaw was convinced that this was the vehicle in question. He activated his lights and sirens in order to pull the Lincoln over, but the vehicle did not immediately stop. Ganshaw testified that he drove past the Lincoln and blocked it with his RMP, and the vehicle came to a stop near the intersection of [REDACTED] [REDACTED]. The driver's side window of the Lincoln was tinted, and Ganshaw could not see inside. He exited his RMP and pointed his firearm at the driver's window, while yelling to the operator to put the car in park. Ganshaw opened the driver's door and observed the complainant in the driver's seat. Since there no longer was an immediate threat to life, he holstered his firearm and had the complainant exit the vehicle. (Tr. 24-32, 37-38, 46)

According to Ganshaw, his decision to point his firearm was consistent with his training, which emphasized that during a felony car stop for a stolen vehicle, an officer's gun needs to be drawn and pointed at the threat area, until the threat is mitigated or determined not to be a threat. He acknowledged, however, that he was also instructed at the Academy that an officer must use professional judgment in determining whether to draw their weapon. (Tr. 28-29, 39, 42-45)

After the complainant was outside the Lincoln, Ganshaw conducted a frisk, patting him down to make sure there were no weapons. Ganshaw conceded that he did not observe any weapons or suspicious bulges before conducting the frisk, but explained that they needed to make sure there were no weapons present while they investigated this major felony crime with a high potential for violence. He then asked for the complainant's driver's license; the license was inside the complainant's wallet, which the complainant allowed Ganshaw to retrieve from his pants pocket. Based on the complainant's "demeanor and his level of cooperation," Ganshaw

believed that he might be the rightful owner of the Lincoln. He asked if he could go inside the glovebox to get the registration, and the complainant consented. Ganshaw testified that he did not tell the complainant that he had a right not to consent. Once Ganshaw confirmed that the vehicle was not stolen, the officers again explained to the complainant the reason for the stop and left the location. (Tr. 32-35, 47-53)

Respondent Pawelic testified that the Lincoln's front windshield was dark. Since he could not see who was inside the vehicle or whether they posed any threat, he drew his firearm and pointed it toward the windshield, providing cover for his colleagues. Once he saw that the situation was under control, Pawelic lowered his firearm to the ready position and eventually holstered it. After it was determined that the Lincoln was not stolen, Pawelic explained to the complainant why he had been stopped, offered him a business card, and departed the location. (Tr. 62-70)

Pawelic acknowledged that he was instructed to use his professional judgment regarding when to draw his weapon. Like Ganshaw, Pawelic also testified that during a training workshop that involved several felony car stop scenarios, the instructors were "adamant" about the officers having their guns out. Pawelic stated that he utilized that training, as well as his experience making car stops, when he decided to draw and point his firearm during this incident. He testified that he continued to point his firearm until there no longer was a threat that the complainant could reach into a concealed area and pull a weapon. However, when he was interviewed by the CCRB sometime after the incident, the only reason Pawelic provided for why he drew his weapon was because they were dealing with a car theft, and he was concerned that the vehicle might be used as a weapon. (Tr. 58-61, 70-72)

Specification 1 against each Respondent alleges that they wrongfully pointed their guns at the complainant without police necessity. It is undisputed that after exiting their RMP, both Respondents did point their firearms in the direction of the complainant. At issue is whether such conduct was reasonable under the circumstances. Section 221-01 of the Patrol Guide notes, “Drawing a firearm prematurely or unnecessarily limits a uniformed member of the service’s options in controlling a situation and may result in an unwarranted or accidental discharge of the firearm. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present.”

After reviewing all of the evidence presented, I credit Respondents’ testimony that they genuinely believed that the car they stopped was the one referenced in the radio run. Ganshaw, a “car enthusiast,” was able to recognize that the vehicle they stopped had the distinct markings of a Lincoln MKX, and that it matched the description of the stolen car as to make, model and color, as well as having an out-of-state plate. Indeed, both sides agree that it was lawful for Respondents to conduct this felony car stop.

Additionally, both Respondents testified about their workshop training, which emphasized the need to draw their firearms during the stolen car stop scenarios they participated in. However, they also acknowledged that they were trained at the Academy regarding the importance of using their professional judgment in each situation to determine whether it is appropriate to draw their firearm. Although drawing one’s weapon may be reasonable in certain stolen car stop scenarios, that does not relieve a UMOS of the responsibility to assess the circumstances of each individual situation in order to determine whether it is appropriate to draw their firearm.

Under the totality of the specific circumstances presented here, it was not unreasonable for Respondents to briefly draw their firearms and point them at the complainant. The officers were responding to a 911 call for a car larceny in progress, just a few blocks away. Although they did not have any information that a weapon was used in stealing the car, the officers were making a stop for a major felony offense that had just occurred. When they initially attempted to pull over the Lincoln, the complainant did not immediately comply, leading Ganshaw to believe that the motorist intended to drive off from the police. After positioning their RMP in front of the vehicle, the officers emerged and observed that the Lincoln had tinted side windows, and the windshield was dark as well, restricting their ability to see inside the vehicle. Indeed, the officers were not even sure how many occupants were in the Lincoln. They could not initially see the complainant's hands, or whether he or any any occupant was reaching for a weapon. They also could not be sure that the motorist would not attempt to drive off in the Lincoln and use it as potential weapon.

In this context, it was reasonable for Respondents to draw and point their firearms until they were able to secure the situation and assure themselves that the potential for serious physical injury was no longer present. Once that occurred, they both lowered their firearms, and proceeded with their investigation. As such, the record has failed to establish, by a preponderance of the credible evidence, that Respondents wrongfully pointed their firearms at the complainant. Accordingly, I find both Respondents Not Guilty of Specification 1.

Respondent Ganshaw faces three additional charges. Specification 2 alleges that he frisked the complainant without sufficient legal authority. It is undisputed that after the complainant was removed from the Lincoln, Ganshaw conducted a brief frisk, which was captured in the video footage. Section 212-11 (36) of the Patrol Guide states that if an officer

develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon.

As discussed above, the stop was conducted in response to a 911 call for a larceny in progress that had just come over the radio. When Ganshaw attempted to pull the Lincoln over, the complainant did not comply, forcing the officer to use his RMP to block the Lincoln. The officers could not initially see what the complainant was doing with his hands inside the Lincoln due to the dark and tinted windows.

As such, at the time of the frisk, Ganshaw reasonably believed that the complainant had just committed a major felony offense, and had attempted to elude the police. Because of the tint and dark windows, the officers were unable to see what the complainant was doing inside the vehicle before he was removed, and they had a reasonable concern for their safety. Although Ganshaw did not observe any weapons or suspicious bulges on the complainant, it was not unreasonable for him to conduct a brief, minimally intrusive pat down for his safety and all involved, in order to allow them to safely proceed with their investigation. The record has failed to prove, by a preponderance of the credible evidence, that Ganshaw wrongfully frisked the complainant. Accordingly, I find him Not Guilty of Specification 2.

Specification 3 charges Ganshaw with wrongfully searching the person of the complainant's person, while Specification 4 alleges that he wrongfully searched the complainant's vehicle without sufficient legal authority. It is undisputed that Ganshaw reached into the complainant's pants pocket and removed his wallet, from which he retrieved the complainant's driver's license. It also is uncontested that Ganshaw leaned into the car to remove the registration from the glove compartment. At issue is whether Ganshaw properly obtained voluntary consent before conducting the searches.

The defense argues that the complainant verbally consented to both searches, and therefore they were proper. Indeed, the video footage shows that Ganshaw did ask the complainant's permission before each search, and the complainant readily agreed. However, Section 212-11 of the Patrol Guide requires an officer to do more when asking for consent: "When seeking consent, make clear that the search will not occur if the person does not consent. For example, in a non-threatening manner and without making promises, you may ask the following: '*I can only search you, if you consent. Do you understand? May I search you?*'"

At the time of the searches, the complainant was behaving in a cooperative manner toward the officers. There were no exigent circumstances preventing Ganshaw from explaining to the complainant that no search would occur if he refused his consent. Since Ganshaw failed to do so, the complainant's permission to search was not fully informed. Accordingly, I find Ganshaw Guilty of Specifications 3 and 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 Ganshaw's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent Ganshaw, who was appointed to the Department on July 2, 2018, has been found Guilty of wrongfully searching the complainant and his vehicle without obtaining proper consent. The presumptive penalty for the improper searches is three days, and the mitigated

penalty is training. The CCRB recommends the presumptive penalty of three vacation days for each offense, to run concurrently with each other.

Ganshaw has no formal disciplinary record, and has been awarded multiple medals in recognition of his police work. The two counts for which he has been found guilty involve his interaction with the complainant after he was removed from the vehicle. The Disciplinary Guidelines articulate several mitigating factors that are relevant here on the issue of penalty for these offenses. Ganshaw's actions were brief and minimally intrusive. The search of the complainant's person involved removing his wallet to see his ID. Similarly, Ganshaw did not conduct an extensive search of the car looking for evidence of criminality; rather, he merely retrieved the registration from the glove compartment to verify ownership of the Lincoln.

Moreover, Ganshaw did ask for the complainant's permission before conducting these limited searches. To be sure, his failure to advise the complainant that he could refuse permission to search was a procedural error, but it did not appear to be a deliberate effort on Ganshaw's part to violate the complainant's rights. Rather, the goal was to investigate and determine as quickly as possible whether the complainant had committed a crime; when it was determined that he had not, he was promptly released within a couple of minutes.

Indeed, the mistakes here appear to be correctable through training. Taking into account the totality of the facts and circumstances in this matter, including Ganshaw's strong record with the Department, I recommend that Respondent Ganshaw receive training, a productive penalty that will hopefully prevent similar misconduct in the future.

APPROVED

AUG 23 2024
Edward A. Caban
EDWARD A. CABAN
POLICE COMMISSIONER

Respectfully submitted,


Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER JOSHUA GANSHAW
TAX REGISTRY NO. 966072
DISCIPLINARY CASE NO. 2022-26847

Respondent was appointed to the Department on July 2, 2018. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2021, 2022, and 2023. He has been awarded four medals for Meritorious Police Duty and 20 medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials