



POLICE DEPARTMENT

August 17, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-24261
Police Officer Darrell Scraper	:	
Tax Registry No. 948675	:	
103 Precinct	:	

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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 Department: Michael Ricottone, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

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

To:

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

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Darrell Scaper, on or about November 3, 2021, while on-duty and assigned to the 75 Precinct, in Kings County, wrongfully discharged his service firearm at a moving vehicle.

P.G. 221-01, Page 3, Paragraph 1(f)

FORCE GUIDELINES

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 20, 2023. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. 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 recommend that Respondent forfeit 25 vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

In the early morning hours of November 3, 2021, Respondent and his partner were involved in a vehicle pursuit in the 75 Precinct in Kings County. Their pursuit of a Honda CRV lasted for approximately three-to-four minutes. As Respondent, who was the operator of the marked RMP, pulled alongside the Honda in order to cut it off, a collision occurred during which the RMP smashed into a light pole. Respondent emerged from his vehicle, observed the Honda moving from the sidewalk into the street in his general direction, and discharged nine rounds from his firearm at the Honda. The parties stipulated that no one was struck by the bullets. Footage from Respondent's Body-Worn Camera ("BWC") shows Respondent firing his weapon at the vehicle. (Dept. Ex. 1)

Respondent admitted his guilt, fully acknowledging that he was wrong to fire his weapon under these circumstances. He testified as to what occurred leading up to his decision to do so. According to Respondent, about a half hour before the incident he heard over the radio that two of his fellow officers were involved in an encounter with two individuals, who were suspected of breaking into cars. As the officers attempted to apprehend them, the individuals fled in a Honda, almost striking one of the officers with the vehicle in the process. (Tr. 13-14)

At approximately 0400 hours, the same Honda was spotted again, and Respondent became involved in a high-speed pursuit, which was authorized by the patrol supervisor. Respondent testified that as he attempted to pull alongside the Honda, the driver of the Honda swerved to the left, causing a collision in which Respondent's RMP struck a light pole and a parked car. He estimated that he was traveling between 40 and 50 miles per hour at the point of impact, with no chance to apply his brake. The airbags in the RMP were deployed, there was smoke coming from the car, and Respondent had difficulty seeing what was happening outside his vehicle. Respondent testified that he exited his RMP and observed the Honda moving toward him, with the engine revving. He could not see inside the vehicle, but believed there were two occupants, based on the earlier radio transmissions; Respondent later learned that the driver had been the only occupant, and that he was in the process of exiting through the passenger side window as the Honda was moving toward Respondent. Respondent yelled for the vehicle to stop, then, feeling there was "nothing else [he] could do," Respondent discharged several rounds from his firearm toward the driver's seat of the Honda, as the car rolled slowly past him. When he realized the driver was already out of the Honda and running away, Respondent briefly pursued him on foot, to no avail. (Tr. 15-20, 27-30)

Respondent described the moment he discharged his firearm as “the most intense situation” he has ever been in. He explained that he was “totally banged up” from the collision, his “adrenaline was pumping,” and he was concerned that the Honda was being deliberately driven at him. He testified that in retrospect, after reviewing the BWC footage, he sees that he had more space to move away from the Honda than he realized at the time. He acknowledged that rather than discharge his firearm, he should have taken cover. He also conceded that he did not have any indication that anyone inside the Honda possessed a firearm; the perceived threat came from the vehicle itself. (Tr. 19-20, 23, 26-27, 30)

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.

Respondent, who was appointed to the Department on July 6, 2010, has admitted to wrongfully discharging his firearm at a moving vehicle. The presumptive penalty for this offense is 20 vacation days. The Department Advocate has recommended an aggravated penalty of 30 vacation days and one-year dismissal probation. It is the Advocate’s position that since Respondent believed there were two occupants inside the Honda, he created a grave risk of death or serious physical injury by discharging his firearm nine times in the direction of the vehicle. Counsel for Respondent asks that the surrounding circumstances of the pursuit and crash be

taken into account, and argues for a penalty of 25 vacation days without dismissal probation. Counsel also notes that Respondent was already modified for approximately 18 months in connection with this matter.

On the one hand, the Department Advocate correctly states that the Patrol Guide prohibits an officer from discharging their weapon at a moving vehicle, unless deadly physical force is being used against the officer *by means other than the vehicle itself*. The rule is grounded in important safety concerns. A vehicle that is fired upon may strike innocent bystanders if the driver loses control. A moving vehicle presents a difficult target, increasing the likelihood that a bystander or other vehicle occupants may be struck by the gunfire. Although it is fortunate that no one was hit by a bullet or the vehicle here, it remains troubling that Respondent discharged his firearm nine times at the Honda, and there needs to be appropriate accountability.

Respondent conceded that he did not have any indication that anyone inside the Honda possessed a gun; the vehicle, itself, was the threat. He also admitted that in retrospect, he could have taken cover, rather than discharge his firearm. Indeed, the video confirms that he had the time and space to avoid the Honda as it slowly rolled past him.

However, it also is important to take into account the context in which this occurred. Respondent was in a high-speed pursuit of the Honda, after learning that the driver had almost struck a fellow officer with the same vehicle. As Respondent attempted to cut off the Honda, his RMP was involved in a collision in which he slammed into a pole while traveling between 40 and 50 miles per hour. It is understandable that Respondent, without the luxury of waiting to receive medical attention, was “totally banged up” as he emerged from his vehicle. He saw the Honda moving forward with the engine revving, and he believed the vehicle was being driven with the intention of hitting him. It was in that split-second that Respondent made the decision

to discharge his firearm at the Honda, a decision which, after viewing the video, he now fully acknowledges was a mistake. He then chased the suspect on foot, put information about the pursuit over the radio, and provided his fellow officers with a description of the suspect and his direction of flight. Respondent also called for an ambulance for his partner, who had injured his wrist. When a supervisor arrived, Respondent promptly identified himself as having discharged his firearm.

In his 13 years of service, Respondent, who prior to joining the Department served eight years with the United States Marines, has no disciplinary history. He has been awarded one medal for Meritorious Police Duty, and has received consistently strong performance evaluations. Under the totality of the circumstances presented here, a period of probation is not warranted. On balance, a forfeiture of 25 vacation days, a significant loss of days, is appropriate to address Respondent's actions, and hopefully serve as a deterrent to future misconduct. Accordingly, I recommend that Respondent forfeit twenty-five (25) vacation days.

Respectfully submitted,

/s/ Jeff S. Adler BY PMG

Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

SEP 23 2023
EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER DARRELL SCRAPER
TAX REGISTRY NO. 948675
DISCIPLINARY CASE NO. 2021-24261

Respondent was appointed to the Department on July 6, 2010. On his three most recent performance evaluations, he was rated “Exceptional” for 2022, and “Exceeds Expectations” for 2020 and 2021. He has been awarded one medal for Meritorious Police Duty.

Respondent has no disciplinary history. In connection with the instant matter, he was placed on Level 1 Discipline Monitoring in August 2022; monitoring remains ongoing.

For your consideration.

/s/ JEFF S. ADLER ^{BY} PMG

Jeff S. Adler
Assistant Deputy Commissioner Trials