



POLICE DEPARTMENT

January 8, 2021

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In the Matter of the Charges and Specifications

- against -

Police Officer David Bleck
Tax Registry No. 948679
Personnel Bureau

Police Officer Daniel Rivas
Tax Registry No. 954273
112 Precinct

Case No.
2018-19720

Case No.
2018-19721

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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:

Angela Shamay, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondents:

John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

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

POLICE OFFICER DAVID BLECK
POLICE OFFICER DANIEL RIVAS

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-19720

1. Said Police Officer David Bleck, while on-duty and assigned to the 112th Precinct, on or about April 19, 2018, did improperly stop a vehicle, in which Peter Babadaglian was an occupant.

P.G. 212-11

INVESTIGATIVE ENCOUNTERS: REQUESTS
 FOR INFORMATION, COMMON LAW RIGHT
 OF INQUIRY AND LEVEL 3 STOPS
 COMMAND OPERATIONS

2. Said Police Officer David Bleck, while on-duty and assigned to the 112th Precinct, on or about April 19, 2018, issued a summons to Peter Babadaglian without having sufficient legal authority to do so.

P.G. 203-10 (5)

PUBLIC CONTACT – PROHIBITED CONDUCT
 GENERAL REGULATIONS

Disciplinary Case No. 2018-19721

1. Said Police Officer Daniel Rivas, while on-duty and assigned to the 112th Precinct, on or about April 19, 2018, did improperly stop a vehicle, in which Peter Babadaglian was an occupant.

P.G. 212-11

INVESTIGATIVE ENCOUNTERS: REQUESTS
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REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 24 and December 2, 2020. The Department called Peter Babadaglian as a witness, and introduced video footage that captured a portion of the incident. Each 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 both

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Respondents guilty of the charges against them, and recommend that they each forfeit five (5) vacation days.

ANALYSIS

This case involves an encounter between Respondents and motorist Peter Babadaglian, on Austin Street, a two-way street in Queens County. On the afternoon of April 19, 2018, Babadaglian was working as a car service driver. He was driving a Chevy sedan, in route to pick up a passenger, when his encounter with Respondents occurred. Respondents were in uniform at the time, inside an unmarked police vehicle.

Babadaglian, who was 75 years old on the date of the incident, testified that he was about half-way up the block, heading westbound, when he observed a vehicle double-parked in front of him, blocking his path. He looked into the oncoming lane of traffic, and observed a bus, followed by another vehicle, which he later learned to be Respondents' unmarked police car. Babadaglian flashed his lights at Respondents' vehicle and waved his hands to signal that he wanted to drive into the oncoming lane in order to go around the double-parked car. Respondents' vehicle did not stop, and continued heading eastbound. (Tr. 35-36, 77-79)

As Respondents pulled alongside Babadaglian's vehicle, the driver, Respondent Rivas, partially lowered his window and asked Babadaglian, with an attitude, "What's your problem?" Babadaglian answered, "Are you fucking plain stupid or what?" Babadaglian testified that at that point, he did not yet realize Respondents were police officers; if he had known they were officers, he would not have used profanity. Babadaglian then noticed the police patch on Respondent Rivas's shoulder and thought to himself, "Whoops." As Babadaglian drove around the double-parked car, he looked in his mirror and noticed Respondents make a three-point turn,

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activate their lights, and drive behind him. Babadaglian immediately pulled over. He insisted that he was never double-parked during this incident. (Tr. 37-44, 83-90, 119, 127)

Babadaglian testified that Respondent Rivas approached him on the driver's side and asked for his license and registration. Babadaglian said that he would produce them, but he first wanted to take a picture of the officer since he believed he was being stopped wrongfully; Babadaglian had his phone in his left hand. Respondent Rivas repeated the request two more times, and threatened to pull him out of the car, but Babadaglian told him he had no reason to do so. The officers opened the car door, pulled Babadaglian out, and Respondent Bleck grabbed the phone from Babadaglian's hand. Babadaglian was brought to the rear of the car where he was handcuffed. The officers checked his pockets, and searched inside the car where they recovered his license from a jacket that was on the car seat; the license was in a pouch that was inside his jacket. Also in the pouch was a Queens County District Attorney's shield; Babadaglian acknowledged that his wife was a prosecutor with that office three-to-five years earlier, though he maintained that the shield was still in his pouch only because he had forgotten to remove it. (Tr. 58-63, 92, 102-05)

The officers placed Babadaglian inside the police car and started driving toward the 112 Precinct. However, before arriving there, Respondent Rivas spoke on the phone with his sergeant, and they stopped the car just two blocks from the scene of the incident, near a car dealership, where they soon met the sergeant. Babadaglian testified that he was scared, and asked one of the officers to loosen his handcuffs, which were too tight; he told the officer that he was old enough to be his grandfather. The officers removed the handcuffs from Babadaglian, returned his phone, and allowed him to sit in his own car until the sergeant arrived. Babadaglian "decided to play it soft" with the sergeant: he said to the sergeant that all he did was use a foul

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word, and asked if they could make this go away, but the sergeant said it was too late for that. Respondent Bleck issued Babadaglian a summons for disorderly conduct, and he was allowed to drive away in his car. Babadaglian confirmed that he has a lawsuit pending against the police department based on this incident. (Tr. 63-70, 97-100, 113-17)

A copy of the summons, charging disorderly conduct under subsection 5, which prohibits obstructing traffic on a public street, was introduced into evidence as Dept. Ex. 4A and 4B. A stamped document from the courthouse (Dept. Ex. 5) shows that the summons was dismissed and sealed based on facial insufficiency in Queens County Criminal Court on July 5, 2018.

Sergeant Eduardo Roche testified that he was the anti-crime sergeant on the date of the incident, responsible for supervision of Respondents. He received a call from Respondent Rivas informing him of an arrest situation. The sergeant arranged with Respondents to transport Babadaglian a few blocks away, by a car dealership, where the sergeant would meet up with them. (Tr. 158-61, 169)

When the sergeant arrived, Babadaglian already was uncuffed. Sergeant Roche testified that he spoke privately with Babadaglian. Babadaglian told him that he did not realize that Respondents were police officers, and admitted that he "kind of went off" on them, yelling at them because he lost his temper. The sergeant asked why he refused to provide his license to the officers, and Babadaglian responded that he wanted to record them with his phone first. Babadaglian asked if the matter could be resolved any other way, and Sergeant Roche answered that issuing him a summons and releasing him from the scene was a lesser way to handle the situation than bringing Babadaglian to the precinct. Babadaglian said thank you, and drove away from the scene. (Tr. 162-66, 171-72)

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Respondent Rivas testified that he, Respondent Bleck, and a third officer were assigned to the conditions unit on the date of the incident, addressing quality of life issues in the area. The officers were in uniform, driving in an unmarked silver sedan with slightly tinted windows. Respondent Rivas claimed that as he was driving eastbound on Austin Street, he saw Babadaglian's vehicle double parked in the westbound lane. As the officer pulled alongside, he observed Babadaglian yelling and waving at him as if signaling Respondent Rivas to proceed. Respondent Rivas, whose window had been half down, lowered his window all the way. Babadaglian told him to move his car, and Respondent Rivas answered, "Excuse me?" Babadaglian then said to Respondent Rivas, in an aggressive, loud voice, "Don't play fucking stupid." According to Respondent Rivas, he told Babadaglian, two or three times, to move along, but Babadaglian, in turn, told Respondent Rivas to move. Babadaglian finally moved slightly forward and stopped again, at which point Respondent Rivas decided to pull Babadaglian over for disorderly conduct. The officer activated his lights, completed a three-point turn into the westbound lane, passed the one vehicle that was behind Babadaglian's car, and pulled Babadaglian over near the intersection of Austin Street and 70th Road. (Tr. 185-86, 189-93, 205, 208, 212, 215-23)

All three officers approached, and Respondent Rivas asked Babadaglian for his license and registration three times, but Babadaglian continued to refuse. Babadaglian reached toward the center console and said, "Fuck you, I'm going to record you." After the third request for identification went unheeded, the officers removed Babadaglian from the vehicle; Babadaglian was yelling and flailing his arms, and the officers placed him in handcuffs. Respondent Rivas testified that he called his supervisor to tell him of the arrest situation, and that people were

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starting to gather, and Sergeant Roche instructed him to drive down a couple of blocks with Babadaglian, where the sergeant would meet up with them. (Tr. 195-201)

Respondent Bleck testified that he observed Babadaglian gesturing as he “pull(ed) up alongside” the officers’ car. Babadaglian stated, “What are you fucking stupid? Who the fuck do you think you are?” At this point, Respondent Bleck did not yet notice any crowd begin to gather. Nevertheless, based on Babadaglian’s conduct, Respondents decided to pull him over for disorderly conduct, which they did after completing a three-point turn. Respondent Bleck provided a description of how Babadaglian was uncooperative after he was pulled over; his account was essentially the same as the one given by Respondent Rivas. According to Respondent Bleck, the officers consulted with their supervisor, and in light of Babadaglian’s age, decided to issue him a criminal court summons rather than put him through the system. (Tr. 227-237, 244-47, 251-52)

Video footage from a street camera showing a portion of Austin Street was admitted into evidence (Dept. Ex. 1). That footage does not capture the actual exchange between Respondents and Babadaglian. At about 2:25:52 p.m., Babadaglian’s vehicle enters the screen and turns right onto Austin Street driving westbound; the car exits the screen about eight seconds later. There is no additional traffic going in that direction, but a bus heading eastbound enters the screen at about 2:26:10. At about 2:26:41, a small portion of the rear of the unmarked police car can be seen backing up perpendicularly into the eastbound lane, in the midst of making a three-point turn. Traffic is light in both directions.

Additional footage from a car dealership camera captures the interaction with Sergeant Roche two blocks from the scene (Dept. Ex. 2). The footage begins with the unmarked police car pulling to the curb at 2:38:00. Three minutes later, Babadaglian’s white car, being driven by

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Respondent Bleck, pulls up and parks behind the police car. Respondent Bleck exits Babadaglian's vehicle and walks to the police car, where he, Respondent Rivas, and another officer engage in conversation. At about 2:43:30, one of the officers removes Babadaglian from the police car, and appears to uncuff him. They talk briefly, and Babadaglian walks off to the side where he appears to engage in a phone conversation. Over the next 15 or so minutes, there is some back and forth between the officers and Babadaglian, who is mostly seated inside his own car, until Sergeant Roche arrives in a black vehicle at 3:05:36. Babadaglian exits his car, and he and the sergeant have a conversation that lasts about five minutes while they stand alone near the front of Babadaglian's vehicle. Babadaglian returns to his vehicle at about 3:11:44, and promptly pulls away from the location. The sergeant talks with the officers for a couple of minutes, before they, too, depart the scene.

Each Respondent is charged with improperly stopping Babadaglian's vehicle, while Respondent Bleck faces an additional charge for issuing a disorderly conduct summons without sufficient legal authority. Section 240.20 (5) of the Penal Law states, "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof: he obstructs vehicular or pedestrian traffic."

Both Respondents testified that they stopped Babadaglian for disorderly conduct based on his interactions with the officers while their vehicles were side-by-side, facing in opposite directions. Specifically, Respondents claimed that Babadaglian's vehicle was unlawfully stopped in the street obstructing traffic, and that Babadaglian yelled and cursed at them when they asked him to move his car. Babadaglian countered that he was not double-parked, but merely was waiting to drive around a car that was double-parked in front of him. He admitted cursing at the officers when they did not stop their vehicle to allow Babadaglian to proceed

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around the double-parked car. He insisted that he did not realize they were police officers until afterward, when he noticed the police patch on Respondent Rivas's upper arm. At issue is whether the officers, under these circumstances, had sufficient legal authority to stop Babadaglian and issue him the summons for disorderly conduct. I find that they did not.

After listening carefully to the testimony of the witnesses, and reviewing the exhibits in evidence, including the video footage (which did not capture the actual encounter), I credit Babadaglian's narrative of events. Babadaglian was detailed and consistent as he described how he stopped behind a double-parked vehicle, waiting for an opportunity to move into the opposite lane of traffic in order to pass the car. He tried signaling to Respondents' vehicle to let him pass, by flashing his lights and waving at the driver, but Respondents' sedan continued forward and did not stop until it was side-by-side with Babadaglian's vehicle. When Respondent Rivas asked "what's your problem," Babadaglian responded by cursing at the officers, including saying to Respondent Rivas, "Are you fucking plain stupid?" This response precipitated Respondents' decision to make a three-point turn and stop Babadaglian.

Although Respondent Rivas provided a slightly different version of what transpired, claiming that there was not a double-parked car in front of Babadaglian, the testimony of Respondents, themselves, corroborates much of Babadaglian's account. Both Respondents acknowledged seeing Babadaglian waving and yelling toward them before they had said anything to him, which is consistent with his explanation that he was trying to get their attention so he could pass the double-parked car; if he merely had been sitting there double-parked, it would have made no sense for him to signal them in that way. Respondent Rivas explained how after completing a three-point turn, he had to pass a vehicle in the westbound lane before pulling Babadaglian over, which is consistent with Babadaglian's testimony that he initially was stopped

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behind a double-parked car. Respondent Bleck described seeing Babadaglian's vehicle "pull up alongside" the officers' car and gesture at the officers, which is consistent with Babadaglian's version of how the encounter began.

After the exchange of words, Babadaglian proceeded around the double-parked car, only to be pulled over by Respondents further up the block. Based on the totality of circumstances, Respondents did not have a reasonable basis for stopping the vehicle. The credible evidence did not establish that Babadaglian acted with an intent to cause public inconvenience, annoyance, or alarm, or that he recklessly created a risk thereof. Rather, he merely stopped momentarily behind a double-parked car, waiting for an opportunity to move into the eastbound lane in order to pass the car. Admittedly, Babadaglian cursed at Respondent Rivas out of frustration when the officer did not stop to let Babadaglian pass. However, even if that cursing was an overreaction to what had occurred, it still did not provide a reasonable basis for Respondents to stop Babadaglian and issue him a summons for disorderly conduct.

To be sure, much of Babadaglian's conduct during the course of this encounter was ill-advised. Babadaglian, who has a lawsuit pending against the Department based on this incident, failed to cooperate when asked for his license and registration. He asked the responding sergeant whether there was a way to avoid the issuance of the summons. However, these actions, which occurred *after* he had already been stopped, did not provide a basis to justify the stop itself, nor the issuance of the summons.

Taken as a whole, the credible evidence has established that Respondents had no reasonable basis to stop Babadaglian. Additionally, Respondent Bleck did not have sufficient legal authority to support the issuance of the disorderly conduct summons. As such, I find Respondents guilty of each of the charges against them.

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POLICE OFFICER DANIEL RIVAS

PENALTIES

In order to determine appropriate penalties for Respondents, their service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent Bleck was appointed to the Department on July 6, 2010, and Respondent Rivas on January 9, 2013. Information from their personnel records that was considered in making these penalty recommendations are contained in attached confidential memoranda. Neither Respondent has a disciplinary record.

Each Respondent has been found guilty of wrongfully stopping the vehicle of 75-year old Peter Babadaglian, and Respondent Bleck has been found guilty of the additional charge of issuing a summons without sufficient legal authority. The Department Advocate recommends that each Respondent receive the same penalty, the forfeiture of two (2) vacation days. Under the circumstances presented here, I agree that the penalty should be the same for both Respondents, since they essentially acted in unison throughout the incident, with both contributing substantially to the misconduct that occurred. However, the Advocate's recommendation does not adequately address the extent of the misconduct here, and a higher penalty, of five (5) vacation days for each Respondent, is warranted.

On the one hand, there were mitigating factors in favor of Respondents. This was not, for instance, a situation where Respondents specifically targeted Babadaglian. Rather, the encounter began only after the officers came upon a situation where a motorist, driving in the opposite lane of traffic, unexpectedly started cursing at them. Indeed, there seems to have been some confusion all-around: Babadaglian did not realize, at first, that Respondents were police officers, and Respondents did not comprehend why the motorist was cursing at them. Although Respondents wrongfully chose to stop and detain Babadaglian, they did show some restraint:

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even after Babadaglian failed to cooperate with their efforts to obtain his identification, Respondents consulted with their supervisor, issued Babadaglian a summons, and released him two blocks from the scene, instead of bringing the 75-year old motorist to the precinct.

Further, each Respondent has a strong record with the Department. Neither has a disciplinary record, and they both have received consistently high performance evaluations. Respondent Rivas has been awarded four medals for Excellent Police Duty and one for Meritorious Police Duty, while Respondent Bleck has been awarded three medals for Excellent Police Duty and two for Meritorious Police Duty.

Nevertheless, as discussed above, the credible evidence has established that Respondents improperly stopped Babadaglian. Moreover, Babadaglian was then wrongfully issued a summons for disorderly conduct. Even though the motorist cursed at them from his vehicle, the reaction of Respondents, under this specific set of facts, was not justified, and there needs to be appropriate accountability, not just for the stop, but for the issuance of the summons as well.

Taking into account the totality of the facts and circumstances in this matter, I recommend that each Respondent forfeit five (5) vacation days.

Respectfully submitted,

Jeff S. Adler
Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED
[Signature]
FEB 12 2012
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DAVID BLECK
TAX REGISTRY NO. 948679
DISCIPLINARY CASE NO. 2018-19720

Respondent was appointed to the Department on July 6, 2010. On his last three annual performance evaluations, he twice received 4.0 overall ratings of “Highly Competent” in 2014 and 2015, and once received a 4.5 rating of “Extremely Competent/Highly Competent” in 2016. He has been awarded three medals for Excellent Police Duty and two for Meritorious Police Duty. [REDACTED]

Respondent has no disciplinary record.

For your consideration.

Jeff S. Adler
Jeff S. Adler

Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DANIEL RIVAS
TAX REGISTRY NO. 954273
DISCIPLINARY CASE NO. 2018-19721

Respondent was appointed to the Department on January 9, 2013. On his last three performance evaluations, he twice received 4.0 overall ratings of "Highly Competent" in 2014 and 2015, and once received a 4.5 rating of "Extremely Competent/Highly Competent" in 2016. He has been awarded four medals for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]

Respondent has no disciplinary record.

For your consideration.

Jeff S. Adler
Jeff S. Adler

Assistant Deputy Commissioner Trials