



POLICE DEPARTMENT

July 10, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- Against -	:	2022-25171
Detective Salvatore Rizzo	:	
Tax Registry No. 955390	:	
Intel CIS FIO Program	:	

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Nishat Tabassum, 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
ACTING POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Salvatore Rizzo, on or about September 27, 2020, at approximately 0308, while assigned to INT CIS and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that he pointed his gun at Prince Nicholson without police necessity.

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FORCE GUIDELINES

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 17, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The CCRB called Prince Nicholson (hereinafter Nicholson) and offered Body-Worn Camera (hereinafter BWC) of four different members of service that were present on the date of the incident, including Respondent's BWC. 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 evaluated all of the evidence in this matter, the Tribunal finds Respondent Not Guilty.

ANALYSIS

The following is a summary of the facts which are not in dispute.

On September 27, 2020, Respondent was a Field Intelligence Officer (hereinafter "FIO") in the 67 Precinct and on patrol with members of different FIO teams. (Tr. 38) At approximately 0300 hours, Respondent observed two men in a car that was backed into a driveway with its headlights on. (Tr. 39) Nicholson was sitting in the rear passenger side and his brother was in the driver's seat. Respondent stated that Nicholson and his brother appeared to be unconscious. (Tr. 39) Respondent and the other officers approached the vehicle and started knocking on the back passenger side window. After approximately 50 seconds of Respondent and Officer Bautista

knocking, Nicholson woke up. (CCRB Ex. 1 at 0:45-1:35) Once awake, Nicholson began to move around the back seat of the vehicle. The officers ordered Nicholson to “stop moving” and to “not reach” (CCRB Ex. 4 at 1:33-1:36) Nicholson then moved his hands down toward the seat, prompting Respondent to point his firearm at Nicholson for approximately three seconds, while yelling: “Let me see your hands.” (*Id.* at 1:36-1:39) Respondent then lowered his firearm and Officer Bautista opened the passenger side door for Nicholson to exit the vehicle. (*Id.* at 1:40-1:45)

The sole charge against Respondent in this matter alleges that Respondent pointed his firearm at Nicholson without police necessity.

Nicholson testified that on the night of the incident he and his brother had come home from a recording studio. They both had smoked marijuana in the car on their way home. (Tr. 24) His brother parked in the driveway adjacent to Nicholson’s residence; neither of them had a key, so they fell asleep inside the car waiting for someone to open the door to the house. (Tr. 21) Nicholson estimated that he and his brother were asleep in the car for about an hour and a half before he woke up and observed the officers surrounding them. (Tr. 15) He recalled that he felt nervous, and he heard his brother screaming at the officers and “a bunch of lights flashing.” (Tr. 16) Due to the officers’ flashlights, Nicholson admitted he did not see the firearm pointed at him, stating, “Even if I wanted to see what was pointed in my face, I couldn’t. It was like a million lights in my eyes.” (Tr. 25) Nicholson corroborated Respondent’s testimony and explained that when he woke up, he began moving his hands around to find his phone “around the seats and in front of me to see if I dropped it.” (Tr. 29)

Respondent does not deny that he pointed his firearm at Nicholson, and the BWC entered into evidence confirms his actions. He explained that his initial concern was that the occupants of the car were shot, stabbed, had overdosed, or had a medical condition that rendered them unconscious. (Tr. 39) Respondent and Officer Bautista were on the passenger side of the car trying to wake Nicholson up, while the other officers were on the driver's side. When Nicholson's brother woke up, he put his hand on the gearshift, leading Respondent to believe he might attempt to flee. (Tr. 40-41) Nicholson's brother instantly became combative, and began yelling and cursing at the officers. (Tr. 41)

Nicholson did not immediately wake up, despite his brother yelling and the officers continuously knocking on the window that he was asleep against. (Tr. 43) Once he did wake, Respondent observed Nicholson look around and "drop his right hand in between the door and the seat, where [Respondent] can't see it." (Tr. 43) Respondent testified that for safety reasons, at that moment, he pulled out his firearm and pointed it at Nicholson because he believed he might have been reaching for a weapon. Respondent verbally directed Nicholson to "show his hands" and when he complied, Respondent immediately re-holstered his weapon. Both Nicholson and his brother were removed from the vehicle by other officers and a subsequent search of the vehicle was conducted. Marijuana and other drug-related paraphernalia was recovered from the vehicle and the driver was issued a summons. (Tr. 44-45)

Patrol Guide 221-01 sets forth an objective standard for analyzing the use of force: The reasonableness of the use of force is based upon the totality of the circumstances known by the member of service at the time of the use of force. An officer's decision to display or draw his firearm "should be based on an articulable belief that the potential for serious physical injury is present." I find the CCRB has failed to meet its burden of proof by a preponderance of the

relevant, credible evidence that Respondent pointed his firearm at Nicholson without police necessity.

In this case, the material factual assertions in Nicholson's testimony are corroborated by Respondent's version of events as well as the video recordings of the incident. Respondent credibly testified that upon his initial approach toward the vehicle, he was concerned for the safety of the occupants given their seemingly unconscious state. Once the driver of the car woke up, he was combative and his furtive movements toward the gear shift made Respondent nervous. The driver's actions elevated the Respondent's concerns for his safety and that of his fellow officers.

When Nicholson woke up, he began looking around and by his own admission, moving his hands around the seat to see if he had dropped his phone. (Tr. 29-30) At this point, Nicholson's hands were not visible to Respondent and were reaching for an item. (Tr. 43; CCRB Ex. 4 at 1:36-1:39) Respondent then verbally warned Nicholson to stop moving and show his hands. When Nicholson did not immediately comply, Respondent reasonably determined that the potential for serious physical injury existed if Nicholson was reaching for a weapon.

At that moment, the windows of the vehicle were still up and the doors were locked, so it would not have been practical or effective for Respondent to use any other weapon available to him on his duty belt. He credibly explained at trial that he ruled out the use of either pepper spray or his Taser as likely to cause undesirable collateral damage to his fellow officers. This was a rational decision under the circumstances. Moreover, as soon as Nicholson's hands were visible to Respondent and the potential for serious physical injury dissipated, Respondent re-holstered his firearm as required by the Patrol Guide.

This Tribunal finds that Respondent used only the reasonable force necessary to ensure his safety and that of his fellow officers at a time when Nicholson was searching for an item with his hands in a manner which was not visible to the officers. I further find that Respondent operated in good faith and in furtherance of his law enforcement responsibilities. The actions taken by Respondent when he issued Nicholson a verbal warning and momentarily pointed his gun at Nicholson were prudent and necessary based upon what he reasonably believed pursuant to his training and experience.

Accordingly, I find Respondent Not Guilty of Specification 1.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

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EDWARD A. CABAN
POLICE COMMISSIONER