



POLICE DEPARTMENT

June 14, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-27117
Lieutenant James Lee	:	
Tax Registry No. 930421	:	
Patrol Borough Manhattan South	:	

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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: Kenneth Crouch, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondent: James Moschella, 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 James Lee, on or about June 23, 2021, at approximately 1450 hours, while assigned to PBMS and on duty, in the vicinity of [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he took a recording of individuals on his personal cell phone without police necessity.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

2. Lieutenant James Lee, on or about June 23, 2021, at approximately 1450 hours, while assigned to PBMS and on duty, in the vicinity of [REDACTED] New York County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he took a recording of [a named complainant] on his personal cell phone without police necessity.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 2, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complaint Review Board introduced into evidence a hearsay statement of a named complainant, video footage he recorded, as well as the Body-Worn Camera footage from several police officers at the scene. 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, I find Respondent Guilty, and recommend a penalty of 20 vacation days.

ANALYSIS

On the afternoon of June 23, 2021, Respondent was the Commanding Officer of the Scooter Squad, tasked with monitoring a protest rally and march scheduled to begin at Bryant Park in Manhattan. The protest was not expected to start for a while, and so with his team

already in place near the intersection of [REDACTED] Respondent had them take their meal. At approximately 1450 hours, Respondent and several of his officers were sitting inside a police support van eating when two individuals approached the passenger side of the vehicle asking for Respondent's name and shield. One of the individuals had a cell phone in his hand, which he apparently was using to record Respondent, who was sitting in the front passenger seat. Respondent emerged from the van, and his ensuing interaction with the two individuals, as well as a third member of the public ("the complainant"), led to the charges in this case.

The complainant did not appear to testify. Instead, the CCRB introduced into evidence a recorded phone interview of the complainant from July 16, 2021. (CCRB Exs. 1 & 1A) 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 interview, the complainant, a self-described "cop watcher," stated that he regularly attends protests in order to document them for the purpose of police accountability. On the date of this incident, he observed two protesters cross the street and approach Respondent, who was in the front passenger seat of a police van, to ask for his name and shield number. Respondent and several other officers exited the van, and Respondent appeared to be using his phone to record the protesters. Respondent and the protesters exchanged words, while the complainant

stood back and recorded the interaction. At one point, Respondent turned his attention to the complainant, whom he believed had a knife in his possession; the complainant explained that it was only a pen, which was hooked onto the side of his pants, and Respondent walked away. The complainant also walked away, before turning back to Respondent to ask him why he had been harassing him. They exchanged additional words before the complainant again walked away. (CCRB Ex. 1A at 4-6, 12-13, 16-21, 27-29)

Video footage recorded by the complainant captures the interaction, as does Body-Worn Camera (“BWC”) footage from several officers at the location. In the complainant’s video (CCRB Ex. 2), the two unnamed protesters can be seen approaching Respondent, as he is seated inside the van. One of them holds his phone up to Respondent as if he is recording. Respondent emerges from the van with a phone in his hand, and appears to be recording the protesters as well. He tells them his name, but one of the protesters repeatedly asks for his badge number, even though Respondent tells him he does not have one. The protester also states, “Bust your move, asshole.” Other police officers exit the van and stand nearby. Respondent tells the protesters that they are harassing him, and an extended conversation ensues where they argue about what constitutes harassment. During much of the exchange, one of the protesters holds his phone in close proximity to Respondent, who in turn continues to hold up his phone to record them. At approximately 6:10 of the video, Respondent’s attention briefly turns toward the complainant. Still recording with his personal phone, Respondent moves close to the complainant, appears to look toward his waist, and asks whether he has a knife; the complainant tells him it is just a pen, and Respondent walks away. The protesters start to cross the street, and the recording ends.

The BWC footage from the officers at the scene (CCRB Exs. 3-5) similarly shows what occurred between Respondent and the individuals, including his interaction with the complainant. One of the videos (CCRB Ex. 4) captures a brief verbal exchange between Respondent and the complainant, which Respondent can be seen recording with his personal phone.

Respondent testified that as he was sitting inside the van eating, he was approached by two “aggressive” protesters who were cursing at him, and sticking their phones in his face. He recognized them as “professional agitators” from past protests, whose goal was to bait officers into a confrontation and then file a lawsuit. He also recognized the complainant as an individual he had seen following and recording protests in the past. Fearing for his safety, Respondent decided that it would be tactically advantageous for him to engage the protesters on the street rather than be trapped inside the van, and so he exited the vehicle. (Tr. 26-30, 37-38)

Once he was outside the van, Respondent wanted to record the interaction in order to document it, but his BWC was attached to his police raid jacket, which was inside a compartment of his scooter across the street. Respondent testified that he had two phones with him inside the van: his Department iPhone and his personal iPhone, which were similar in appearance. He grabbed one of them, which he believed to be his Department phone, and started to record; he realized afterward that he had actually grabbed his personal cell phone instead. According to Respondent, he successfully de-escalated the situation, and the protesters walked away. When he later returned to the command, Respondent confirmed that his colleagues had captured the incident with their BWCs, and he deleted the footage from his personal phone. (Tr. 25, 28, 31-39, 45, 47)

The CCRB has brought two charges against Respondent that stem from this interaction with several members of the public. Specifically, Specification 1 alleges that Respondent improperly used his personal cell phone to record his encounter with the two unnamed protesters, while Specification 2 similarly charges him with using that phone to record the complainant.

It is undisputed that Respondent did use his personal cell phone to record his interaction with the two unnamed protesters, as well as the complainant: Respondent acknowledged that he did so, and the events were captured on video. At issue is not Respondent's decision to record; rather, the issue is *how* Respondent chose to record the interaction – i.e. by using his personal phone as the recording device. Under section 203-06 (17) of the Patrol Guide, in effect at the time of the incident, an MOS is specifically prohibited from “Using any personal electronic/digital device (e.g. cellular phone, camera, etc.) to record video and/or audio or take photographs during any police encounter.” An MOS is instead expected to record such encounters by activating their BWC in the manner prescribed by section 212-123 of the Patrol Guide, after which the video footage becomes the property of the Department, and may not be edited, deleted, or altered by the MOS who recorded it.

This tribunal is mindful that Respondent wanted to record his interaction with the “aggressive protesters” in order to document what transpired; these were “professional agitators” whom he recognized from past protests. However, with his BWC across the street inside his scooter, Respondent exited the van and began recording the protesters using his personal device, contrary to the rules of the Patrol Guide.

To be sure, the rules do not prohibit an MOS from using a personal phone for non-Departmental purposes while on their meal. However, that was not the situation here. At the point where he stepped out of the van to engage the civilians, Respondent was involved in

official Department business. Under such circumstances, any recording he undertook needed to be done with an official Department device. His decision to use his personal phone to record his interaction with the two unnamed protesters, as well as the complainant, ran afoul of the rules set forth in the Patrol Guide. Accordingly, I find Respondent Guilty of both specifications.

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 Respondent's personnel record that was considered in making this penalty recommendation is contained in an attached memorandum. In nearly 22 years of service, Respondent has been the subject of three disciplinary findings against him, though two of them occurred more than 10 years ago. He also has been awarded seven medals in recognition of his performance, including one Commendation.

Respondent, who was appointed to the Department on July 1, 2002, has been found Guilty of both specifications, for wrongfully using his personal cell phone to record his encounter with protesters. The Disciplinary Guidelines provide for a presumptive penalty of 20 days for this offense. The CCRB recommends that Respondent forfeit 20 vacation days for each count, and that those penalties run concurrently with each other for a total forfeiture of 20 days.

On the one hand, this tribunal is mindful that Respondent's BWC was inside his scooter at the time his encounter with the protesters began. Unfortunately, Respondent then proceeded to record the interaction with his personal cell phone in order to document it. Even if, as he claimed, he mistakenly grabbed his personal phone instead of his Department phone, Respondent

still chose to exit the van and record with that device, while his BWC was across the street. The Patrol Guide strictly forbids an MOS from using a personal device in such a situation. As an experienced lieutenant, Respondent should have known that his decision to do so was improper, and I find no basis to mitigate the penalty here.

On balance, the presumptive penalty of 20 vacation days for each of the two charges will fairly address the misconduct in this case. Respondent's actions were essentially part of one underlying course of conduct, and so concurrent penalties are appropriate. Taking into account the totality of the facts and circumstances in this matter, including Respondent's disciplinary history with the Department, I recommend that Respondent forfeit twenty (20) vacation days for each of the two specifications, with those penalties to run concurrently with each other, for a total forfeiture of twenty (20) vacation days.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED


AUG 07 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 JAMES LEE
TAX REGISTRY NO. 930421
DISCIPLINARY CASE NO. 2022-27117

Respondent was appointed to the Department on July 1, 2002. On his three most recent annual performance evaluations, he received 5.0 ratings of “Extremely Competent” for 2021, 2022, and 2023. Respondent has been awarded one Commendation, three medals for Meritorious Police Duty, and three medals for Excellent Police Duty.

Respondent has been the subject of three previous disciplinary matters during his career. Most recently, in 2021, Respondent pled guilty to failing to properly supervise a subordinate over a 12-month period and negotiated a penalty of 10 vacation days. In connection with that case, he was placed on Level 1 Discipline Monitoring from September 2018 through February 2021.

In 2012, Respondent pled guilty to operating a motor vehicle while under the influence of alcohol, refusing to submit to a breathalyzer test, and being unfit for duty; he negotiated a penalty where he forfeited 34 suspension days and 15 vacation days, was placed on one-year dismissal probation, and agreed to cooperate with counseling and ordered breath testing.

In 2010, Respondent pled guilty to using excessive force against a handcuffed individual, and negotiated a penalty of 15 vacation days.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials