



POLICE DEPARTMENT

September 3, 2024

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In the Matter of the Charges and Specifications :
- against - :

Lieutenant Daniel Berardi :
Tax Registry No. 948658 :
69 Precinct :

Case No. :
2022-26426 :

Police Officer Anthony Varrone :
Tax Registry No. 961405 :
75 Precinct :

Case No. :
2022-26424 :

Detective Neil Narayan :
Tax Registry No. 966239 :
75 Precinct :
----- X

Case No. :
2022-26425 :

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Brian Arthur, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondent Berardi:

Matthew Schieffer, Esq.
The Quinn Law Firm
399 Knollwood Road, #220
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For Respondents
Varrone and Narayan:

Michael Martinez, Esq.
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To:

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

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CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-26426

1. Sergeant Daniel Berardi¹, on or about January 17, 2021, at approximately 0230 hours, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he stopped [the complainant] without sufficient legal authority.

P.G. 212-11, Page 6, Paragraph 20

INVESTIGATIVE
ENCOUNTERS

2. Sergeant Daniel Berardi, on or about January 17, 2021, at approximately 0230 hours, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he failed to explain to [the complainant] the reason for stopping him, without police necessity.

P.G. 203-09, Page 1, Paragraph 3

PUBLIC CONTACT

3. Sergeant Daniel Berardi, on or about January 17, 2021, at approximately 0230 hours, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he failed to provide [the complainant] with a business card, without police necessity.

P.G. 203-09, Page 1, Paragraphs 1 & 4

PUBLIC CONTACT

Disciplinary Case No. 2022-26424

1. Police Officer Anthony Varrone, on or about January 17, 2021, at approximately 0230 hours, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] [REDACTED], Kings County, abused his authority as a member of the New York City Police Department, in that he stopped [the complainant], without sufficient legal authority.

P.G. 212-11, Page 6, Paragraph 20

INVESTIGATIVE
ENCOUNTERS

2. Police Officer Anthony Varrone, on or about January 17, 2021, at approximately 0230 hours, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED] [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.

¹ Respondent Berardi was promoted to Lieutenant in May 2024.

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

INVESTIGATIVE
ENCOUNTERS

3. Police Officer Anthony Varrone, on or about January 17, 2021, at approximately 0230 hours, while assigned to 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], without sufficient legal authority.

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

INVESTIGATIVE
ENCOUNTERS

4. Police Officer Anthony Varrone, on or about January 17, 2021, at approximately 0230 hours, while assigned to 075 PCT and on duty, in the vicinity of [REDACTED], abused his authority as a member of the New York City Police Department, in that he failed to explain to [the complainant] the reason for stopping him, without police necessity.

P.G. 203-09, Page 1, Paragraph 3

PUBLIC CONTACT

5. Police Officer Anthony Varrone, on or about January 17, 2021, at approximately 0230 hours, while assigned to 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 failed to provide [the complainant] with a business card, without police necessity.

P.G. 203-09, Page 1, Paragraph 4

PUBLIC CONTACT

Disciplinary Case No. 2022-26425

1. Police Officer Neil Narayan², on or about January 17, 2021, at approximately 0230 hours, while assigned to 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 stopped [the complainant], without sufficient legal authority.

P.G. 212-11, Page 6, Paragraph 20

INVESTIGATIVE
ENCOUNTERS

2. Police Officer Neil Narayan, on or about January 17, 2021, at approximately 0230 hours, while assigned to 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 failed to explain to [the complainant] the reason for stopping him, without police necessity.

P.G. 203-09, Page 1, Paragraph 3

PUBLIC CONTACT

² Respondent Narayan was promoted to Detective in July 2024.

3. Police Officer Neil Narayan, on or about January 17, 2021, at approximately 0230 hours, while assigned to 075 PCT and on duty, in the vicinity [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he failed to provide [the complainant] with a business card, without police necessity.

P.G. 203-09, Page 1, Paragraph 4

PUBLIC CONTACT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on July 17, 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 Respondents' Body-Worn Camera ("BWC") footage. 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: with respect to Respondents Varrone and Narayan, I find them each Guilty of failing to explain to the complainant the reason for the stop, and Not Guilty of the remaining charges, and recommend a penalty of Training for each of them; with respect to Respondent Berardi, I find him Not Guilty of all charges.

ANALYSIS

At approximately 0230 hours on January 17, 2021, Respondents, who were in uniform in an unmarked RMP, were on patrol in the vicinity of [REDACTED] in Kings County when they observed an individual ("the complainant") walking in the street. It is alleged that Respondents wrongfully stopped the complainant, and that additional acts of misconduct were committed during their brief encounter as well.

The complainant did not appear to testify. Instead, the CCRB offered into evidence a recording and transcript of a phone interview conducted by the CCRB on January 22, 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 BWC video footage.

In his statement, the complainant said he was walking home from a friend's house when police officers inside a vehicle called out to him. The complainant chose not to respond and started crossing the street when the three officers exited their vehicle and approached him on foot. He asked the officers if they had probable cause to stop him, but they provided no explanation. Instead, the officers grabbed the complainant's arms, patted him down, and searched inside his pockets, removing a magnifying glass from his jacket. One of the officers asked the complainant if he had any information; the complainant answered that he did not, and stated that he was going to report the incident. The officers got back inside their vehicle and drove off, without providing business cards. The complainant did not sustain any injuries during the encounter. (CCRB Ex. 1A at 6-7, 16-19, 27-29, 39-49)

BWC footage from each of the Respondents captures their 30-second encounter with the complainant. (CCRB Exs. 2-4) In that footage, the Respondents can be seen exiting their vehicle and approaching the complainant on foot; Varrone and Narayan each walk up to the complainant, while Berardi, who exits after them, stands a few feet back. Varrone pulls the

complainant's left hand out of his pocket and begins to pat him down, as the complainant repeatedly asks if they have probable cause. After Varrone removes a large magnifying glass with a long handle from the complainant's jacket pocket and places it on the hood of a parked car, the complainant says that "it's a magnifying glass," and calls the officers "stupid." Varrone continues to pat down the complainant, as Narayan raises the complainant's left arm back in the air. The complainant, at first, tells them to "keep going," and says, "you want to open my jacket up, open my jacket up," but then complains there is no probable cause and tells them not to touch him. After the brief pat-down yields nothing, Varrone places the magnifying glass back inside the complainant's jacket pocket, and the officers begin to walk away. Berardi says to the complainant, "Do you have any information or anything, we offer cards?" The complainant answers no, and Berardi confirms, "No? Alright." As the officers prepare to leave, the complainant states that what they did was illegal, and he is going to report them.

A copy of the Stop Report prepared by Narayan, and approved by Berardi, was introduced into evidence. (CCRB Ex. 5) The narrative section of that report states that the subject "was observed walking on a public street with an object sticking out of his jacket pocket which resemble[d] the handle of a firearm." The report also indicates that the officer explained to the subject the reason for the stop, and that a business card was offered to him. (Tr. 75-84)

Respondent Varrone testified that the task of his public safety team is "to quell street crime, as well as gang violence and shootings," which frequently occur within the confines of the 75 Precinct. On the night of the incident, he observed that as the complainant was walking by, his front jacket was "weighed down" on the left side, signifying that there was something heavy in the left jacket pocket. The complainant made eye contact with Varrone, and he adjusted his pocket, making a side-to-side motion, which suggested to Varrone that he might be armed with a

gun. Varrone made a U-turn and pulled closer to the complainant, where he saw a piece of metal sticking out of the complainant's left jacket pocket. Varrone testified that it appeared to be the handle of a gun. (Tr. 30, 33-38, 44, 46)

After making these observations, Varrone and Narayan exited the RMP and approached the complainant, who stood still with his hands in his pockets. Varrone testified that he pulled the complainant's hands from his pockets to prevent him from drawing a gun, and Narayan held his hands. Varrone immediately grabbed the outside of the complainant's front jacket pocket, where he felt "a hard handle with a slight curvature to it." Varrone reached into the pocket and removed the object, which turned out to be a large magnifying glass, and placed it on the hood of a parked car. According to Varrone, his earlier observations of the complainant, including his movement to adjust the weight in his pocket, did not seem consistent with merely possessing a magnifying glass; since he had momentarily lost sight of the complainant, Varrone still suspected that the complainant possessed a firearm somewhere on his person. He rubbed his hands along the outside of the complainant's jacket and down part of his leg for about five seconds, with negative results. Varrone placed the magnifying glass back inside the complainant's pocket, and removed his hand without searching the pocket, which concluded the encounter. He did not offer a business card because he heard Berardi, who was standing behind them, offer cards to the complainant. Varrone also testified that he did not explain to the complainant why he had been stopped because he believed, from the complainant's comment, "Look, it's a magnifying glass," that he knew the reason for the stop. (Tr. 38-43, 47-58, 62)

Respondent Narayan testified that from inside the RMP he observed a big bulge in the complainant's left front jacket pocket. The complainant looked toward the officers, then adjusted his front jacket area. Narayan suspected that the complainant might be armed with a

firearm. After the U-turn, they drew closer to the complainant, and Narayan saw an object sticking out of his jacket pocket. The object was “long and straight edged.” Based on his observations and experience making multiple gun arrests, Narayan believed the object to be a firearm. (Tr. 67-68, 73)

Since the officers were at a tactical disadvantage, in close proximity to the complainant without cover, they exited their RMP and confronted him on foot. Narayan testified that he assisted Varrone by controlling the complainant’s arms, to prevent him from reaching down into his pockets and grabbing a weapon. Varrone frisked the complainant and removed a magnifying glass from his left jacket pocket. The complainant told them that they were stupid, that it’s a magnifying glass, which made Narayan believe that he knew why he had been stopped. He heard his supervisor, Berardi, offer a business card to the complainant, so he did not believe it was necessary to offer one himself. (Tr. 68-72, 83-85)

Respondent Berardi, who was the public safety sergeant at the time of the incident, testified that after one of the officers mentioned seeing the bulge, he, too, observed a bulge in the complainant’s pocket. After the U-turn, Varrone and Narayan were first to exit the RMP, and Berardi, who was in the front passenger seat and further away from the complainant, exited after them. He could not hear what initially was said between his officers and the complainant. Berardi observed Varrone frisk the complainant, while Narayan had control of the complainant’s hands, so there was no need for him to intervene. Berardi described the complainant as “combative” and “agitated,” and so he tried to calm the situation, reassuring the complainant that the encounter was being recorded. (Tr. 90-94)

Berardi testified that he did not explain to the complainant why he was stopped since he was not the one who initiated the stop; the reason why the “Stop Report” indicated that they *did*

explain the reason for the stop was because there was an assumption, based on the complainant's statements during the encounter, that he knew why he had been stopped. Before departing from the location, Berardi asked the complainant if he had information about any crimes, and also offered business cards to the complainant, who declined. Berardi insisted that his offer of the cards was not contingent on the complainant's agreeing to provide information. (Tr. 94-104)

Specification 1 against each Respondent alleges that they wrongfully stopped the complainant. Section 212-11 of the Patrol Guide states that when a UMOS has a reasonable suspicion that an individual has committed, is committing, or is about to commit a crime, the officer may stop and detain that individual in order to conduct a criminal investigation.

It is undisputed that Respondents did, in fact, conduct a stop of the complainant. At issue is whether they had a reasonable basis for doing so. Respondents each observed a bulge in the complainant's jacket pocket. Additionally, Varrone described how the front of the complainant's jacket was "weighed down" on the left side, indicating that there was something heavy in the pocket. Both Varrone and Narayan testified in a detailed, credible manner about how the complainant, after looking at the officers, adjusted his pocket with a side-to-side motion, further arousing their suspicion that he was in possession of a firearm. When the officers pulled their RMP closer for a better look, both Varrone and Narayan observed an object sticking out of the jacket pocket: Varrone described it as a piece of metal that appeared to be the handle of a gun, while Narayan noted that it was long and straight edged, leading him, too, to conclude it was a firearm.

Based on these observations, Respondents reasonably believed that the complainant was in possession of a firearm. Rather than remain inside their vehicle where, as Narayan explained, they were at a tactical disadvantage, Respondents quickly exited their RMP and immediately

stopped the complainant. The ensuing pat-down and search, which will be addressed below, yielded a large magnifying glass but no firearm, and the complainant was promptly released, with the entire encounter having lasted approximately 30 seconds.

Under the specific circumstances presented here, I find that Respondents did have sufficient legal authority to stop the complainant. Their observations regarding the heavy bulge and the object protruding from the complainant's pocket, coupled with the complainant's suspicious behavior in adjusting his pocket area after making eye-contact with the officers, provided a reasonable basis for stopping the complainant. Accordingly, I find each Respondent Not Guilty of conducting a wrongful stop.

Respondent Varrone faces additional charges for wrongfully frisking and searching the complainant (Specifications 2 & 3).³ Section 212-11 (36) of the Patrol Guide states that if an officer develops a reasonable suspicion that an individual is armed and dangerous, the officer may frisk the person for a weapon. Reasonable suspicion may arise from the officer's observations, including seeing something on the person of the individual that the officer reasonably suspects is a weapon. The Patrol Guide section further states that where the frisk reveals an object that the officer reasonably suspects may be a weapon, he may search that particular portion of the individual's clothing.

As discussed above, Respondents stopped the complainant based upon a reasonable suspicion that he possessed a firearm. Pursuant to that stop, the officers needed to determine, for the safety of themselves and others, whether there was a gun on the complainant's person. Toward that end, while Narayan held the complainant's arms, Varrone quickly placed his hand

³ According to counsel for the CCRB, the charge of a wrongful search refers to the moment where Varrone reached inside the complainant's jacket pocket to return the magnifying glass. (Tr. 122)

on the outside of the complainant's jacket pocket, where he felt "a hard handle with a slight curvature to it." He reasonably suspected that the object might be a firearm, and so he reached into the complainant's pocket and removed the object, which turned out to be a magnifying glass.

After removing the magnifying glass, Varrone still reasonably suspected that the complainant possessed a firearm. Varrone credibly explained that the way the complainant had adjusted the heavy object in his pocket did not seem consistent with that object being the magnifying glass that they recovered. Since the officers had briefly lost sight of the complainant before the stop, Varrone believed that the complainant may have concealed a firearm somewhere else on his person. Based on that concern, Varrone did a quick pat-down of the complainant with negative results. Having satisfied himself that the complainant was not armed and dangerous, Varrone placed the magnifying glass back inside the complainant's pocket. In doing so, he briefly placed his hand inside the pocket, not for the purpose of searching the pocket, but merely to return the item.

Under these circumstances, Varrone's actions did not constitute misconduct. His interaction with the complainant was based on a reasonable suspicion, and was minimally intrusive. Once it was determined that the complainant was not armed and dangerous, the encounter ended and the complainant was immediately released. Accordingly, I find Varrone Not Guilty of wrongfully frisking and searching the complainant.

Each Respondent also faces two additional charges: for not providing a business card to the complainant, and for failing to explain to the complainant the reason for the stop. These charges will be considered separately.

Section 203-09 (4) of the Patrol Guide, and its successor Administrative Guide Section 304-11, require a UMOS involved in an encounter such as this to offer the individual a Right to Know Business Card at the conclusion of the law enforcement activities. Here, at the conclusion of their encounter, Berardi offered business cards to the complainant. On the BWC footage, Berardi can be heard saying to the complainant, "Do you have information or anything, we offer cards?" When the complainant answers no, Berardi confirms with him that his answer is no, and Respondents depart without providing cards to the complainant.

Respondents each testified credibly that since the complainant declined Berardi's offer of business cards, there was no need for them to pursue that matter further. Counsel for the CCRB suggests that Berardi should have made it more clear to the complainant that the offer of cards was not contingent on his agreeing to provide information. However, based upon my review of the evidence, I find that Berardi did effectively offer cards to the complainant, even if he also was trying to solicit information about criminal activity from him. Not only did Berardi clearly state that the officers offer cards, he confirmed with the complainant that his answer to the offer was no.

The record has failed to establish, by a preponderance of the credible evidence, that Respondents wrongfully failed to provide business cards to the complainant. Berardi made the offer, the complainant declined it, and so I find Respondents Not Guilty.

Regarding the remaining charge of failing to explain to the complainant the reason for the stop, the evidence first will be considered with respect to Varrone and Narayan, and then regarding Berardi.

Both Varrone and Narayan contend that since they believed the complainant already knew why he was being stopped, they did not need to tell him the reason. That argument is not

persuasive, as it runs counter to the clear requirement of the Patrol Guide. Pursuant to Section 203-09 (3) of the Patrol Guide, a UMOS involved in an encounter such as this must explain to the individual the reason for the law enforcement activities that were taken. Additionally, there is even a box on the Department's Stop Report that asks the MOS to indicate whether the individual was informed of the reason for the stop, further underscoring the importance of providing such information when it can be done safely.

Here, it is undisputed that neither Varrone nor Narayan provided such an explanation to the complainant. At the outset of the encounter, they chose not to tell the complainant the reason for the stop, even when he asked if they had probable cause. In fairness to the officers, they were reasonably concerned that the complainant possessed a firearm, and their top priority was to safely secure the situation. Also, the complainant was berating the officers, repeatedly telling them that they were stupid. However, once it was determined that the complainant did not pose a threat, Varrone and Narayan could safely have taken a moment to explain to him the reason they had stopped him, before departing from the location. Since they failed to do so, I find Varrone and Narayan Guilty of failing to explain the reason for the stop.

With respect to Berardi, he credibly testified that although he did observe a bulge in the complainant's jacket, the stop of the complainant was not based on his observation. Rather, the stop was initiated by Varrone and Narayan, who made more extensive observations of which Berardi was unaware at the time. It was Varrone and Narayan who initially engaged the complainant, while Berardi was the last to emerge from the vehicle. As such, Berardi could not hear what words were exchanged between his officers and the complainant. Since Berardi was not privy to the basis for the stop, and could not hear whether Varrone or Narayan had already told the complainant why he was being detained, it would be unreasonable to hold Berardi

accountable for not explaining to the complainant why he was stopped. The credible evidence has failed to establish misconduct on the part of Berardi, and I find him Not Guilty.

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. Respondents' employment histories also were examined. *See* 38 RCNY § 15-07. Information from their personnel records that was considered in making these penalty recommendations are contained in attached memoranda.

Respondent Varrone, who was appointed on January 6, 2016, and Respondent Narayan, who was appointed on July 2, 2018, each have been found Guilty of one charge, for failure to explain to the complainant the reason for the stop. The CCRB recommends a penalty of three vacation days for this specification. The CCRB makes that recommendation based on the Disciplinary Guidelines offense entitled, "Failure to Comply with the Right-to-Know Act Regarding Consent to Search," even though that does not precisely match what occurred here. In any event, the presumptive penalty for that offense is three days, with a mitigated penalty of Training.

On balance, a mitigated penalty of Training is appropriate here. Each Respondent has a strong record with the Department. Neither of them has any formal disciplinary history, and they both have been awarded numerous medals for their work: Varrone has been awarded 23 medals for Meritorious Police Duty and 34 for Excellent Police Duty; Narayan has been awarded one Commendation, 26 medals for Meritorious Police Duty, and 30 for Excellent Police Duty.

Additionally, as noted above, this encounter was extremely brief, lasting approximately 30 seconds. The failure of Varrone and Narayan to explain the reason for the stop was not a deliberate intent to violate the procedure; rather, they mistakenly believed that the complainant's statements were enough to relieve them of their responsibility to explain the basis for the stop. In this situation, the potential for training to correct their mistake is a viable and appropriate option.

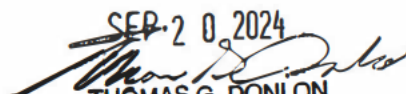
Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondents Varrone and Narayan each receive a penalty of Training.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

SEP 20 2024

THOMAS G. DONLON
INTERIM POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER ANTHONY VARRONE
TAX REGISTRY NO. 961405
DISCIPLINARY CASE NO. 2022-26424

Respondent was appointed to the Department on January 6, 2016. On his three most recent annual performance evaluations, he was rated “Exceptional” for 2021, 2022 and 2023. He has been awarded 23 medals for Meritorious Police Duty and 34 medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

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
DETECTIVE NEIL NARAYAN
TAX REGISTRY NO. 966239
DISCIPLINARY CASE NO. 2022-26425

Respondent was appointed to the Department on July 2, 2018. On his most recent annual performance evaluations, he was rated “Exceptional” for 2021, 2022, and 2023. He has been awarded one Commendation, 26 medals for Meritorious Police Duty, and 30 medals for Excellent Police Duty.

Respondent has no formal disciplinary history; he is currently on Level 1 force monitoring and remains so date.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials