



POLICE DEPARTMENT

September 15, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-27737
Police Officer Kieran Ross	:	
Tax Registry No. 967310	:	
83 Precinct	:	

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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 Department: Mirna Youssef, 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 Kieran Ross, while on-duty and assigned to the 83 Precinct, on or about October 1, 2022, in Kings County, said Police Officer wrongfully deactivated his own and Police Officer Christopher Chacon's Body-Worn Camera at an improper time.

P.G. 212-123, Page 2, Para. 4(g)

COMMAND OPERATIONS -
USE OF BODY-WORN CAMERAS

2. Said Police Officer Kieran Ross, while on-duty and assigned to the 83 Precinct, on or about October 1, 2022, in Kings County, said Police Officer failed to activate his Body-Worn Camera at the start of a foot pursuit.

P.G. 212-123, Page 2, Para. 4(g)

COMMAND OPERATIONS -
USE OF BODY-WORN CAMERAS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 1, 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, the Tribunal recommends that Respondent forfeit twenty (20) vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

On the evening of October 1, 2022, at approximately 1950 hours, Respondent and his partners, Officers Chacon and Seaton, were working in their capacity as public safety officers in the 83 Precinct. They were in an unmarked police vehicle conducting routine patrol. Respondent was seated in the front passenger seat as the recorder, Officer Chacon was the driver, and Officer Seaton was in the back seat. As they were driving along Bushwick Avenue in Brooklyn, Respondent observed a vehicle commit a traffic infraction. Specifically, he observed the vehicle

drive through a steady red light, nearly striking another motorist on a moped. (Tr. 14)

Respondent testified they proceeded to follow this vehicle and check the license plate.

The license plate affixed to the car did not match the car's registration. Based upon his experience, Respondent believed this could be an indication that the car was stolen. (Tr. 15) At this point, they decided to initiate a car stop. Respondent testified that the vehicle came to a stop shortly thereafter and that is when he activated his body-worn camera (hereinafter "BWC"). (Dept. Ex. 1) Respondent explained that his BWC has a one-minute buffer where there is no audio, so the audio begins when he is seen exiting the police vehicle. (Tr. 21) Upon exiting the police vehicle, Respondent went over his PA system to instruct the driver to roll down the windows and turn off the car. (Tr. 15) The driver of the vehicle did not immediately comply with Respondent's instructions, so he gave the driver additional time to comply before he began to approach the car. As soon as Respondent started walking toward the car, it immediately took off at a high rate of speed, causing its tires to skid. (Tr. 15-16)

Respondent testified that he quickly re-entered his police vehicle and turned off his BWC believing that the police action had concluded. (Tr. 22) The total amount of time captured on Respondent's BWC was one minute and thirty-two seconds. He also reached over and turned off Officer Chacon's BWC. He indicated that his intention, at that point, was to communicate their location over the radio and report the status of the car that they had attempted to stop. (Tr. 17) When asked why he turned off Officer Chacon's BWC as well, Respondent replied: "Both his hands were on the wheel. And if someone is cursing or something, I don't want CCRB to see that video and be like well, they cursed." (Tr. 22)

Respondent described the street where this occurred as a one-way residential street. He explained that although it was not their intention to follow or pursue the car they had stopped,

there was only one direction for them to drive. Respondent testified that within a few seconds of getting back into his car, the car that they had stopped crashed into a parked car. (Tr. 17) The occupants of that car immediately got out and ran away. Respondent made a split-second decision to chase after the driver of the car, so he exited his police car and began a foot pursuit.

As the driver of the crashed vehicle was running, Respondent saw him duck behind a parked car and simulate holding a firearm. Respondent recounted that he took cover behind the same car and drew his own firearm while giving the driver commands to drop the weapon. (Tr. 18) The foot pursuit continued and again the driver hid behind another car and gestured as if he had a firearm. At this juncture, Respondent realized that the driver was not armed and he re-holstered his service weapon. Respondent testified that he was finally able to catch up with the driver about a half block later and a scuffle between him and the driver ensued. The driver punched Respondent in the face a couple of times and they continued struggling on the ground until the driver was finally handcuffed. (Tr. 19-20)

Respondent testified that it did not occur to him to activate his BWC when he made the decision to pursue the driver on foot because everything happened so quickly. It was not until the driver was apprehended that he even realized that his camera was not on. Respondent testified that when he saw the driver take cover, he believed he had a firearm so activating his BWC was not his primary concern. (Tr. 23)

In retrospect and after reflecting upon the events of that evening, Respondent acknowledged that he should have left his BWC on until the car that they were attempting to stop was out of sight. (Tr. 24) He accepted full responsibility for prematurely deactivating his BWC and his partner's BWC, and for not turning his own BWC back on when he began the foot pursuit. He testified that since the date of this incident, he has not had any incidents or received

any warnings or discipline regarding his BWC. He remains committed to continuing his career with the Department and in fact is on a waiting list to become a detective. (Tr. 25)

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 January 3, 2019, has pleaded guilty to the both specifications in this case. The Department has requested the presumptive penalty of twenty days for "intentional or reckless failure to record a prescribed event or commencing/termination a recording at an improper time" and three days for the "negligent failure to record a prescribed event," for a total of twenty-three (23) vacation days, in accordance with the Disciplinary System Penalty Guidelines. Respondent's counsel, while not minimizing the severity of Respondent's misconduct, advocated for a mitigated penalty of ten days.

Respondent does not have any formal disciplinary history, and has an exceptional record with the Department. Over his four-and-half year career, he has received three medals for Excellent Police Duty, and three for Meritorious Police Duty. Prior to joining the Department, he served in the Navy for ten years and was honorably discharged. He took responsibility for his actions and testified that he will ensure that this conduct does not repeat itself. Indeed, it has

been almost a year since this incident, and Respondent has had no further issues related to his BWC. Nevertheless, there needs to be appropriate accountability to address this misconduct.

Respondent testified that he deactivated his and Officer Chacon's BWC once inside the police vehicle because he believed that police action was over. He further stated that he did not intend on pursuing the fleeing vehicle, so there was no need for the BWC to be on. Based upon a careful review of the footage captured by each of the three BWCs, this Tribunal is unpersuaded by Respondent's testimony on this point. Department's Exhibit 3 clearly shows that when Officer Chacon and Respondent get back into their vehicle a pursuit begins. The police vehicle's lights are activated, sirens can be heard and it appears that Officer Chacon is driving at an accelerated speed. (Dept. Ex. 3 at 1:22) Moreover, Department's Exhibit 2 shows that the car chase goes on for approximately fourteen (14) seconds before Respondent exits the vehicle, presumably to initiate a foot pursuit of the driver. (Dept. Ex. 2 at 00:40-00:54) Respondent can also be heard stating in sum and substance: "Cameras off," in Department's Exhibit 1 at 1:30. Taking all of these factors into account, I find that Respondent's premature termination of the recording was an intentional act to conceal the fact that they were pursuing this vehicle rather than an oversight or mistake.

I also find Respondent's explanation that he turned off his and his partner's BWCs because he did not want CCRB to hear them cursing to be troubling. The purpose of the BWC is to record enforcement, investigative and other encounters between the police and the public. They provide a contemporaneous, video recording of these encounters, facilitate review of events by stakeholders, foster accountability and public trust, and encourage lawful and respectful interactions between the public and the police. By intentionally turning off his BWC prematurely, Respondent deprived the public and himself of the benefit associated with having

them in the first place. Accordingly, I agree with the Department's recommendation of the presumptive penalty of twenty days.

Although the Department charged Respondent with two separate specifications, this Tribunal views this as one continuous event from the time Respondent initiated the car stop until he apprehended the driver of said vehicle. It appears from the video evidence and Respondent's testimony that once the motorist fled the car stop, the incident unfolded rapidly, thereby not allowing Respondent sufficient time for deliberate reflection of his actions. The forfeiture of twenty vacation days is a substantial penalty designed to deter any misconduct in the future and reinforce the need to consistently comply with the Department's BWC policies and procedures. Imposing additional penalty days for Respondent's failure to turn his BWC back on after prematurely turning it off, is unnecessary under these circumstances.

Taking into account the totality of the facts and circumstances in this matter, it is recommended that Respondent forfeit twenty (20) vacation days.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

NOV 18 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 KIERAN ROSS
TAX REGISTRY NO. 967310
DISCIPLINARY CASE NO. 2023-27737

Respondent was appointed to the Department on January 3, 2019. On his two most recent annual performance evaluations, he was rated “Exceptional” for 2022 and, “Exceeds Expectations” for 2021. He has been awarded three medals for Meritorious Police Duty, and three medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials