



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

January 28, 2025

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Wesley Wellington**
Tax Registry No. 946391
75 Precinct
Disciplinary Case No. 2022-27371

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on October 10, 2024, and was charged with the following:

DISCIPLINARY CASE NO. 2022-27371

1. Said Police Officer Wesley Wellington, on or about July 15, 2022, while on duty and assigned to the 75 Precinct, wrongfully activated his body-worn camera and commenced recording when receiving a post change from a superior officer, inside the 75 Precinct.

P.G. 212-123, Page 4, Paragraph 13 (a) & (b)

**USE OF BODY-WORN
CAMERA**

2. Said Police Officer Wesley Wellington, on or about July 15, 2022, while on duty and assigned to the 75 Precinct, failed to timely notify the Internal Affairs Bureau regarding an allegation of misconduct he observed against a member of the service.

P.G. 207-21, Page 1, Procedure & Paragraph 1

**ALLEGATIONS OF
CORRUPTION AND
OTHER MISCONDUCT
AGAINST MOS**

In a Memorandum dated November 14, 2024, Assistant Deputy Commissioner Adler found Police Officer Wesley Wellington Guilty of Specification No. 1 and Not Guilty of Specification No. 2 in Disciplinary Case No. 2022-27371. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues concerning the misconduct for which Police Officer Wellington has been found Guilty and deem that a greater penalty is warranted. Based on the facts and circumstances of this incident, and relying on the section of the Disciplinary Guidelines for "Body-Worn Camera—Intentional or Reckless Failure to Record a Prescribed Event or Commencing/Terminating a Recording at an Improper Time," the penalty will be the mitigated penalty of ten (10) days. This penalty appropriately addresses the misconduct in this case and complies with the Matrix.

It is therefore directed that Police Officer Wellington forfeit ten (10) vacation days, as a disciplinary penalty.


Jessica S. Tisch
Police Commissioner



POLICE DEPARTMENT

November 14, 2024

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

- against - :

Police Officer Wesley Wellington :

Tax Registry No. 946391 :

75 Precinct :

Case No.

2022-27371

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, London, & Martinez LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE THOMAS G. DONLON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Wesley Wellington, on or about July 15, 2022, while on duty and assigned to the 75 Precinct, wrongfully activated his body-worn camera and commenced recording when receiving a post change from a superior officer, inside the 75 Precinct.

P.G. 212- 123, Page 4,
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2. Said Police Officer Wesley Wellington, on or about July 15, 2022, while on duty and assigned to the 75 Precinct, failed to timely notify the Internal Affairs Bureau regarding an allegation of misconduct he observed against a member of the service.

P.G. 207-21, Page 1,
Procedure & Paragraph 1

ALLEGATIONS OF
CORRUPTION AND
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REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on October 10, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Robert McNamara, Lieutenant Joshua Bienvenue, and Sergeant Victor Torres as witnesses. Respondent called Police Officer Andrew Nicholson as a witness, and 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 of Specification 1, Not Guilty of Specification 2, and recommend a penalty of five (5) vacation days.

ANALYSIS

The charges in this case stem from an interaction between Respondent and Sergeant Robert McNamara inside the 75 Precinct stationhouse at approximately 0400 hours on July 15,

2022. McNamara, the desk sergeant, was informing Respondent and his partner, Officer Andrew Nicholson, of a post change that involved driving to Brooklyn Central Booking ("BCB") in order to escort a prisoner to the hospital. The primary allegation is that during their verbal exchange at the desk, Respondent wrongfully activated his Body-Worn Camera ("BWC") to record McNamara. Respondent conceded that he did briefly activate his camera, but claimed that he did so for safety reasons since the sergeant was not behaving normally, possibly due to being intoxicated.

Sergeant Robert McNamara testified that he was not intoxicated or in any way unfit on the day of the incident. When he received a request to send an officer to BCB for a hospital transport, he assigned Respondent and Nicholson to the task. The plan was for Nicholson to drive Respondent to BCB; Nicholson would then drive back to the command, while Respondent accompanied the prisoner to the hospital. When McNamara informed the two officers of this assignment, Respondent said he understood, but then asked the sergeant to repeat the instruction several times. According to McNamara, it was a simple instruction, and it did not seem reasonable for Respondent to ask him to repeat it multiple times. Although McNamara was frustrated, he maintained his calm and again explained to Respondent and Nicholson that they needed to go to BCB. (Tr. 13-14, 19, 26, 30, 33, 44)

As this verbal exchange was occurring, McNamara noticed that Respondent had activated his BWC. McNamara testified that this was an unauthorized use of the BWC, and he ordered Respondent to turn it off. Respondent told McNamara that he was recording "for his own safety." McNamara thought that was a "bizarre" comment for Respondent to make, as he was not threatening Respondent in any way. Since he was unsure regarding Respondent's intentions, McNamara stood up and walked several feet to his left to where Lieutenant Joshua Bienvenue

was sitting, because he wanted the lieutenant to witness what was occurring. McNamara again told Respondent to turn off the camera, and this time Respondent complied. McNamara testified that Respondent and Nicholson did then complete their assignment. (Tr. 15, 20-21, 34-36, 39, 52)

Immediately after the incident, McNamara consulted with Bienvenue, and they decided to issue a Command Discipline ("CD") to Respondent for wrongfully activating his BWC to record the sergeant. A copy of the "Command Discipline Election Report," dated October 6, 2022, in which Respondent declined to accept any disciplinary action, was admitted into evidence. (Dept. Ex. 2) The narrative portion of the report is consistent with McNamara's trial testimony. (Tr. 16, 40)

The BWC footage from Respondent's camera was admitted into evidence. (Dept. Ex. 1) In that footage, which is one minute and twenty-one seconds in duration, with only 21 seconds of audio, McNamara can be seen behind the desk interacting with Respondent. At 0:42, McNamara places his right hand against his own forehead, in apparent frustration. He then looks straight at Respondent and speaks to him. As he is doing so, Respondent raises his right hand and appears to make several pressing motions toward his BWC, thereby activating it. McNamara asks Respondent, "Are you turning on your body camera? You can't be turning on your body camera." Respondent replies, "I'm doing it for my safety, Sarge." McNamara gets up out of his seat and walks to his left. Simultaneously, Respondent says, "Because I'm not understanding what you're saying, so I guess I should record it." As Respondent proceeds to walk in the same direction alongside the front of the desk, McNamara twice tells him to turn off the camera, but Respondent claims he cannot hear him. McNamara is standing to the left of Lieutenant Bienvenue, who is seated in front of a computer. McNamara again instructs Respondent to turn

off the camera because it is not supposed to be on. Respondent asks if it is a direct order, and states, "Ok, I'll turn it off, because it sounds like I'm arguing with you, but I'm not."

Respondent then deactivates his camera and the recording ends.

Lieutenant Joshua Bienvenue testified that he was busy inputting data when the exchange between McNamara and Respondent occurred about 10-15 feet away. He heard McNamara instructing Respondent about his assignment several times. It sounded to Bienvenue like fairly simple instructions from a supervisor to a subordinate officer, and it struck Bienvenue that Respondent was "playing dumb." Bienvenue was unsure whether Respondent was doing so because he did not like the assignment, or for some other reason. According to Bienvenue, McNamara did not threaten Respondent in any way. Bienvenue also testified that McNamara was behaving normally, and exhibited no signs of being intoxicated or medicated. (Tr. 58-62, 66-67)

Sergeant Victor Torres of IAB testified that as part of his investigation, he reviewed an IAB log reflecting a call Respondent made to IAB on October 6, 2022, almost three months after the incident. (Dept. Ex. 3) According to the report, in the call to IAB Respondent stated that McNamara "appeared to be intoxicated or heavily medicated" during their interaction on July 15th. Specifically, he claimed that McNamara had slurred speech, was angry, and was acting irrationally. Respondent stated during the call that he had reported these observations to Sergeant Jonathan Metelus, the assistant ICO, who told Respondent that he believed the incident was a misunderstanding. Torres testified that based on his own investigation, which included interviewing McNamara and Metelus, and reviewing the BWC footage, there was no indication that McNamara was intoxicated, medicated, or impaired at the time of the incident. (Tr. 74-78, 87-88)

Police Officer Andrew Nicholson, who is friends with Respondent and was his partner on the date of the incident, testified that he observed Respondent activate his BWC for a few seconds inside the stationhouse. McNamara ordered him to turn off the camera, and Respondent complied. Nicholson, in contrast, did not activate his BWC, because he did not believe it was necessary. Nicholson was tasked with driving Respondent to BCB, where Respondent would then escort a prisoner to the hospital. The two officers had been using a van earlier in their shift, but since Nicholson was not qualified to drive a van, he went to switch the keys for those of a regular RMP. According to Nicholson, McNamara angrily asked him what he was doing. Metelus, the assistant ICO, intervened, and arranged for a different vehicle for Nicholson. Nicholson testified that he heard Respondent tell Metelus that there was “something wrong” with McNamara, but Respondent did not tell Metelus that he thought McNamara was intoxicated. Metelus told Respondent that he would take care of it. (Tr. 93-98, 101-02)

Respondent testified that at one point during their verbal exchange, McNamara said to him, “Dude, what’s your problem?” Respondent answered that he preferred to be called by his name or rank, and things got worse from there. According to Respondent, McNamara took off his eyeglasses and flailed his hands as they were speaking, and Respondent did not understand what he was saying regarding their assignment. Respondent testified that he had never seen the sergeant behave this way, and described him as “disheveled” and “stressed,” maybe from a lack of sleep. Respondent claimed that he activated his BWC to protect both himself and McNamara, because “something wasn’t right,” and it would have been difficult to put it into words if he later had to describe the interaction. When McNamara told him to turn off the camera, Respondent asked him to repeat the order, because he wanted to make sure he captured some audio of the sergeant speaking. Respondent then complied and turned off his BWC. (Tr. 110-15, 143-46)

Respondent echoed his partner's testimony that since Nicholson was not qualified to operate a van, he needed to obtain keys for a different vehicle. Sergeant Metelus stepped in and got Nicholson the keys for a car he could drive. Respondent testified that he then spoke to Metelus, telling the assistant ICO that there was something wrong with McNamara. Metelus told him that he would take care of it, so Respondent left to complete his assignment. In the days that followed, Respondent did not follow up with Metelus regarding whether he made any notifications about McNamara. Respondent did document his concern that McNamara was "possibly medical or impaired" in his Activity Log (Dept. Ex. 4), but he did not call IAB to report his concern regarding McNamara's condition. According to Respondent, when he was presented with the CD for adjudication on October 6, Metelus urged him to sign it and accept the two-day penalty being offered, since he had wrongfully activated his BWC. Based on their ensuing conversation, Respondent determined that Metelus had never notified IAB. Respondent declined the two-day offer, and later that day he called IAB for the first time to report his observations about McNamara. (Tr. 118-24, 128-31, 141-43, 150-52)

Specification 1 charges Respondent with wrongfully activating his BWC to record Sergeant McNamara inside the 75 Precinct stationhouse. Section 212-123 (13a & 13b) of the Patrol Guide, which was in effect at the time of this incident, instructs a UMOS not to activate their BWC for the "performance of administrative duties or non-enforcement functions," or for "routine activities within Department facilities." It is undisputed that Respondent did activate his camera for approximately 21 seconds, as seen in the BWC footage in evidence (which also includes video of the one minute leading up to the activation, for a total of 1:21). (Dept. Ex. 1) At issue is whether in doing so, Respondent committed misconduct.

In seeking to justify the decision to activate his BWC, Respondent has provided an evolving set of explanations. During the incident itself, Respondent plainly stated, “I’m doing it for my safety, Sarge...because I’m not understanding what you’re saying, so I guess I should record it.” (Dept. Ex. 1 at 1:03) In his Activity Log, Respondent noted the sergeant’s “abnormal speak pattern and reaction, possibly medical or impaired.” (Dept. Ex. 4) Three months later, after the meeting to adjudicate the CD, Respondent called IAB and claimed that McNamara appeared to be intoxicated or heavily medicated, in that the sergeant had slurred speech, was angry, and acting irrationally. (Dept. Ex. 3) At trial, Respondent testified that he activated his camera to protect himself and the sergeant because “something was not right.” He wanted to capture their exchange with his BWC, since it would otherwise be difficult to describe with words the sergeant’s behavior.

After reviewing the evidence, including Respondent’s own testimony, I reject any suggestion that McNamara, an experienced supervisor who was approximately four hours into his tour, was intoxicated, impaired, or otherwise unfit for duty. Although the video footage is only 1:21 in duration, McNamara appears alert and focused, and there is no indication of intoxication. Lieutenant Bienvenue, who also was sitting behind the desk, credibly testified that McNamara was behaving normally, and exhibited no signs of being intoxicated or unfit. He also confirmed that McNamara did not threaten Respondent in any way. Even Respondent’s own partner and friend, Officer Nicholson, who was present during the exchange, testified that he saw no reason to activate his BWC. Additionally, although neither side chose to call Sergeant Metelus as a witness, Sergeant Torres of IAB did provide testimony that he spoke with Metelus, who informed him that McNamara did not appear intoxicated or impaired in any way.

In evaluating what occurred, I find the assessment provided by Lieutenant Bienvenue, an unbiased observer, to be the most reasonable: the instructions given by McNamara were straightforward, and Respondent was deliberately feigning confusion and pretending not to understand, possibly to avoid the unpleasant task of escorting a prisoner to the hospital. Indeed, Respondent acknowledged that assignments of this kind had led to investigations against him in the past based on prisoner complaints. (Tr. 138) When his intentionally disagreeable behavior caused McNamara to become frustrated, Respondent activated his BWC in order to record the sergeant, but McNamara noticed the camera was on and quickly ordered Respondent to turn it off. Since his misconduct had been discovered, Respondent unsuccessfully attempted to deflect responsibility for his actions, first by expressing a baseless concern for safety, and later with a disingenuous claim that McNamara was intoxicated or otherwise unfit for duty.

Under the specific circumstances presented here, there was no justification for Respondent's actions. Respondent's intentional activation of his BWC inside the stationhouse in order to record a supervising sergeant violated the Patrol Guide rule prohibiting such conduct. Accordingly, I find Respondent Guilty of Specification 1.

Specification 2 charges Respondent with failing to notify IAB in a timely manner of his observation that McNamara was intoxicated. Section 207-21 of the Patrol Guide, which was in effect at the time of the incident, requires an MOS who observes misconduct involving another MOS to telephone IAB with details of such misconduct.

It is undisputed that Respondent did not call IAB on the date of the incident, but instead waited approximately three months to make the call. Respondent testified that the reason he waited was because Sergeant Metelus had informed him that he would handle the matter. It is the Department Advocate's position that "*if* [emphasis added] Respondent truly believed that

Sergeant McNamara was under the influence or impaired, he should have called IAB himself on July 15, 2022.” (Tr. 164)

Before even getting to the question of the timeliness of Respondent’s call to IAB, the initial issue to resolve is whether Respondent genuinely suspected McNamara of having committed misconduct, which in turn would require a notification. For reasons discussed above, I find Respondent’s after-the-fact claim that McNamara was intoxicated to have been disingenuous. There was no reasonable basis for Respondent to draw such a conclusion, and it was only after he was caught wrongfully activating his BWC that Respondent attempted to justify his actions with a baseless suggestion that McNamara was unfit.

Since I am not persuaded from the credible evidence that Respondent, himself, even suspected that McNamara was intoxicated, there was no requirement for him to notify IAB on July 15, 2022. As such, his failure to timely notify IAB did not constitute misconduct, and I find Respondent Not Guilty of Specification 2.

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 7, 2008, has been found guilty of wrongfully activating his BWC to record a superior officer inside the stationhouse. The Department Advocate recommends a penalty of 20 vacation days for this charge, relying on the

section of the Disciplinary Guidelines for “Body-Worn Camera -- Intentional or Reckless Failure to Record a Prescribed Event or Commencing/Terminating a Recording at an Improper Time.” However, I am not persuaded that this section of the Guidelines, which appears designed to capture BWC misconduct in connection with citizen encounters, is applicable to the scenario in the present matter. The task, then, is to fashion a reasonable penalty based on the particular circumstances in this case.

As discussed above, the credible evidence established that Respondent received a post change requiring him to escort a prisoner to the hospital. Rather than promptly agreeing to follow the straightforward instructions, Respondent initiated an unnecessary back-and-forth with the desk officer, Sergeant McNamara, pretending not to understand the assignment. During that verbal exchange, Respondent chose to activate his BWC in order to record McNamara. To his credit, Respondent did deactivate the camera after the sergeant ordered him to do so, though Respondent did concede that he first asked McNamara to repeat the order so that he would have more time to at least get some footage of the sergeant speaking.

With his actions, Respondent ran afoul of the clear Patrol Guide rule prohibiting the recording of routine, administrative activities inside a Department facility, and there must be appropriate accountability. On balance, a penalty of five vacation days is appropriate to address the misconduct in this case. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit five (5) vacation days.

DISAPPROVED

JAN 28 2025

**JESSICA S. TISCH
POLICE COMMISSIONER**

Respectfully submitted,



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
POLICE OFFICER WESLEY WELLINGTON
TAX REGISTRY NO. 946391
DISCIPLINARY CASE NO. 2022-27371

Respondent was appointed to the Department on January 7, 2008. On his three most recent annual performance evaluations, he was twice rated “Meets Standards” for 2022 and 2023, and received a rating of “Exceeds Expectations” for 2021. He has been awarded one medal for Excellent Police Duty.

In 2009, Respondent forfeited 30 days previously served on suspension without pay after pleading guilty to engaging in an off-duty physical altercation, failing to request the response of a supervisor, and not reporting the incident.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials