



POLICE DEPARTMENT

January 10, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2020-22971
Police Officer Randel Bueno	:	
Tax Registry No. 964409	:	
44 Precinct	:	

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

Before: Honorable Paul Gamble  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: David Green, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Craig Hayes, Esq.  
Worth, Longworth and London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

## CHARGES AND SPECIFICATIONS

1. Police Officer Randel Bueno, while assigned to the 44th Precinct, on or about September 12, 2020, while on duty, having responded to a report of an assault in or near a parking lot located at East 169<sup>th</sup> Street and Webster Avenue, Bronx County, wrongfully failed to (1) arrest person alleged to have committed a crime reported to said Police Officer; (2) prepare or ensure the preparation of an accurate Complaint Report; (3) inform the 44th Precinct Patrol Supervisor and Platoon Commander of the actual facts of the incident, including accurate information obtained from witnesses; (4) prepare an Aided Report; and (5) make required entries in his Activity Log.

P.G 208-01, Page 1, Para. 3

P.G 201-21, Pages 1 & 2, Paras. 1, 6, 8, & 17

P.G. 212-08, Page 1, Para. 1

P.G. 216-01, Page 2, Paras. 8-11

P.G. 216-02, Pages 1 & 2

LAW OF ARRESTS  
POLICE OFFICER DUTIES AND  
RESPONSIBILITIES  
ACTIVITY LOGS  
AIDED CASES—  
GENERAL PROCEDURE  
PREPARATION OF AIDED  
REPORT

2. Police Officer Randel Bueno, while assigned to the 44th Precinct, on or about September 12, 2020, while on duty, having exited his assigned police vehicle to take police action outside or near a parking lot located at East 169<sup>th</sup> Street and Webster Avenue, Bronx County, wrongfully failed to activate his Department-issued Body-Worn Camera immediately, as required.

P.G. 212-123, Pages 1 & 2, Paras. 4 & 8

USE OF BODY-WORN CAMERAS

3. Police Officer Randel Bueno, while assigned to the 44th Precinct, on or about September 12, 2020, while on duty, having exited his assigned police [vehicle] outside or near a parking lot located at East 169<sup>th</sup> Street and Webster Avenue, Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer (1) wrongfully was discourteous and used profane or otherwise inappropriate language towards another person or persons, identities known to the Department; (2) improperly used or threatened to use force against said other person or persons; and (3) wrongfully slapped or smacked a cellular telephone from the hand of said person or persons.

P.G 203-10, Page 1, Para. 5

P.G. 221-01

P.G. 221-02, Page 1, Para. 2

PUBLIC CONTACT—  
PROHIBITED CONDUCT  
FORCE GUIDELINES –  
TACTICAL OPERATIONS  
USE OF FORCE

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on December 13, 2022. 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 reviewed all the evidence, the Tribunal recommends the forfeiture of 40 vacation days.

## SUMMARY OF EVIDENCE IN MITIGATION

Respondent plead Guilty to the three charges in the accusatory instrument. The charges arose from a dispute between a parking lot attendant and an individual trying to retrieve his friend's car. I credit Respondent's testimony, establishing that he and his partner responded to a 911 call to a parking lot. The attendant had physically confronted a customer who attempted to retrieve a car from the lot. While the vehicle did not belong to the customer, he claimed that the owner had authorized him to retrieve it from the lot and that he had done so in the past with the cooperation of other lot attendants (T. 34-35).

According to the customer, when he objected to the attendant's decision not to release the car, the attendant punched him in the head, causing him to fall to the ground and injure his hand. The attendant then turned a water hose on him, causing his clothes to become wet. When Respondent interviewed the attendant, he denied striking the customer, but another customer confirmed the report of the first customer, asserting that she witnessed the physical altercation (T. 7-8, 34-35, 49-50).

Respondent called his sergeant to the scene and reported the findings of his preliminary investigation. The sergeant assessed the physical act of striking the customer, causing a physical injury to his hand, and another customer's corroboration of the customer's story as a sufficient

basis to place the attendant under arrest for assault. He further opined that the attendant would likely be released from the Precinct with a Desk Appearance Ticket (T. 36, 52-53).

After the patrol supervisor departed the scene, Respondent continued to engage the parking lot attendant, advising him that he would be arrested. Respondent magnanimously allowed the attendant to contact his manager to secure relief so that the lot and the cars would not be unattended while he addressed his situation at the precinct (T. 37).

It is noteworthy that a review of the body-worn camera evidence from several police officers reveals that Respondent's partner referred to the customer as a "perp" several times. The video evidence further shows that Respondent empathized with the attendant's situation.

Based upon this record, it is apparent that Respondent chose to resolve the situation, not as his patrol supervisor approved, but in a manner that he believed to be more appropriate. He spoke to the customer and asked if he was "playing games." The video evidence was unclear regarding what the customer said in response. Still, it was clear that Respondent decided to charge the attendant with harassment, a less serious charge than assault, and informed the customer of this change in disposition.

Respondent called the patrol supervisor again and informed him that the customer had changed his mind and that he was charging the attendant with harassment. He then directed the customer and his two companions to leave the parking lot, saying, "It's all over, and you have to leave," and telling them that they were trespassing, which could make them subject to arrest. Respondent went even further, telling them they were never to return to the parking lot (T. 40-41, 58).

Once Respondent and his partner went to his vehicle to process the arrest paperwork for the less serious charge, the customer and his companions remained outside the lot on the

sidewalk. Clearly, they were not satisfied with how Respondent resolved the initial complaint, and they voiced their displeasure in profane terms. The video evidence established that Respondent and his partner stepped from their car and engaged the customer verbally. Respondent did not turn on his body-worn camera, but another police officer's camera recorded one of the customer's companions threatening, "I'll fuck you up;" Respondent repeated the same threat in response. The customer and his companions directed several offensive statements toward Respondent and the other police officers, criticizing how they performed their duties (T. 42-43, 59-60).

The evidence establishes that the customer took out a mobile telephone and began recording the interaction. Respondent slowly stepped forward and slapped the phone from the customer's hand. When the customer retrieved the phone from the sidewalk and held it up again to record, Respondent slapped it out of his hand a second time. The other police officers present, as well as two EMS personnel, separated the customer and Respondent in an attempt to intervene in the deteriorating situation (T. 43-44, 61-62).

In the view of the Tribunal, Respondent's misconduct is most logically separated into two distinct events: his decision to ignore his sergeant's advice on processing the arrest and the decision to engage in a verbal altercation with the disgruntled customer. Respondent's candid admission in response to the Tribunal's questioning reveals that the likely source of his misjudgment that day was a change in his perception of the customer. The evidence supports a finding that Respondent's partner essentially goaded him into treating the customer differently because his partner viewed him as a "perp." Respondent also empathized with the parking lot attendant, even though he would be charged criminally. The Tribunal finds evidence of Respondent's humanity rather than some sinister design.

Respondent did not appreciate that day that it might have been possible to bestow grace on the parking lot attendant *and* the disgruntled customer rather than making a binary choice. He attempted to achieve a just resolution to the situation he was presented with but executed his plan based on a flawed judgment, which tainted his subsequent actions. While a workable, novel solution did not occur to Respondent in the moment, based solely upon his limited service with this Department, a second consultation with the patrol supervisor may have been fruitful.

Respondent's decision to engage the disgruntled customer after he decided to downgrade the charges was ill-advised. It should not have been surprising to Respondent that the customer was upset that the attendant was no longer being charged with an assault after Respondent initially told him that an arrest on that charge would be made. The customer's reaction might have been less heated if Respondent had attempted to resolve the situation with more diplomacy.

While the Department Advocate recommended termination, I find that sanction unwarranted based upon the type of misconduct and the motivation, the absence of a disciplinary history, and the unblemished record Respondent enjoyed before these accusations of wrongdoing. No single offense to which Respondent has pleaded Guilty carries such a presumptive penalty. The Department's articulated rationale for the sanction was a computation of presumptive penalties and consecutive enhancements for aggravating factors, leading to a penalty of greater than 90 days, creating a presumption of termination. In this case, using the escalator rationale to achieve termination as a sanction would lead to an unjust result.

Moreover, I had the opportunity to observe Respondent's demeanor as he testified before the Tribunal. He testified candidly and was contrite. A review of his testimony would lead a disinterested observer to conclude that Respondent was aware that he committed a serious judgment error and was accepting responsibility for it. I also note Respondent's relative youth at

the time of the incident. While he could have made better decisions that day, terminating him at this early stage of his career would deny him the opportunity to learn from his mistakes and become a better police officer. The presence of a Member of Service whose judgment has been tempered by the commission of an error early in his career, from which he has rehabilitated himself, inures to the benefit of the Department and the public it serves.

The presumptive penalty for failure to process a civilian complaint is ten penalty days; the mitigated penalty is five penalty days, and the aggravated penalty is 20 penalty days.

The presumptive penalty for using non-deadly force against another, which does not result in an injury, is ten penalty days; the mitigated penalty is five penalty days, and the aggravated penalty is termination.

The presumptive penalty for interfering with a recording device is 20 penalty days; the mitigated penalty is ten penalty days, and the aggravated penalty is 30 penalty days.

The presumptive penalty for discourtesy is five penalty days; the mitigated penalty is one day, and the aggravated penalty is ten penalty days.

The presumptive penalty for the improper threat of force is ten penalty days; the mitigated penalty is five days, and the aggravated penalty is 20 penalty days.

The failure to submit reports in a timely manner, omitted activity log entries, and omitted entries in Department records are each violations adjudicated as Schedule "A" Command Disciplines, which carry a potential sanction from an oral admonition to five penalty days.

The most serious misconduct to which Respondent has pleaded guilty is his verbal and physical responses to the customer's objections to the change in circumstances. Respondent's act of slapping the phone from the customer's hand was inexcusable; the customer had every right under the law to record Respondent, even if he found doing so at that precise moment

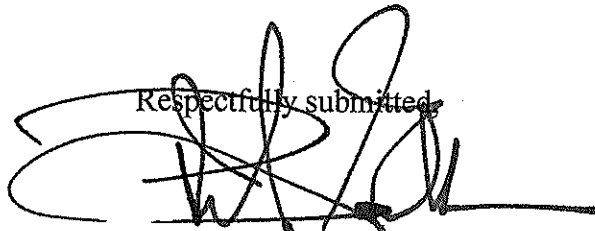
particularly vexatious. Respondent compounded his misconduct by slapping the phone from the customer's hand a second time, which warrants the imposition of an aggravated penalty of 30-days for interfering with a recording device. While the guideline for the use of non-deadly physical force is also applicable, the aggravated penalty for interfering with a recording device is an adequate sanction for Respondent's misconduct. At the same time, the aggravated penalty of termination indicated by the guideline for the unlawful use of force is too severe.

While it is unacceptable that Respondent responded in kind to the vile threat made to him, he did so in the context of a deteriorating street encounter in which he repeated the same profane language directed at him. Under these circumstances, the five-day mitigated penalty for the improper threat of force is warranted. I will not impose an additional five-day penalty for discourtesy, as the presumptive penalty of the unlawful threat of force is a more serious sanction, even when mitigated.

I recommend that Respondent forfeit ten days for failing to process the assault complaint to run concurrently with the five-day mitigated penalty for the improper threat of force discussed in the preceding paragraph. I further recommend that the five-day penalties for failure to submit reports in a timely manner, omitted activity log entries, and omitted entries in Department records also be imposed concurrently with the aforementioned ten-day penalty.

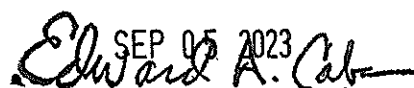
Accordingly, I recommend that Respondent forfeit a total of 40 vacation days.

Respectfully submitted,



Paul M. Gamble  
Assistant Deputy Commissioner Trials

**APPROVED**

SEP 05 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 RANDEL BUENO  
TAX REGISTRY NO. 964409  
DISCIPLINARY CASE NO. 2020-22971

Respondent was appointed to the Department on October 18, 2017. On his three most recent performance evaluations, he was rated “Exceeds Expectations” for 2019, 2020, and 2021. He has been awarded two medals for Excellent Police Duty and one medal for Meritorious Police Duty.

Respondent has no formal disciplinary history. On August 25, 2022, Respondent was placed on Level 1 Disciplinary Monitoring in connection with the instant case. Monitoring remains ongoing.

For your consideration.

Paul M. Gamble  
Assistant Deputy Commissioner Trials