The City of New York

POLICE DEPARTMENT

February 5, 2020

In the Matter of the Charges and Specifications	:	
- against	:	
Police Officer Patrick Craig	:	Case No.
Tax Registry No. 945623	:	2018-18852
77 Precinct	:	
	:	
Sergeant Avinash Patel	:	Case No.
Tax Registry No. 940551	:	2018-18854
Criminal Intelligence Section	:	
	:	
Police Officer Alex Viera	:	Case No.
Tax Registry No. 945080	:	2018-18855
77 Precinct	:	
	:	
Police Officer Umar Khitab	:	Case No.
Tax Registry No. 952929	:	2018-18853
77 Precinct	:	

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Jonathan Fogel, Esq.
Civilian Complaint Review Board
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For the Respondents: Michael Martinez, Esq.
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To:
HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

POLICE OFFICER PATRICK CRAIG
POLICE OFFICER UMAR KHITAB
POLICE OFFICER ALEX VIERA
SERGEANT AVINASH PATEL

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-18852

1 Police Officer Patrick Craig, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 PCT and on duty, in the vicinity of [redacted] wrongfully used force, in that he struck Person A in the face without police necessity.

P.G. 221-02, Page 2, Prohibition 11 — USE OF FORCE

2. Police Officer Patrick Craig, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 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 refused to provide his name to Person B without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 1 — PUBLIC CONTACT - GENERAL

3. Police Officer Patrick Craig, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 PCT and on duty, in the vicinity of [redacted] was discourteous, in that he spoke discourteously to Person A by calling him an "animal" without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2 — PUBLIC CONTACT - GENERAL

4. Police Officer Patrick Craig, on or about July 29, 2017, at approximately 2235 hours, while assigned to 077 PCT and on duty, in the vicinity of [redacted] was discourteous, in that he spoke discourteously to Person A by calling him an "idiot" without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2 — PUBLIC CONTACT - GENERAL

5. Police Officer Patrick Craig, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 PCT and on duty, in the vicinity of [redacted] was discourteous, in that he spoke discourteously to Person A by using profanity without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2 — PUBLIC CONTACT - GENERAL

Disciplinary Case No. 2018-18854

1. Sergeant Avinash Patel, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 PCT and on duty, in the vicinity of [redacted] engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he issued a disorderly conduct summons to Person A without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT – PROHIBITED CONDUCT

Disciplinary Case No. 2018-18855

1. Police Officer Alex Viera, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 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 stopped a vehicle in which Person A and individuals were occupants, without sufficient legal authority.
   P.G. 212-11, Page 4, Paragraph 16 INVESTIGATIVE ENCOUNTERS

2. Police Officer Alex Viera, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 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 frisked Person A without sufficient legal authority.
   P.G. 212-11, Page 5, Paragraph 18 INVESTIGATIVE ENCOUNTERS

3. Police Officer Alex Viera, on or about July 29, 2017, at approximately 2235 hours, while assigned to the 077 PCT and on duty, in the vicinity of [redacted] was discourteous, in that he spoke discourteously to Person A by calling him a "stupid motherfucker," without sufficient legal authority.
   P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT - GENERAL

Disciplinary Case No. 2018-18853

1 Police Officer Umar Khitab, on or about July 29. 2017, at approximately 2235 hours, while assigned to the 077 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 stopped the vehicle in which Person A and individuals were occupants without sufficient legal authority.
   P.G. 212-11, Page 4, Paragraph 16 INVESTIGATIVE ENCOUNTERS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 31 and December 19, 2019. Respondents, through their counsels, entered pleas of Not Guilty to the subject charges. The CCRB called Andie McMahon and Police Officer Matthew Ondrejack as witnesses, and introduced the hearsay statements of Person A, Person B, and

Person C The CCRB also submitted video footage that shows portions of the incident.

Each 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 reviewed all of the evidence in this matter, I find as follows:

Respondent Viera:

Specification 1 (wrongful stop): Not Guilty

Specification 2 (wrongful frisk): Not Guilty

Specification 3 (discourtesy): Guilty

Recommended penalty: two (2) vacation days.

Respondent Khitab:

Specification 1 (wrongful stop): Not Guilty

Respondent Craig:

Specification 1 (wrongful use of force): Guilty

Specification 2 (refused to provide name): Guilty

Specification 3 (discourtesy): Guilty

Specification 4 (discourtesy): Guilty

Specification 5 (discourtesy): Not Guilty

Recommended penalty: ten (10) vacation days.

Respondent Patel:

Specification 1 (wrongful issuance of summons): Guilty

Recommended penalty: five (5) vacation days.

ANALYSIS

On July 29, 2017, at about 2235 hours, police received two 911 calls and one witness account reporting a male with a firearm. In response to that information, officers stopped and frisked 23-year old Person A in the vicinity of [redacted]; it is alleged that this stop and frisk occurred without sufficient legal authority. While attempting to handcuff Person A, one of the officers who arrived on the scene delivered a single punch to PersonA's face; it is alleged that this punch was without police necessity. There also are allegations of discourtesy against two of the police officers at the scene, and the responding sergeant is charged with wrongfully directing the officers to issue Person A a summons for disorderly conduct.

Both Person A and his mother, Person B, have civil lawsuits pending against the NYPD; neither appeared to testify. Eyewitness Person C also did not appear. Instead, the CCRB offered into evidence recorded statements, and the accompanying transcripts, that each of the three made to IAB on July 30, 2017. (CCRB Exs. 3-5) Hearsay evidence is admissible in an administrative tribunal, and a case may be proven with such evidence, provided it is found to be sufficiently reliable and probative on the issues to be determined. *See Ayala v. Ward*, 170 A.D.2d 235 (1st Dept. 1991); *see also In the Matter of 125 Bar Corp. v. State Liq. Auth.*, 24 N.Y.2d 174 (1969). It is preferable to have testimony from live witnesses, where opposing counsel has the opportunity to cross-examine, and the court can observe the demeanor of the witnesses. In the absence of live testimony from these three witnesses, this tribunal listened carefully to their prior recorded statements, reviewed the accompanying transcripts, and

considered these statements in conjunction with the testimony of the live witnesses and the video footage.

In his statement, Person Astated that he ordered an Uber Pool ridesharing car to the front of his building. He had just entered the vehicle when two plainclothes police officers stopped the car. One officer approached the left side of the car and spoke to the driver. The other officer approached the car on the right side, knocked on the rear window, and asked Person A to step out of the car. Person A let the officer search him, and tried to reenter the car. However, several additional police officers arrived and told him to put his hands behind his back because the officer had not searched him thoroughly enough, and they wanted to move him to the police car behind the Uber. Person A told them that he already had been searched and did not have a weapon. According to Person A, the officers put his arms behind his back and told him to turn around. When Person A questioned them as to why he was being arrested, one of the officers punched him in his face. Person A stated that his "mouth kind of hurt a little bit," but he was not injured and did not require medical attention. The officers handcuffed Person A, walked him to the other car, and drove him down the block, where they told him he was going to receive a summons; however, they released him without issuing a written ticket. (CCRB Ex. 3A at 4-18, 22-23)

Eyewitness Person C stated in her IAB interview that the two plainclothes officers "seemed very calm and very nice" when they approached the Uber car. The officers asked a young male with braids wearing a light yellow shirt to get out of the vehicle. Person C stated that she observed the individual lift up his shirt and try to sit back down inside the car, but additional officers arrived and pulled him out of the car. The officers held him with his arms behind his

back, while he repeatedly stated that he did not have anything. Person C observed one of the officers punch the individual in the face at a moment where he could not defend himself. She could not see if he was injured, but he seemed normal after the punch and she did not observe any bleeding. The individual was screaming, "He punched me in my face for nothing, I don't have anything, I didn't do anything," as other people stopped in the area. (CCRB Ex. 5A at 2-9)

Person B stated in her IAB interview that she went outside and saw police officers surrounding her handcuffed son, trying to push him into an unmarked police car. She said that her son was not willing to go into the car, and that he kept asking the police officers why they were arresting him. One of the officers told her to tell Person A to go inside the car, which she did. Two officers standing near her pushed her away from the scene; Person B asked for their names but they refused. Another officer approached her to explain what was happening with her son.

When she asked for his name, he did not to give it to her, and instead instructed her to go to the 77 Precinct to find out their names and more information regarding her son. (CCRB Ex. 4A at 2-5, 7-8)

Police Officer Matthew Ondrejack, who is not a respondent in this matter, testified that at the time of the incident he was a sergeant's operator. When they arrived at the scene at around 2230 hours, Officer Ondrejack saw five to six police officers trying to pull Person A away from a car in order to handcuff him. Officers were telling him to stop resisting, but Person A was tensing up his arms and yelling. Officer Ondrejack stood next to the suspect and held his arm to assist the officers in handcuffing him; Person A's hands were by his lower back, inches away from his waistband, but not inside his waist. After about 30 seconds, Officer Ondrejack saw Respondent Craig punch Person A in the face; Person A was handcuffed almost immediately after

the punch. As a crowd gathered, Person A resisted the officers' efforts to place him into the police vehicle by stiffening up and refusing to bend down to get into the car. (Tr. 57-60, 62-70)

Andie McMahon, who observed a portion of the incident from the third floor window of her apartment, testified that she and her [redacted] used their cell phones to record a portion of the interaction between the police officers and Person A. She testified that she only observed what was captured in the video footage, and did not see what occurred between Person A and the officers leading up to the incident. Both cell phone recordings were admitted into evidence as CCRB Ex. 1A, 1B, and 2B; the sister's provides a zoomed-in perspective on part of the encounter, but otherwise the two recordings are virtually the same. (Tr. 28-30, 47-49)

Footage from the recordings shows Person A, wearing a light-colored shirt, with his back up against a car and police officers surrounding him. Several police officers are attempting to secure Person A, who questions why he is being handcuffed and protests that he does not have a weapon. Respondent Craig reaches behind Person A's back in an unsuccessful effort to secure Person A's right arm. Respondent Craig then lets go with his right hand and delivers a single punch to Person A's face. He instructs Person A, "Put your hands behind your back. That's the last time... I'm giving you a direct order." As he is being handcuffed, Person A states, "You just punched me right in my face," and Respondent Craig responds, "You didn't listen to me." Person A asks a bystander on the sidewalk to call his mother. His mother and sister promptly arrive at the scene and scream at Person A to "calm down," as a handcuffed Person A resists and

protests the officers' efforts to move him to the police car. (CCRB Ex. 1A, 1B, and 2B)

Additional video footage captured by Person A's sister at street level was admitted into evidence as CCRB Ex. 2A. That footage shows a handcuffed Person A yelling and resisting as

several officers try to get him into the backseat of the police vehicle. As Person A struggles with the officers, Respondent Craig can be heard saying, "Someone film him acting like an animal," and "You're acting like an idiot, dude." The footage captures Respondent Viera saying "Stupid motherfucker." After Person A is placed into the police car and the door is shut, Respondent Craig appears to say, "Something so stupid." The footage also captures Respondent Craig explaining what transpired to Person A's mother and sister. They ask Respondent Craig for his name, and he instructs them to go to the 77 Precinct for more information since they will all be there. (CCRB Ex. 2A)

Testimony of Respondents:

Respondent Viera testified that he and Respondent Khitab responded to two 911 calls of a male with a firearm: the first call described a male Hispanic wearing a white t-shirt and khakis, while the second call described a male white. The officers canvased the area looking for the male with the firearm. About a block from the location they were waved down by an individual on a bike who told Respondent Viera that he had an argument with a male who pointed a gun at him. The individual did not want to make a report, but he did provide a description of the gunman as a dark-skinned male, 6'0" or taller, with braided hair, wearing a white or yellow t-shirt and red-colored pants.[1] The individual on the bike also pointed the officers in the direction of [redacted], about one block away, as the direction in which the man

[1] In his interview with the CCRB on November 14, 2017, Respondent Viera provided a similar statement regarding the description: braids, yellow shirt, 6'0" or taller, and red pants. However, in his memo book, Respondent Viera omitted the red pants. He also noted in his memo book that the man on the bike described the individual with the firearm as having medium skin and being of Indian descent. (Tr. 305-309)

with the gun had walked. Respondent Viera called his supervisor, Respondent Patel, with the description, and he and his partner drove toward [redacted] (Tr. 272-79, 297-98, 301 02)

Once they arrived at the location, the officers observed a car service vehicle double-parked in front of [redacted], and the officers decided to watch the vehicle for a few minutes Respondent Viera testified that he observed a male by the front door of the building, holding a plastic bag, and nervously looking left and right. There was no one else around, and the male matched the general description provided by the man on the bike: he was at least 6'0", with braids, a white or yellow shirt, and red pants. When Respondent Viera observed the male enter the vehicle, he called his supervisor to inform him that they were going to stop an individual and needed backup. Respondent Khitab pulled their police car in front of the car service vehicle, and the officers approached on foot. Inside the vehicle was the driver, a female passenger, and the male passenger who had just entered. (Tr. 279-84, 293-94)

Respondent Viera approached on the passenger side, where he observed the male passenger sitting. Respondent Viera testified that he identified himself to the male, who he later learned to be Person A, told him that they were looking for a male with a firearm, and asked him to get out of the car. Person A cursed and screamed at the officer, and told him that he did not have a gun. Person A agreed to exit the vehicle, but continued yelling while there were two-to-four people on the sidewalk (who kept their distance). Respondent Viera did a quick pat down on the front of Person A's pants for safety reasons, and Person A complied with Respondent Viera's request to raise his hands in front of him, which had nothing in them. Respondent Viera then asked Officer Rosiello, who had just arrived in another car, to watch Person A while Respondent Viera searched inside the car for a firearm. He checked the interior of the vehicle,

including the plastic bag that Person A had been holding, but did not discover any weapons. Respondent Viera heard a commotion outside the vehicle, and by the time he stepped out of the car Person A already was in handcuffs; Respondent Viera did not see Person A being punched in the face. (Tr. 284-88, 295, 324-25, 328-30, 336, 342)

According to Respondent Viera, he heard Respondent Patel state that Person A was going to be arrested for disorderly conduct, and brought to the precinct to be issued a summons since he did not have identification. Person A screamed, and resisted efforts to get him to the police car, but eventually he was placed inside the vehicle. Respondent Viera denied that he called Person A a "stupid motherfucker." The officers drove Person A about one block from the location, where he was issued the summons for disorderly conduct and released. (Tr. 289-91, 295, 343, 348)

Respondent Khitab testified that he and his partner, Respondent Viera, responded to two 911 calls of a male with a firearm, one of whom said the gun was in the man's waist. The two officers were canvassing the area when they encountered the distressed man on the bicycle. Respondent Khitab stopped their vehicle in order for Respondent Viera to exit the car and speak to the man; Respondent Khitab could not hear what the man was telling Respondent Viera, but, when he got back into the car, Respondent Viera directed him to drive to [redacted] one block away. Respondent Viera also called Respondent Patel to report the witness' statement that a male with "Indian skin" and cornrows in a white shirt and khaki pants pulled a firearm on him, and was last seen walking down [redacted] Based on his experience as an individual of Pakistani descent, Respondent Khitab understood "Indian skin" to range from "very light" to "dark." (Tr. 186-93, 215-17)

After the exchange, the officers drove back to [redacted], where Respondent Khitab noticed a black Toyota double parked with its lights on and smoke coming out of the exhaust. He also observed a male black, whom he later learned to be Person A, about to get into the car. According to Respondent Khitab, he was the only individual observed in the vicinity of where the firearm job originated, and he was wearing a white shirt and had cornrows, which generally matched the description provided by the witness on the bicycle. Respondent Khitab turned on his police car's lights and pulled in front of the black Toyota in order to ensure that the suspect did not leave the scene in the vehicle. (Tr. 193-200)

Respondent Khitab testified that he approached on the left side, identified himself and Respondent Viera as police officers, informed the driver of why they stopped him, and instructed him to put the car in park and roll down the windows. Respondent Viera approached the right side of vehicle and instructed Person A, who was sitting in the right back seat, to step out of the car. The other anti-crime unit arrived at the same time that Person A exited the vehicle. Respondent Khitab was speaking to the driver when he heard an altercation between Person A and the other officers. Respondent Khitab then noticed an individual on the sidewalk approaching the scene, and turned his attention to deal with him; he did not see Person A get punched in the face. (Tr. 199-205, 208, 229-32)

Respondent Khitab also testified that he prepared the Stop, Question, and Frisk form and entered it into the system based on the information from the scratch copy completed by Respondent Viera; that report did not specifically state that the suspect with the firearm actually pointed the gun at the man on the bicycle. (Tr. 218-21)

Respondent Craig testified that when he arrived at the scene where his colleagues had a suspect stopped, he saw Respondent Khitab and Respondent Viera's vehicle parked in close proximity to another stopped car. Respondent Craig observed Person Aexit the back seat of the vehicle with his hands flailing as he spoke with Respondent Viera. Respondent Craig recognized Person A as a local gang member from the neighborhood, whom he had previously arrested in connection with possessing a BB gun. Within 15 seconds of getting out of the car, Person A sat back down in the vehicle without allowing Respondent Viera to frisk him. Respondent Craig asked Person A to step out of the vehicle again so that they could conduct a satisfactory frisk, but Person A responded, "I already told him. I don't have a gun." Person A quickly exited the vehicle and pulled up his t-shirt while stating, "Look, I got no gun," before sitting down in the car yet again. Respondent Craig informed him that they still needed to check him, and Person A again exited the vehicle. (Tr. 105-07, 111-14)

With Person A back out of the car, Respondent Craig and Police Officer Rosiello moved him over slightly so that he was in front of the gas tank area of the vehicle instead of the car's rear door. Respondent Craig testified that he heard an officer instruct them to "cuff him." Respondent Craig put his hand on Person A's right hand, while Officer Rosiello grabbed Person A's left hand. In response, Person A tensed up his body and slid his hands, palms facing out, inside his waistband in the rear, making it difficult to handcuff him. Officer Rosiello was able to get one handcuff on PersonA's left hand, but Respondent Craig continued to have difficulty with the right hand. Respondent Craig testified, "At some point, I just gave him a quick jab to his face...I had no intention of hurting him or anything else. The reason for my hand strike, we're taught in the academy, was to loosen his grip on his belt or or I thought, at

the time, that the gun was in his waistband." He felt that there was no other option to get Person A in handcuffs at the time. Within one second of the punch, Respondent Craig was able to handcuff him. Respondent Craig frisked Person A, but found no weapon. (Tr. 114-20, 125)

After Person A was handcuffed, Respondent Craig observed him being dragged by other officers to the police car. Person A was stiffening up his body and trying to jerk away from the officers who were tasked with putting him in the car. Respondent Craig described the encounter as stressful, and so he stepped off to the side to vent to himself; he was frustrated that the events occurred as they did, since "there was no need to have any type of escalation whatsoever." Respondent Craig acknowledged that there was no police purpose for saying the phrases "you're acting like an animal," or "you're acting like an idiot." He remembered saying, "This is so stupid. This is so stupid," meaning that the whole situation was stupid; he never intended to imply that Person A was stupid. Respondent Craig also stated he did not go directly up to Person A and call him an animal or say he was an idiot. (Tr. 121-22, 128-29, 156, 173-75)

Respondent Craig approached the people standing on the sidewalk and spoke to PersonA's mother to explain the situation with her son. Respondent Craig let the mother know that they were taking her son to the precinct and that the officers would meet her there with any information that she needed. Respondent Craig testified that at no point did he specifically remember Person A's mother asking for his name, but he does remember numerous people asking for everyone's name and shield. Respondent Craig stated that they just wanted to get Person A away from the scene because the situation could have escalated. (Tr. 122-24, 127)

Respondent Patel testified that he was informed by Respondent Viera that a male fitting the description had been stopped. When Respondent Patel, Respondent Craig, and Officer

Rosiello arrived at the location, Respondent Patel observed Person A lift up his shirt then attempt to re enter the car. The officers approached the car and grabbed Person A, telling him that they were not yet done searching him. Person A had his hands behind him, was screaming, stiffening his body, and pushing himself back toward the car. Respondent Patel, the supervising sergeant on the scene, told his officers to handcuff Person A; Respondent Patel had decided that Person A was going to be arrested for disorderly conduct under Penal Law section 240.20 (1), unless it was determined that Person A was behaving this way because he was an emotionally disturbed person. Respondent Patel then noticed an individual approaching from the side, so the sergeant briefly turned his attention to that person to make sure he did not intervene; Respondent claimed that he did not see the punch to Person A's face. The scene was becoming chaotic, with other people gathering, so Respondent Patel decided to have Person A removed from the scene, about one block away, where he was issued the summons and released. (Tr. 354-56, 358-59, 364, 368, 371-72, 378 80, 388)

The charges against each Respondent will now be considered separately.

Respondent Viera

Specification 1 charges Respondent Viera with wrongfully stopping the vehicle in which Person A was a passenger, while Specification 2 charges him with wrongfully frisking Person A. It is not in dispute that Respondent Viera and his partner, Respondent Khitab, did detain the vehicle, and that Respondent Viera patted down Person A. What is at issue is whether these actions were done with sufficient legal authority. I find that they were.

Patrol Guide section 212-11 (16) states that reasonable suspicion is necessary before stopping and detaining a person for the purpose of conducting a criminal investigation. Section

212-11 (18) adds that if a police officer develops a reasonable suspicion that a suspect is armed and dangerous, the officer may frisk the person to ensure the officer's safety.

Here, Respondent Viera was alerted by two 911 calls that there was a male with a firearm in the vicinity of [redacted]. Although the physical descriptions provide by the callers were limited, one of the calls indicated that the individual had the gun in his waistband. While canvassing, Respondent Viera came upon a distressed individual who stated that another individual had just pulled a firearm on him. Respondent Khitab confirmed that when Respondent Viera returned to the car, he repeated part of the description he was given. Although there were some discrepancies and omissions in what Respondent Viera recorded in his memo book about his conversation with the male on the bike, Respondent Viera gave a more complete description during his CCRB interview less than four months later, and I credit that the male on the bike described the man with the gun as having braided hair, 6'0" or taller, and wearing a white or yellow shirt. I also credit that the individual pointed the officers in the direction the man with the gun had headed.

When the officers drove to that location a block away, Respondent Viera observed a man matching the general description that had been provided by the man on the bike. Person A was standing in front of a building, next to a car service vehicle, looking around nervously. There was no one else in the area matching the general description, and so when Person A entered the vehicle, Respondent Viera and his partner decided to stop and detain him. Under these circumstances, the officers had a reasonable suspicion that Person A was armed with a firearm. As such, they had legal authority to stop the vehicle and detain Person A in order to investigate further, and I find Respondent Viera not guilty of Specification 1.

Additionally, based on the information provided by the calls and the individual on the bike, as well as Respondent Viera's observations, there was reasonable suspicion that Person A was armed with a firearm. Under these specific circumstances, Respondent had a reasonable basis for conducting a frisk to ensure his and his partner's safety. Respondent Viera's quick pat down of Person A was minimally intrusive and legally authorized, and I find him not guilty of Specification 2.

Specification 3 alleges that Respondent Viera was discourteous, in that he called Person A a "stupid motherfucker" without sufficient legal authority. Section 203-09 (2) of the Patrol Guide requires members of service to be "courteous and respectful."

Here, the moment of the alleged statement is captured on the street-level video in evidence (CCRB Ex. 2A), at the point where Person A is being placed inside the sergeant's police vehicle. Respondent Viera acknowledged that his voice can be heard during the sequence, but he denied that he said "stupid motherfucker." However, after carefully reviewing the video footage, this tribunal is convinced that Respondent did make the alleged statement. Respondent can be seen leaning into the vehicle to help secure Person A. At the 2:16 mark, Respondent Viera removes himself from the car, and as he closes the door he can be heard saying, "Stupid motherfucker."

This tribunal is mindful that at the time the comment was made, the officers were dealing with an uncooperative individual whom they were trying to take into custody and remove from the scene. Nevertheless, there was no legitimate police purpose for Respondent Viera to make that remark. Rather, it was a gratuitous insult, presumably born out of the frustration of dealing

with a non-compliant subject. Under these specific circumstances, the statement constituted discourtesy, and I find Respondent Viera guilty of Specification 3.

Respondent Khitab

Respondent Khitab is charged with wrongly stopping the vehicle in which Person Awas a passenger. It is undisputed that while working with Respondent Viera, Respondent Khitab pulled their police car in front of the car service vehicle for the purpose of stopping Person A. At issue is whether under the circumstances the stop was wrongful. I find that it was not.

For the same reasons discussed above with respect to Respondent Viera, I find that the officers had a reasonable suspicion that Person A was armed with a firearm. As such, they had a reasonable basis to stop the vehicle and detain Person A in order to investigate further. The credible evidence has failed to establish that Respondent Khitab acted without sufficient legal authority in stopping the vehicle, and I find him not guilty.

Respondent Craig

Specification 1 charges Respondent Craig with wrongful use of force, in that he struck Person A in the face without police necessity. From the witness accounts, video footage, and Respondent Craig's own admission, it is undisputed that Respondent Craig pulled back his arm and delivered a single punch to Person A's face. At issue is whether that punch was reasonable under the circumstances. I find that it was excessive.

Patrol Guide section 221-02 (11) requires members of service to "apply no more than the reasonable force necessary to gain control" of a resisting subject. If the force used is unreasonable under the circumstances, it will be considered excessive.

Respondent Craig insisted that when he gave Person Aa quick jab to his face, he had no intention of hurting him. Rather, the reason for the punch was to gain compliance of a subject suspected of possessing a firearm, whose hands were behind him in his waistband. Respondent Craig was concerned for everyone's safety, and felt that there was no other option to get Person A in handcuffs at the time. Indeed, within one second of the punch, the officers were able to handcuff him.

However, even if Respondent Craig was not intending to injure Person A, under the circumstances presented here the punch constituted an unreasonable use of force. Respondent Viera already had conducted a protective frisk of Person A and discovered no firearm; I find it implausible that Respondent Viera would have left the suspect with a fellow officer and moved on to search the interior of the vehicle if he had not already reasonably satisfied himself that Person A did not have a gun on his person. At the moment of the punch, there were multiple officers present, including Officer Ondrejack who testified credibly that Person A's hands were not inside his waist. When the punch was delivered, Person A was standing against a car with one hand already in handcuffs. In this context, the punch to the face was not reasonably necessary.

This tribunal is mindful of the urgency in dealing with a subject suspected of possessing a firearm. particularly one whom Respondent Craig recognized from a previous incident with a BB gun. Additionally, after initially agreeing to exit the vehicle, at which time he was frisked, Person A was being uncooperative in the officers' efforts to place him in handcuffs. Nevertheless, Respondent Craig was responsible and accountable for using the level of force appropriate to the situation. Given the number of additional officers present, and the level of

control over the subject at the time, the punch to the face was not reasonable or appropriate. Accordingly, I find Respondent Craig guilty of Specification 1.

Specification 2 charges Respondent Craig with wrongfully refusing to provide his name to Person B. Patrol Guide section 203-09 (1) states that a member of service must "courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so."

Here, the video footage corroborates Person B's statement that Respondent Craig refused to provide his name when asked to do so at the scene. At about the 4:45 mark of the video (CCRB Ex. 2A), Respondent Craig can be heard telling the civilians that they could get the information they requested back at the 77 precinct. Respondent Craig testified that he felt it was important to get Person A away from the scene before the situation escalated.

However, at the time Respondent Craig was asked to provide his name, the situation did not appear so volatile as to excuse his failure to do so Rather, Respondent Craig appeared to be engaging in a civil conversation with the civilians. To his credit, Respondent Craig even took the time to explain why the officers had stopped Person A, and what to expect moving forward. Under these circumstances, there was no reasonable justification for Respondent Craig not to provide his name to Person A's mother, and I find him guilty of Specification 2.

Specifications 3, 4, and 5 charge Respondent Craig with making various discourteous comments to Person A, in violation of section 203-09 (2) of the Patrol Guide. Specifically, it is alleged that Respondent Craig called Person A an "animal," an "idiot," and stated that Person A was "fucking so stupid."

Each of the moments in question are captured on the video footage (CCRB Ex. 2A). At about the 2:02 mark, Respondent Craig can be heard saying, "You know what, someone film him acting like an animal." At 2:08, Respondent Craig states to Person A, "You're acting like an idiot." However, a careful listening of the 2:19 mark reveals that Respondent Craig says, "*Something* so stupid," not "*Fucking* so stupid" as alleged.

Respondent Craig insisted that he never intended to imply that Person A was stupid. He described the encounter as stressful, and explained that he stepped off to the side to vent to himself out of frustration. However, the comments made by Respondent Craig were not quietly uttered in private; rather, he made his statements in close proximity to Person A, and the remarks were loud and clear enough to be distinctly captured in a recording by a bystander. Further, Respondent acknowledged that there was no legitimate police purpose for making those comments. Under these circumstances, the statements made by Respondent Craig under Specifications 3 and 4 were discourteous, and I find him guilty of those counts. However, Respondent did not utter the profanity alleged in Specification 5, and I find him not guilty of that count.

Respondent Patel

Respondent Patel is charged with issuing a disorderly conduct summons without sufficient legal authority. Specifically, the summons charged Person A with disorderly conduct under Penal Law section 240.20 (1). That section states, "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he engages in fighting or in violent, tumultuous or threatening behavior." Guidance for what constitutes disorderly conduct comes from the Department's Legal Bureau

Bulletin on "Disorderly Conduct, Vol. 47, No. 2, dated February 2017. The Bulletin notes that there is both a "public harm" requirement and an "intent" requirement: in order for an arrestee to be charged with disorderly conduct, he must have "caused actual or threatened public harm," with "the intent to cause public inconvenience, annoyance, or alarm."

Respondent Patel testified that Person A was being charged with disorderly conduct for his behavior up until the point where he was handcuffed, which was almost immediately after being punched by Respondent Craig.[2] According to Respondent Patel, Person A was screaming, stiffening his body, and pushing himself back toward the police car, resisting the officers' efforts to re-position him toward the rear of the vehicle. At issue is whether these actions constituted disorderly conduct. I find that they did not.

On the one hand, the video footage supports Respondent Patel's contention that Person A was uncooperative with the officers, resisting their efforts to secure and re-position him. However, under these specific circumstances, that non-compliance did not rise to the level of disorderly conduct. From the testimony of the eyewitnesses, and the video footage for the relevant time period, there was no intent on the part of Person A to cause public inconvenience, annoyance, or alarm, nor did he recklessly create such a risk. Up until the point where he was handcuffed, he was not causing a public disturbance among the bystanders in the vicinity, who were minimal at that time. Rather, Person A's protestations were directed at the police officers who were detaining him, and were limited to some screaming, stiffening his body, and pushing himself back toward the police car. Taken as a whole, Person A's actions did not constitute

[2] Since Respondent Patel maintained that he had made the decision to charge disorderly conduct based on Person A's behavior prior to being handcuffed (Tr. 378-80), Person A's subsequent behavior, where he is seen on video screaming and resisting efforts to bring him to the Sergeant's police car, is outside the scope of what may be considered in deciding whether there was probable cause for the disorderly conduct arrest.

probable cause that he was committing disorderly conduct, and so Respondent Patel's decision to issue him the summons was without sufficient legal authority. Accordingly, I find Respondent Patel guilty.

PENALTIES

In order to determine appropriate penalties for Respondents Viera, Craig, and Patel, their service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent Viera was appointed to the Department on July 9, 2007, Respondent Patel was appointed to the Department on January 9, 2006, and Respondent Craig was appointed to the Department on January 7, 2008. Information from their personnel records that was considered in making these penalty recommendations are contained in attached confidential memoranda.

Respondent Viera

Respondent Viera has been found guilty of one count of discourtesy, for calling Person A a "stupid motherfucker." The CCRB asks that Respondent Viera forfeit no less than 10 vacation days However, considering that he has been found not guilty on two of the three specifications, a lesser penalty is warranted.

On the one hand, the officers were investigating reports of a male with a firearm, and this tribunal is mindful of the heightened security concerns and charged atmosphere associated with such a job. It was clear from the video footage and the testimony of the Respondents that they were frustrated with Person A's non-compliance, including efforts to place him inside the police car.

Nevertheless, there was no justification for Respondent Viera to call Person A a "stupid motherfucker." Respondent Viera's language fell short of the standard of professionalism

expected of members of service, and there must be some accountability. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent Viera forfeit two (2) vacation days.

Respondent Craig

Respondent Craig has been found guilty of excessive force, refusal to provide his name, and two counts of discourtesy. The CCRB asks that he forfeit no less than 20 vacation days. This tribunal agrees with the serious nature of Respondent Craig's misconduct, particularly the punch to Person A's face. However, there also were mitigating factors present, and a lesser penalty is warranted.

On the one hand, Respondent Craig explained that he was not intending to injure Person A with the punch to the face; rather, his goal was to gain compliance from the subject in order to safely place him in handcuffs. Person A confirmed that he was not injured from the punch, and did not require medical attention. Even so, for the reasons discussed above, the force used by Respondent Craig was excessive. Given the number of additional officers present, and the level of control over the subject at the time, the punch to the face was not reasonable or appropriate, and there needs to be some accountability.

With respect to the two counts of discourtesy, the comments made by Respondent Craig were in response to his frustration with a situation that he felt had needlessly escalated due to Person A's lack of cooperation. Nevertheless, Respondent Craig chose to vent his frustration in a manner that was not appropriate. It also was an abuse of his authority not to provide his name to Person B, though to Respondent Craig's credit, he did spend time at the scene patiently

explaining the background of what transpired to Person A's family in an attempt to clarify the situation for them.

Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent Craig forfeit ten (10) vacation days.

Respondent Patel

Respondent Patel has been found guilty of issuing a disorderly conduct summons without sufficient legal authority. The CCRB asks that he forfeit no less than 12 vacation days. However, in light of Respondent's strong record with the Department, and taking into account the circumstances surrounding the incident, a lesser penalty is warranted.

To be sure, Respondent Patel, a supervising sergeant who has been with the Department since 2006, is responsible for knowing the core requirements for disorderly conduct, and acting accordingly. Here, he chose to issue a summons in a situation where the facts did not justify it, and there must be some accountability.

However, this tribunal also is mindful that Respondent Patel was dealing with a volatile situation after Person A had been lawfully stopped on suspicion of possessing a firearm. Even if his conduct did not rise to the level of disorderly conduct, there was credible evidence that Person A was screaming, stiffening his body, and resisting the officers' efforts to reposition him toward the rear of the vehicle.

Taking into account the totality of the facts and circumstances surrounding this matter, I

recommend that Respondent Patel forfeit five (5) vacation days.

Respectfully submitted,

Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED
MAY 27 2020
DERMOT SHEA
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER PATRICK CRAIG
TAX REGISTRY NO. 945623
DISCIPLINARY CASE NO. 2018-18852

Respondent was appointed to the Department on January 7, 2008. On his last three annual performance evaluations, he twice received 4.5 overall ratings of "Extremely Competent/Highly Competent" for 2014 and 2015, and received a 4.0 overall rating of "Highly Competent" for 2016. He has been awarded six medals for Excellent Police Duty and two medals for Meritorious Police Duty. [redacted]

Respondent was placed on Level 1 Force Monitoring from October 30, 2017 to November 5, 2018, for having received three or more CCRB complaints in one year.

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: CONFIDENTIAL MEMORANDUM
SERGEANT AVINASH PATEL
TAX REGISTRY NO. 940551
DISCIPLINARY CASE NO. 2018-18854

Respondent was appointed to the Department on January 9, 2006. On his last three annual performance evaluations, he received 4.5 overall ratings of "Extremely Competent/Highly Competent" for 2016, 2017, and 2018. He has been awarded nine medals for Excellent Police Duty and two medals for Meritorious Police Duty. [redacted]

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: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ALEX VIERA
TAX REGISTRY NO. 945080
DISCIPLINARY CASE NO. 2018-18855

Respondent was appointed as a Police Officer on July 9, 2007. On his last three annual performance evaluations, he received 4.5 overall ratings of "Extremely Competent/Highly Competent" for 2015, 2016, and 2017. He has been awarded one medal for Excellent Police Duty and one medal for Meritorious Police Duty. [redacted]

In 2012, Respondent was found Not Guilty after a trial on departmental charges.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials