POLICE DEPARTMENT CITY OF NEW YORK

April 4, 2019

In the Matter of the Charges and Specifications		
	:	Case No.
- against -	:	2017-17813
	:	
Police Officer Ronald Remo	:	
	:	
Tax Registry No. 951125	:	
Manhattan South Narcotics	:	

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

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Jonathan Fogel, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

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

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Ronald Remo, on or about January 24, 2017, at approximately 1415 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, abused his authority as a member of the New York City Police Department, in that he stopped Individual 1 without sufficient legal authority.
   P.G. 212-11, Page 4, Paragraph 16 ABUSE OF AUTHORITY - STOP

2. Said Police Officer Ronald Remo, on or about January 24, 2017, at approximately 1415 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he arrested Individual 1 without sufficient legal authority.
   P.G. 208-11, Page 1, Paragraph 3 LAW OF ARREST

3. Said Police Officer Ronald Remo, on or about January 24, 2017, at approximately 1415 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Individual 1 without sufficient legal authority.
   P.G. 212-11, Page 5, Paragraph 18 ABUSE OF AUTHORITY - FRISK

4. Said Police Officer Ronald Remo, on or about January 24, 2017, at approximately 1415 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, abused his authority as a member of the New York City Police Department, in that he searched Individual 1 without sufficient legal authority.
   P.G. 212-11, Page 5, Paragraph 22 ABUSE OF AUTHORITY - SEARCH

5. Said Police Officer Ronald Remo, on or about January 24, 2017, at approximately 1415 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, abused his authority as a member of the New York City Police Department, in that he seized Individual 1's cell phone without sufficient legal authority.
   P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT - PROHIBITED CONDUCT

6. Said Police Officer Ronald Remo, on or about January 24, 2017, at approximately 1415 hours, while assigned to PSA 1 and on duty, in the vicinity of [redacted], Kings County, abused his authority as a member of the New York City Police Department, in that he searched Individual 1's cell phone without sufficient legal authority.
   P.G. 212-11, Page 5, Paragraph 23 ABUSE OF AUTHORITY - SEARCH

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on February 8, 2019. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Civilian Complaint Review Board submitted as evidence the interview transcript of Individual 1, surveillance video, and a screen capture of several text messages as evidence. 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 the evidence in this matter, the Court finds Respondent Guilty.

ANALYSIS

Introduction

Respondent is charged with stopping, arresting, frisking and searching Individual 1, and seizing and searching his cell phone. Most of the facts in this case are not in dispute. Respondent was a domestic violence officer for Police Service Area 1. He and Police Officer Steven Mercedes were investigating a domestic violence complaint brought against Individual 2 by Individual 2's girlfriend.[1] The top charge was Assault in the Third Degree, a Class A misdemeanor.

After the officers were unable to arrest Individual 2 at his residence, they obtained his employment information from his girlfriend. The officers learned that Individual 2 was employed as a porter at a residential building located at [redacted] in Brooklyn. The officers learned from Individual 2's employer that Individual 2 was scheduled to work on Tuesday, January 24, 2017.

[1] Mercedes pleaded guilty on December 12, 2018, to three specifications: wrongful stop, wrongful arrest, and discourtesy for telling [redacted] to "shut the fuck up." See *Case No. 2017-17812* (Feb. 27, 2019).

The exact parameters of what happened next are in dispute. It is agreed, however, that the officers went to [redacted] on January 24, 2017, and encountered Individual 1, the building superintendent, who was Individual 2's supervisor and is the complainant in this matter. Individual 1 told the officers that Individual 2 was not there. Respondent did not believe him. It is undisputed that Respondent placed Individual 1 under arrest for hindering prosecution (see Penal Law §§ 205.50 et seq.). Respondent frisked and searched him as he would any arrestee. He also seized Respondent's cell phone. It is undisputed that a text message was sent from Individual 1's phone to Individual 2's phone, at the time of this incident, stating falsely that the police had left the location. Individual 2 came from within the building and was arrested for the assault. Respondent released Individual 1 from the handcuffs and he was free to go. He was not brought to the stationhouse or court, and no arrest paperwork was produced.

Thus, it is not in dispute that Respondent stopped, arrested, frisked and searched Individual 1. Respondent contended that he had probable cause to arrest Individual 1 for hindering prosecution. He also contended that Individual 1 gave him verbal consent to look at the text messages and to text Individual 2, pretending to be Individual 1, to come to the area so he could be arrested.

Evidence

Individual 1 was interviewed in person by the CCRB on Monday, January 30, 2017. At trial, the CCRB prosecutor stated that Individual 1 was not responsive to the subpoena or to phone calls to secure his appearance at trial (CCRB Ex. 1, Individual 1 interview transcript, pp. 1-2; Tr. 2-3).

Individual 1stated in his interview that he worked as the superintendent at [redacted] At approximately 1415 hours on January 24, 2017, Individual 1 was supervising the painting of one of the apartments. Respondent and Mercedes approached him in the hallway. Individual 1 identified himself as the super. Respondent said that they were looking for Individual 2, one of the porters (Ex. 1, p. 3, 6-7-8, 19, 22).[2]

The officers asked Individual 1 if he had seen Individual 2. Individual 1 answered that that he had not seen him, adding that it was supposed to be Individual 1's day off and he was only there to check on the painting (Ex. 1, pp. 3, 19).

The officers asked Individual 1 if he could call Individual 2. Individual 1 did so, but Individual 2 told him he was at lunch. He handed the phone to Respondent, and the officers spoke to Individual 2 for approximately five minutes. Individual 1 believed that the officers spoke to his supervisor, because she called him and asked where Individual 2 was. He told her he did not know, and also called Individual 2 back and told him to call the supervisor as well (Ex. 1, pp. 3-4, 8-9, 11-12).

The officers "kept following me around." Mercedes called Individual 1 a liar. Individual 1 protested, saying that he had told the officers what he knew. Respondent asked Individual 1 to call or text Individual 2 and tell him that the police had left. Individual 1 refused to do so, saying he did not want to lie to Individual 2 (Ex. 1, pp. 4-5, 8, 10, 12).

Respondent arrested Individual 1, claiming that he was "hiding" Individual 2. He took Individual 1's cell phone, which was unlocked at the time, and read some of his relevant text messages. ~~Respondent texted Individual~~ 2, saying the police had left. Individual 2 "showed up" about 10 minutes later and was arrested. Individual 1 stated during the interview that Individual 2 had been in the

building. The officers then released Individual 1 from the handcuffs (Ex. 1, pp. 5, 13, 15-17, 20-21).

THE VIDEO consisted of surveillance footage of the lobby and entry vestibule of [redacted] There was no audio. The video begins at approximately 02:23:43 p.m. Respondent and Mercedes are in the vestibule. Respondent speaks on a cell phone to someone for several minutes. At approximately 02:28:13, the officers enter the building. At approximately 02:29:55, Individual 1 comes into view of the camera. He is the male wearing a maroon shirt, Yankees cap and white sneakers. He also is speaking on a cell phone. He goes from the lobby into the vestibule, and steps outside the building at around 02:30:21.

At approximately 02:30:27, the officers come back into view. Around 02:31:49, Respondent goes out to the vestibule to check on Individual 1. At approximately 02:32:03, Mercedes goes out too.

By approximately 02:33:07, Individual 1 appears to be off the phone, and Respondent talks to him. A discussion amongst the three ensues. They all step back into the lobby at about 02:33:30. The discussion seems somewhat heated, as they are gesturing with their hands and appear to be disagreeing about something. Individual 1's phone appears to be on at the approximately 02:34:03 mark, as there is a white screen. A few seconds later, he tries to walk away, but the officers place him in handcuffs. At this point, the phone appears to be off.

Some time passes, as the three individuals stand there. They are not doing much of anything except talking or arguing exasperatedly. Several people walk by and see Individual 1 in handcuffs. At approximately 02:36:59, Respondent looks at the phone. There appears to

be a text message on the screen. The officers both react as though their suspicions were correct.

At approximately 02:38:04, Respondent looks at the phone again. A little over a minute later, he shows Individual 1 the phone. Respondent appears to be going through something on the screen. About a minute after that, Respondent places the phone into his jacket pocket. Shortly thereafter, the officers and Individual 1 walk off screen.

At approximately 02:43:32, the officers are escorting a second male, i.e., Individual 2, who is in handcuffs. Individual 1 is out of cuffs and is holding a cell phone. The officers allow Individual 2 to collect his coat from a closet. Around 02:45:20, Individual 2 says something to Individual 1, and then the officers leave with Individual 2. The video concludes at that point.

THE TEXT MESSAGES were provided by Individual 1 to the CCRB on Monday, January 30, 2017. The first relevant message is time-stamped "Tuesday [i.e., the 24th] 2:28 PM." There are no further time stamps. Individual 1 identified the incoming messages as from Individual 2. The messages were:

They gone

Yo

Hit me wen they leave am next door.

Hit me wen they leave am next door.

Individual 1's phone then texted back, "They gone."

RESPONDENT testified that on January 24, 2017, he was assigned to PSA 1 in Brooklyn as a domestic violence officer. He had been assigned a complaint with Individual 2 as the suspect. The case involved an alleged assault against Individual 2's partner. Respondent testified that he made several attempts to arrest Individual 2 at possible residences, as well as by

making arrangements for him to turn himself in. Individual 2 told Respondent at least three times that he would turn himself in, but he never showed (Tr. 18-20).

Respondent got Individual 2's employment information from the complainant, and contacted that company. He learned from [redacted], a human resources employee, that Individual 2 would be at [redacted]e in Crown Heights on January 24, 2017. He worked as a porter at this residential building. Respondent went with Mercedes to that location (Tr. 20-23, 47-48, 64-65).

The officers arrived at [redacted] at 1400 hours. When they could not immediately gain access, Respondent called [redacted] again. She called Individual 2 to let them in. But it was Individual 1 that came to open the door. Individual 1 told the officers that he was Individual 2's supervisor, but Individual 2 was "off duty," i.e., that he was not at work that day. [redacted] confirmed to Respondent that Individual 1 had not been scheduled to work that day (Tr. 23-25, 58-59).

Respondent called Individual 2's cell phone again, and also called [redacted] back. She told Respondent that Individual 2 had clocked in for the day and had not clocked out. When Respondent informed Individual 1 of this, Individual 1 told him that Individual 2 actually was out to lunch. Respondent noted at trial that this was different from Individual 1's original statement, although he conceded it was consistent with what [redacted] said – Individual 2 was scheduled to be at work. Individual 1 was on his iPhone with Individual 2 at that time and handed the phone to Respondent. Individual 2 told Respondent that he had left for the day and was on his way to Manhattan. Respondent overheard Individual 1 tell Individual 2 something along the lines of, "[T]he cops are here. What do you want me to tell them?" (Tr. 25-26, 59-61, 65).

Respondent, believing that Individual 1 had lied to him, asked Individual 1 why he was covering for Individual 2. He informed Individual 1 that he was arresting him for hindering prosecution. Respondent predicated the arrest on any of three provisions of the statute: harboring or concealing the wanted person; warning the person; or preventing, by force, intimidation or deception, the police from discovering the person (Penal Law §§ 205.50 [1], [2], or [4], respectively). Respondent agreed that he frisked Individual 1 and searched his pockets, recovering several personal items (Tr. 26-27, 33-34, 50, 52, 62-64, 67).

Respondent was holding Individual 1's cell phone after placing him in handcuffs. After a few minutes, a text message came in from Individual 2 along the lines of "tell me when they're done. I'm upstairs." Respondent showed this to Individual 1 and concluded that he was covering for Individual 2. Individual 1 maintained that Individual 2's actions had nothing to do with him. Respondent agreed, assuring Individual 1 that he was not there for him and there was no reason for Individual 1 to get involved (Tr. 27-30, 35-36, 38-41, 49-50).

Respondent contended that Individual 1 spontaneously told him to send Individual 2 a text message from Individual 1's phone saying the police had left. Respondent asserted that Individual 1 gave him his passcode to enter the phone. Respondent claimed that he was unable to answer the text without entering a passcode. Respondent texted Individual 2, "They gone" in response to Individual 2's questions and entreaties. One to two minutes later, Individual 2 came out of the elevators and was arrested. The charge was Assault in the Third Degree. Individual 1 then was released from the handcuffs and was free to go (Tr. 30-34, 39-40, 43, 48, 66).

Respondent testified that the portion of the video when he was touching Individual 1's phone screen was not him sending a text message or going through Individual 1's text messages.

The phone was locked and he could not read anything other than the message that came in from Individual 2 (Tr. 44-47).

Respondent denied that he arrested Individual 1 to pressure him into assisting the arrest of Individual 2 (Tr. 48).

Respondent agreed that he needed probable cause to arrest Individual 1 for hindering prosecution. It had been his understanding that a person could be charged with hindering prosecution for assisting someone to commit either a misdemeanor or felony. He conceded, however, after being shown the statute at trial, that hindering prosecution required the defendant to aid another in committing a felony (Penal Law § 205.55, Hindering Prosecution in the Third Degree; Tr. 55-56, 58).

Analysis

The specifications in this case, charging Respondent with an unlawful stop, arrest, frisk of Individual 1, search of Individual 1's person, seizure of his phone, and search of his phone, are predicated on the purported justification for Respondent's arrest of Individual 1 on the charge of hindering prosecution.

Hindering prosecution, codified under Penal Law §§ 205.50 et seq., proscribes six different forms of "render[ing] criminal assistance . . . with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person who he knows or believes has committed a crime or is being sought by law enforcement officials for the commission of a crime." Respondent testified that Individual 1 hindered the prosecution of Individual 2 through at least one of three of the six subsections: "Harbor[ing] or conceal[ing] such person" (§ 205.50 [1]); "Warn[ing] such person of impending discovery or apprehension" (§ 205.50 [2]); or "[p]revent[ing] or obstruct[ing],

by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him" (§ 205.50 [4]).

There are, however, at least two problems with Respondent's argument. First, there is no evidence that Individual 1 knew Individual 2 had committed a crime, or knew that law enforcement was seeking Individual 2 for the commission of a crime. Respondent testified that he asked Individual 1 "where I could find Individual 2" (Tr. 24). This is consistent with Individual 1's statement to the CCRB, in which he said that the officers did not tell him why they were looking for Individual 2: "They said they want to speak to him and that was it" (Ex. 1, p. 22). There is no evidence that Individual 1 knew the police were there to arrest Individual 2. The police could have been looking for him as a witness to a crime, or even for information on some investigation. The Court appreciates that it can be good police work not to inform people of the exact reason for officers' presence, but it does not alter the elements of the crime of hindering prosecution.

Furthermore, there are three degrees of hindering prosecution. The least serious, Hindering Prosecution in the Third Degree, Penal Law § 205.55, prohibits rendering criminal assistance "to a person who has committed a felony." The top charge against Individual 2, however, was Assault in the Third Degree, a misdemeanor (Penal Law § 120.00). The requirement of an underlying felony is not a mere technicality. It is a reflection of the Legislature's judgment that in order to depart from the general rule that persons are not required to report crimes, the crime for which prosecution is being hindered must be a serious one. See People v. Williams, 20 A.D.3d 72, 76-78 (1st Dept. 2005) (noting that felony requirement is continuation of common law accessory-after-the-fact doctrine).

In sum, because there was no probable cause to arrest Individual 1, Respondent's stop, arrest and frisk of Individual 1, the search of Individual 1's person, and the seizure of his phone were ab initio without sufficient legal authority. Whether Individual 1 was lying to Respondent, or whether Respondent could have justifiably made that conclusion, are not relevant to this basic and necessary question of law.

The Court notes that the frisk was predicated, according to Respondent, on the arrest alone, which is standard Department procedure (Tr. 63). Independent from an arrest, an officer is authorized to conduct a frisk to feel for weapons when she reasonably suspects the person is armed and dangerous (Patrol Guide § 212-11, p. 3). Respondent gave no testimony to support a conclusion that a frisk was independently warranted here. No weapons were recovered from Individual 1's person (Tr. 63), and he was calm on the video. Therefore, Respondent is found Guilty of Specification Nos. 1 through 5.

The sixth specification, which charges Respondent with unlawfully searching Individual 1's phone, must be analyzed differently because Respondent testified that he received consent from Individual 1 to go into his phone to text Individual 2. The problem with this is that Individual 1 was in police custody at the time. The video shows Individual 1 and the two officers standing there for two to three minutes after he was handcuffed. Several people, very possibly residents, including children, walk by and see the super of their building handcuffed and in custody. According to Respondent's own testimony, when Individual 1 complained that whatever Individual 2 was doing had nothing to do with him, Respondent replied that was true: the police were not there for Individual 1 and there was no reason for Individual 1 to get involved. It was at this point that Individual 1 "spontaneously" suggested sending the text message assuring Individual 2 the police had left.

Under the circumstances, this tribunal cannot conclude that any purported consent was validly given by Individual1. Cf. People v. Gonzalez, 39 N.Y.2d 122, 128-29 (1976) ("Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances," which include, inter alia, whether individual was handcuffed and how many officers were present on scene).

Moreover, the Court does not credit Respondent's claim that Individual 1 "spontaneously" suggested Respondent send the text himself. Respondent's very detailed memo book entries (Ex. 4) say nothing of this "spontaneity." Rather, Respondent wrote that Individual 1

"verbally & voluntarily gave Remo [permission] & [authority] to unlock phone and answer 'Nate.'"). This is more consistent with Individual 1's account, in which it was Respondent that wanted Individual 1 to send the text, and when he refused, he was arrested. If Individual 1 then

"consented" to instead have Respondent send the text while Individual 1 had his hands cuffed behind his back, this "consent" was legally meaningless. As such, Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2011. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The CCRB recommended a penalty of the forfeiture of 15 vacation days (Tr. 87). The evidence at trial demonstrated that Respondent was attempting to effect the arrest of a domestic violence suspect, Individual 2, against whom there was an outstanding complaint

report. In doing so, Respondent encountered Individual 1, whom he thought was hindering the prosecution of Individual 2. He was wrong as a matter of law and Department procedure.

There is an aggravating factor here: the embarrassment that Individual 1 must have felt at being wrongfully arrested. As noted above, several residents, including children, walked by and viewed Individual 1, the superintendent of their building, handcuffed and surrounded by two police officers. This requires a significant penalty.

The Court also is guided by Respondent's excellent service history, see Confidential Mem., infra. Finally, the Court is guided by the 10-day penalty received by Respondent's co-accused, Mercedes. The actions of Mercedes, who told Individual 1 to "shut the fuck up," are not less serious than that of Respondent.

As such, the Court recommends that Respondent forfeit 10 vacation days as a penalty. See *Case No. 2016-15945* (July 9, 2018) (Police Commissioner directed forfeiture of 10 vacation days, rather than 5 as recommended by trial commissioner, for stopping individual, and arresting him for disorderly conduct, without sufficient legal authority: while officer stopped and arrested individual for making what he described as simulated gunshot sounds with his mouth, this did not articulate reasonable suspicion, and there was no evidence these sounds were causing public harm or annoyance, so no basis for disorderly conduct arrest).

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

JUN 25 2019

JAMES P. O'NEILL
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RONALD REMO
TAX REGISTRY NO. 951125
DISCIPLINARY CASE NO. 2017-17813

Respondent was appointed to the Department on July 6, 2011. His last three annual performance evaluations were: a 4.0 overall rating of "Highly Competent" in 2018 and 4.5 ratings of "Highly Competent/Extremely Competent" in 2015 and 2016. [redacted]

Respondent has no disciplinary record. He was, however, placed on Level 1 Force Monitoring on June 8, 2016, after having received three or more CCRB complaints in a one-year period. This monitoring remains ongoing.

For your consideration.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials