The City of New York

POLICE DEPARTMENT

January 10, 2020

In the Matter of the Charges and Specifications	:	
- against -	:	
Police Officer Jonathan Martinez Tax Registry No. 953059 77th Precinct	: : :	Case No. 2018-19003
Police Officer Matthew Lambert Tax Registry No. 956820 88th Precinct	: : :	Case No. 2018-19002

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

Before: Honorable Paul M. Gamble
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Hamilton Lee, Esq.
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To:
HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-19003

1. Police Officer Jonathan Martinez, on or about November 18, 2017, at approximately 1555 hours, while assigned to 088 PCT and on duty, in the vicinity of Clinton Avenue and Fulton Street, Kings County, wrongfully used force, in that he pointed his gun at Person A without police necessity.
   P.G. 221-01 FORCE GUIDELINES
   P.G. 221-02 USE OF FORCE GENERALLY

2. Police Officer Jonathan Martinez, on or about November 18, 2017, at approximately 1555 hours, while assigned to 088 PCT and on duty, in the vicinity of Clinton Avenue and Fulton Street, Kings County, abused his authority as a member of the New York City Police Department, in that he arrested Person A without sufficient legal authority.
   P.G. 208-01, Page 1, Paragraph 3 LAW OF ARREST

Disciplinary Case No. 2018-19002

1. Police Officer Matthew Lambert, on or about November 18, 2017, at approximately 1555 hours, while assigned to 088 PCT and on duty, in the vicinity of Clinton Avenue and Fulton Street, Kings County, wrongfully used force, in that he pointed his gun at Person A without police necessity.
   P.G. 221-01 FORCE GUIDELINES
   P.G. 221-02 USE OF FORCE GENERALLY

2. Police Officer Matthew Lambert, on or about November 18, 2017, at approximately 1555 hours, while assigned to 088 PCT and on duty, in the vicinity of Clinton Avenue and Fulton Street, Kings County, abused his authority as a member of the New York City Police Department, in that he arrested Person A without sufficient legal authority.
   P.G. 208-01, Page 1, Paragraph 3 LAW OF ARREST

3. Police Officer Matthew Lambert, on or about November 18, 2017, at approximately 1555 hours, while assigned to 088 PCT and on duty, in the vicinity of Clinton Avenue and Fulton Street, Kings County, was discourteous, in that he spoke discourteously to Person A without sufficient legal authority.
   P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT - GENERAL

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on November 12, 2019. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges and testified on their own behalves. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all the evidence in this matter, I find Respondents Martinez and Lambert Not Guilty of Specifications 1 and 2 in Disciplinary Cases Nos. 2018-19002 and 2018-19003. I further find Respondent Lambert Not Guilty of Specification 3 in Disciplinary Case No. 2018-19002.

ANALYSIS

The following is a summary of the facts which are not in dispute. On November 18, 2017, Respondents were on Anti-Crime duty in the 88th Precinct (T. 23-24, 25, 90). Respondents were in an unmarked vehicle and were in plainclothes (T. 25). At approximately 1550 hours, Respondents were driving eastbound on Lafayette Avenue when they observed a four-door Honda Accord sedan, also driving eastbound on Lafayette Avenue (T. 91). This car had tinted windows that Respondents believed violated the Vehicle and Traffic Law (T. 26-27, 49-50, 52, 81, 90). Respondent Lambert further suspected that the car's registration was not current, based upon his perception that it was registered in North Carolina and appeared to be missing a registration sticker (T. 90). Both Respondents described the vehicle as gray, although the vehicle was silver in color (T. 28, 47-48, 52, 90).

Respondents conducted a car stop, using their lights and siren, causing the Honda Accord to turn right onto Clinton Avenue before it came to a stop (T. 27, 91). As Respondents approached the Honda Accord from the rear, with Respondent Lambert approaching from the driver's side and Respondent Martinez approaching from the passenger side, they observed two

occupants in the vehicle (T. 27, 91). When Respondent Lambert reached the open driver's side window, he observed what appeared to be a firearm in the cup holder (T. 92). At about the same time, Respondent Martinez observed a semi automatic firearm in the center console through the rear passenger window (T. 28, 54, 79). Before either Respondent could communicate their observations to the other, the Honda Accord accelerated and drove southbound on Clinton Avenue at high speed (T. 28-29, 92). Respondents returned to their vehicle and pursued the Honda Accord, which had built a 2 ½-3 block lead (T. 29, 56, 93-94). While in pursuit, Respondents made a radio communication reporting that they were in pursuit of a gray sedan, giving a partial license plate, and the sedan's direction of flight (T. 44, 57, 82-82). As they pursued the Honda Accord toward Fulton Street, they observed smoke in the distance and surmised that there had been a vehicular accident (T. 29-30, 60, 94).

While there is no dispute that Respondents did not and likely could not see the intersection of Clinton Avenue and Fulton Street during the pursuit, Person B the driver of the New York City Transit bus which was involved in the accident, provided her observations in a statement to CCRB (CCRB Ex. 5).

According to Person B, the Honda Accord approached the intersection of Clinton Avenue and Fulton Street, then proceeded through a red light signal (CCRB Ex. 5 at 3, 5). As it did so, the Honda Accord collided with Person B' bus, which was driving eastbound through the intersection of Fulton Street and Clinton Avenue (*Id.*). The Honda Accord careened off the left front end of the bus, struck a black SUV, then continued southbound on Clinton Avenue until it collided with a barrier on the east side of the street (*Id.* at 5, 7; T. 95). Person B also described the Honda Accord as a gray sedan, subsequently adding it was "like a silver." (*Id.* at 6).

Immediately before the collision, Person A exited the Capital One Bank, located on the southwest corner of Fulton Street and Clinton Avenue, then entered his car, a gray Nissan Altima[1], which was parked on Clinton Avenue, in front of the bank (CCRB Ex. 2 at 3). Person A had three passengers in his car: Persons C, D and E (*Id.*). As A drove the Nissan Altima into the southbound traffic lane, he heard a loud noise and saw the Honda Accord approaching his vehicle at high speed before it turned to cross into the northbound traffic lane on Clinton Avenue, then collide with a barrier on the east side of the street (*Id.* at 7, 18). Person A stopped his car and got out of it, along with all of his passengers (*Id.* at 3). Person A walked toward the Honda Accord, which he described as being silver in color, to determine whether it had struck his Nissan Altima (*Id.* at 24). One of his passengers, Person C, described the car as a gray Honda (CCRB Ex. 4 at 12, 19). Person C told Person A to move away from the car because it was smoking (*Id.* at 16, 23).

At approximately 1555 hours, near the intersection of Clinton Avenue and Fulton Street, Respondent Martinez saw Person A standing in the middle of Clinton Avenue (T. 31, 61, 95). Respondent Martinez saw someone point at Person A and yell, "That's the guy; he's got a gun" (T. 35-37, 96, 113-114). At about the same time, Person A heard several people warning that the Honda Accord was "about to blow" (CCRB Ex. 2 at 3, 19, 27-28). A then entered his gray Nissan Altima in an attempt to drive it away from the zone of danger (CCRB Ex. 2 at 3-4; CCRB Ex. 4 at 16, 23; T. 32-34, 37, 62, 96). Person C described Person A's car as a light gray (CCRB Ex. 4 at 19). Martinez ran toward the Nissan Altima, running past the Honda Accord, and demanded that Person A stop the car and step out of it (T. 33, 96). Respondent Martinez and Respondent Lambert both

[1] The car bore New York license plates.

had their firearms out and pointed at Person A[2] (T. 98-99, 109, 111; CCRB Ex. 3 at 5, 19, 22; CCRB Ex. 4 at 17, 19, 26, 27, 30; CCRB Ex. 5 at 24-25, 29). When Person A did not immediately exit, Martinez

pulled him from the vehicle (T. 34, 66, 84; CCRB Ex. 4 at 30; CCRB Ex. 5 at 14-15, 27, 29). The Nissan Altima, with its transmission still in drive, continued rolling down Clinton Avenue until it collided with another vehicle on the west side of the street (CCRB Ex. 2 at 4).

At the same time Respondent Martinez was interacting with Person A, and unbeknownst to either Respondent, the driver of the Honda Accord got out of the car, dropped his jacket and ran southbound on Clinton Avenue toward Atlantic Avenue (CCRB Ex. 4 at 19, 42; CCRB Ex. 5 at 23-24, 31). Person D did not see the driver of the Honda flee, but later observed the police recovering the jacket the driver dropped (CCRB Ex. 3 at 40). Individual 1 who was a passenger in the Honda Accord, also exited the vehicle, but fell to the ground due to an apparent injury (CCRB Ex. 5 at 24, 30, 31).

Once Person A was removed from the Nissan Altima, Respondent Martinez placed him on his stomach in the street; Respondent Lambert then handcuffed Person A and knelt over him (T. 37, 85-86, 99). As Respondent Lambert detained Person A, he made a profane comment to him, stating in and sum substance, "You could have fucking ruined somebody's life" (T. 116-117; CCRB Ex. 2 at 45). When Person A responded that he did not do anything, Lambert said, "Are you kidding me, you ran the light" (CCRB Ex. 2 at 71).

[2] I note that at trial Respondent Martinez did not recall whether he or his partner drew their firearms. Respondent Lambert confirmed to the Tribunal that he did have his firearm drawn, but did not recall whether his partner also drew his firearm until confronted with his January 2018 CCRB interview statement where he had confirmed that both he and Respondent Martinez had their firearms out (T. 38, 64, 84, 98, 109-12). I do not find Respondents' lack of specific recollection on this point to be a deliberate attempt to mislead the Tribunal, but instead somewhat understandable given the passage of time and variance in individual memories. The record on the whole, with the testimony of Respondent Lambert and the statements of multiple other eyewitnesses, does, however, support a finding that both Respondents drew their firearms.

Respondent Martinez then approached the Honda Accord which was on the opposite side of Clinton Avenue (T. 38-39, 86-87; CCRB Ex. 7). Respondent Lambert described the car as light gray (T. 106-108; CCRB Ex. 8). As Respondent Martinez walked around it, he observed Individual 1 laying on the sidewalk (T. 39-40). Individual 1 told Respondent Martinez that he had been a passenger in the Honda; that the driver had exited the car in possession of a firearm; and that the driver had fled toward Atlantic Avenue (T. 68-69). Respondents did later recover a multicolored jacket near the Honda Accord. At that point, Respondent Martinez returned to Respondent Lambert and Person A. Respondents contacted a supervisor, whom they briefed on their observations. After a discussion with Respondents, the supervisor directed them to release Person A (T. 41-42, 103).

It is undisputed that Person A did not possess a firearm and was not the operator of the vehicle that Respondents began pursuing in the vicinity of Lafayette and Clinton Avenues. It is also undisputed that Respondents did not present evidence of physical descriptions of the two occupants of the Honda Accord. Finally, it is undisputed that Respondents did not notice the plates on either car at the time they were in the process of apprehending Person A.

At issue in this case is whether Respondents had sufficient legal authority to point their weapons at Person A and to place him under arrest. Also at issue is whether Respondent Lambert was discourteous to Person A in that he used profane language toward him. Based upon the credible, relevant evidence in the record, I find both Respondents Not Guilty of Specifications 1 and 2 in Disciplinary Cases No. 2018-19002 and 2018-19003. I further find Respondent Lambert Not Guilty of Specification 3 in Disciplinary Case No. 2018-19002.

Disciplinary Case No. 2018-19002
Disciplinary Case No. 2018 19003

Specification 1: Pointing a Gun Without Police Necessity

I find the CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondents pointed their firearms at Person A and the passengers in his car without police necessity.

Patrol Guide procedure 221-01 sets forth an objective standard for analyzing the use of force:

> The reasonableness of the use of force is based upon the totality of the circumstances known by the MOS at the time of the use of force. The Department examines the reasonableness of force viewed from the perspective of a member with similar training and experience placed into the same circumstances as the incident under investigation.

(P.G. 221-01, p.2). The same Patrol Guide procedure addresses a police officer's decision whether to draw a firearm:

> The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present.

(P.G. 221-01, Note, p.3)

In this case, Respondent Martinez testified credibly that as he entered the intersection of Clinton Avenue and Fulton Street, he heard people shouting, "[That's] him, he's got a gun" and pointing at Person A. Martinez then saw Person A enter a car and attempt to drive away. Martinez also observed pedestrians on either side of Clinton Avenue south of the intersection (T. 33-37, 64, 67). Finally, Respondent Martinez and Respondent Lambert possessed a reasonable belief that

each had seen a firearm in a car that they had spent the past few minutes chasing at a distance, and then observed said car drive in the direction of the same intersection.

Based upon the totality of the circumstances, it was reasonable for Respondent Martinez and Respondent Lambert to draw their weapons. While it is true that Respondents' belief that Person A was the individual who had originally possessed the firearm they saw during the car stop was mistaken, the report by the unidentified citizen(s) that Person A had a gun and that he ran to

enter a similar gray sedan provides a reasonable and articulable basis for Respondents' drawing their weapons without regard to the observations which preceded the car chase (*see Disciplinary Case No. 2017-17005* [March 27, 2018][Respondent found not to have used excessive force when he drew his weapon and pointed it at a group of five individuals who were running towards him and other police officers who were effecting an arrest. Approximately 20 police officers responded to calls for assistance, including 10-13s, in connection with a stolen vehicle pursuit. The vehicle crashed at a gas station at 0100 hours, drawing a crowd of approximately 30 civilians]).

Even if Respondents' drawing of their weapons under the circumstances presented here was found to lack a sufficient factual basis, I find that they operated in good faith and in furtherance of their general law enforcement responsibilities. There can be no greater professional challenge to a police officer than the decision of how to respond to a report of a "man with a gun" where no firearm is visible, particularly when they have knowledge that a suspect is carrying a weapon. Such a scenario immediately places public safety at risk and calls upon the police officer to decisively but conscientiously enter a place of potential danger.

In this case, Respondents initiated a car chase after seeing a firearm in a car during a routine car stop, which car then fled the scene. Due to the speed of the fleeing vehicle, Respondents lost sight of it in the distance. The car chase ended in a multi-car accident at a busy intersection. By the time Respondents arrived at the intersection, they were presented with several damaged vehicles and a crowd of pedestrians. As they exited their vehicle, they were alerted to the presence of a firearm and a potential suspect was pointed out to them. That potential suspect then entered a vehicle and started the engine. Under these circumstances, Respondents would have been derelict in their duties had they not operated on the assumption that they were attempting to stop an individual who possessed an illegal firearm. The display of their weapons until they were able to better assess the situation and isolate the potential danger from ripening into an actual threat was therefore reasonable.

Accordingly, I find Respondents Not Guilty of Specification 1 in Disciplinary Cases 2018-19002 and 2018-19003.

Specification 2: Arrest Without Sufficient Legal Authority

I find the CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondents arrested Person A without sufficient legal authority. Even if I had found that Respondents lacked a sufficient legal basis for an arrest, I would nevertheless find that such an arrest would not constitute actionable misconduct in this case for the reasons set forth below.

Respondents credibly testified that they observed a vehicle commit one, and perhaps two, Vehicle and Traffic Law violations; they, therefore, had probable cause to stop the vehicle to address those violations (*People v. Robinson*, 97 N.Y.2d 341 [2001]; *see People v. Bacquie*, 154

A.D.3d 648 [2d Dept. 2017][excessively tinted windows], *People v. Sloane*, 208 A.D.2d 777 [2d Dept. 1994][improper license plate]). Once Respondents conducted a lawful stop of the Honda Accord, they each observed the presence of a firearm inside the car from lawful vantage points. At that point, having made these observations, Respondents had probable cause to believe that the occupants of the vehicle possessed a firearm in violation of Article 265 of the Penal Law

In this case, Respondent Martinez testified that he and Respondent Lambert conducted a car stop of a "gray vehicle" in which he observed, through the rear passenger window, the handle of a semi-automatic firearm in the center console. Respondent Lambert testified that he too observed a firearm in the cup-holder of the Honda Accord through the open driver's side window. I find these observations credible and consistent with Respondents' conduct throughout the episode and further corroborated by the statement against penal interest made by Individual 1 at the scene: that he had been a passenger in the car; that the driver had taken the firearm; and that the driver had fled toward Atlantic Avenue. Furthermore, the dangers to the public, as well as to Respondents, inherent to a vehicular pursuit, of which they were no doubt aware, weigh heavily in favor of crediting their independent observations of a firearm.

Once Respondents arrived at the scene of what they believed to be a vehicular accident between the vehicle they were pursuing and other vehicles, Respondent Martinez saw an unidentified person point to A and assert that he had a firearm. Respondent Martinez then saw Person A move to a vehicle, enter it and start the engine.

Under these circumstances, if the facts were as Respondents believed them to be, they would have had probable cause to believe that Person A possessed a firearm; as such, Respondents could have lawfully effected a warrantless arrest.

CCRB argued during the trial that because: (1) Respondents had no physical description of the occupants of the Honda Accord; and (2) the Honda Accord being pursued was a distinctly different vehicle from the Nissan Altima Awas removed from, Respondents *ipso facto* lacked probable cause to arrest him. This argument appears to conflate making an arrest on the basis of facts which later turn out to be mistaken with an arrest based upon the absence of sufficient facts. As stated, this argument misapprehends the law.

Under Criminal Procedure Law Section 140.10, a police officer may arrest a person for any crime "when he has reasonable cause to believe that such person has committed such offense in his presence" (N.Y. Crim. Proc. §140.10). The Supreme Court of the United States has opined that the probable cause standard "is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances" (*Maryland v. Pringle*, 540 U.S. 366, 371 [2003]). New York courts have concurred, holding:

> "[A]n arrest need not be supported by information and knowledge which, at the time, excludes all possibility of innocence and points to the defendant's guilt beyond a reasonable doubt. As the very name suggests, probable cause depends upon probabilities, not certainty."

(*People v. Sanders*, 79 A.D.2d 688 [2d Dept. 1980][citations omitted]). Another court stated the concept of probable cause:

> "requires a pragmatic analysis of 'everyday life on which reasonable and prudent men, not legal technicians, act.' It is to be viewed from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training"

(*United States v. Davis*, 458 F.2d 819, 821 [D.C. Circ. 1972][citations omitted] *quoting Bell v. United States*, 254 F.2d 82, 85 [D.C. Circ. 1958] and *Brinegar v. United States*, 338 U.S. 160, 175 [1949])

In the view of the Tribunal, in the situation Respondents found themselves in, it would have been unreasonable to expect them to have undertaken a visual inspection of the scene until they observed the Honda Accord, then compared its appearance with that of any surrounding vehicles in order to exclude the possibility of a misidentification, before approaching the vehicle and refocusing their investigation on the fleeing suspects and the firearm. Such prudence would have been appropriate had they been conducting static surveillance on a vehicle suspected of being an instrumentality of a crime. Instead, this was a dynamic situation which occurred over 0.3 miles, at high speed, and which culminated in a crowd of civilians. The urgency of addressing the unidentified citizen's pointing out of Person A and claim that he had a gun rendered such an unhurried assessment of the scene impracticable.

Assuming for the sake of argument that Respondents had simply been happening by the intersection of Clinton Avenue and Fulton Street and an unidentified bystander pointed at Person A, standing in the middle of Clinton Avenue, stating, "[That's] him, he's got a gun," followed by Respondents' observation that Person A entered a vehicle, they would have had reasonable suspicion to believe he was armed and about to leave the scene, which would warrant them using force to detain him, even including a display of their firearms (*see People v. Chestnut*, 51 NY2d 14, 18 [1980]). The potential danger to the public presented by a person with a firearm in a crowded area is another factor weighing in favor of conducting a stop (*see People v. Rich*, 206 A.D.2d 443 [2d Dept. 1994][crowded restaurant], *In re Dequon D.*, 201 A.D.2d 275 [1st Dept. 1994][subway platform], *People v. Mitchell*, 196 A.D.2d 401 [1st Dept. 1993][bus terminal]).

Indeed, neither the application of handcuffs nor the display of a weapon is dispositive of whether an otherwise lawful stop has transformed into an arrest (*see People v. Allen*, 73 N.Y.2d 378 [1989], *People v Davis*, 161 A.D.2d 602 [2d Dept. 1990]). In this case, however,

Respondent Martinez handcuffed Person A with Respondent Lambert's assistance and left him lying on his stomach in the middle of the street. In his testimony before the Tribunal, Respondent Martinez asserted that he placed Person A under arrest for Criminal Possession of a Weapon (T. 37, 85-86, 99).

Accordingly, the actions taken by Respondents were prudent and cautious based upon what they knew and what they could reasonably believe based upon their training and experience. The facts presented in this case may be distinguished from previous cases in which this Tribunal has found respondents guilty of making arrests on the basis of insufficient legal authority (*compare Disciplinary Case No. 2016-15945* [July 9, 2018][Respondent stopped and arrested individual for disorderly conduct after claiming he made simulated gunshot sounds with his mouth]; *Disciplinary Case No. 2014-12377* [Nov. 20, 2015][Respondent arrested individual for obstructing governmental administration, resisting arrest and disorderly conduct based upon his general refusal to obey Respondent's commands and his recording of Respondent's actions during an arrest]).

Based upon the foregoing, I find Respondents Not Guilty of Specification 2 in Disciplinary Cases 2018-19002 and 2018-19003.

Good Faith

I find in the alternative that if Respondents lacked sufficient legal authority to place Person A under arrest, their alleged misconduct would not be actionable in this matter, as their judgments were based upon reasonable mistakes made in good faith.

In this case, there is no dispute that Respondents' beliefs about Person A's possession of a firearm were mistaken. Person A was not the driver of the Honda Accord, which Respondents had

been pursuing lawfully. The Honda Accord was silver in color, despite Respondents' description of the car as gray. The Nissan Altima was, in fact, gray, but bore New York license plates, while the Honda Accord bore North Carolina license plates.

The dispositive issue then is whether their actions constitute actionable misconduct. This Tribunal has long held that where an officer's actions "were undertaken by the officer in good faith and in furtherance of his general law enforcement responsibilities, they are not subject to disciplinary punishment even if subsequently found to be beyond the bounds of accepted constitutional law'" (*Disciplinary Case Nos. 2014-11639 & 11640* [June 17, 2015], quoting *Police Dep't v. Wang* OATH Index *No. 657/98* [Jan. 12, 1998], citing *Police Dep't v. Dowd*, OATH Index *No. 1189/90* [Oct. 5, 1990]). The mistake, however, must be reasonable. "The Fourth Amendment tolerates only reasonable mistakes, and those mistakes, whether of fact or law, must be objectively reasonable" (*Heien v. North Carolina*, 135 S.Ct. 530 [2014]).

Based upon the totality of the evidence, I find that Respondents' decisions to arrest A, as well as to draw their weapons and point them at him during the encounter, though based upon a mistake, were made in good faith. Drawing all reasonable inferences from the credible evidence in the record, I make three findings which I believe constitute compelling evidence of this good faith.

The first finding is based upon the factual assertions made by two witnesses, Person B, the bus driver, and Person C, one of the passengers in Person A's car, about the Honda Accord and its occupants. They both told investigators that they observed a man exit the Honda Accord (located on the east side of Clinton Avenue) and run *while Respondents were pointing their firearms at Person A and removing him from the Nissan Altima* (located on the west

side of Clinton Avenue)(emphasis added). These factual assertions, made by two percipient witnesses, were further corroborated by Individual 1 admission on the scene, in close physical proximity to the Honda Accord and temporal proximity to the accident. Individual 1 admitted that he was in the Honda Accord with the driver, who fled in possession of the firearm. It defies common sense to believe that Respondents would have pursued a car which they believed had a firearm in it, to finally catch up with the car they believed they were pursuing and then to deliberately approach the wrong man in the wrong car, conscious of the fact that the true suspect in possession of the firearm was fleeing the scene.

The second finding is based upon the verbal exchange between A and Respondent Lambert after A was handcuffed. According to Person A, when Respondent Lambert admonished him for his supposed recklessness, he asserted that he had done nothing. Respondent Lambert then replied, *"Are you kidding me, you ran the light"* (emphasis added). I find this statement to be persuasive evidence of Respondent Lambert's then state of mind: essentially, he articulated his belief that Person A had been the driver of the vehicle they had been pursuing, albeit mistaken, and that the car he had been pursuing had run a red light, which was true.

Finally, the credible, relevant evidence in the record supports a finding that the actual color of the Honda Accord was not so distinct from that of Person A's Nissan Altima to render Respondents' mistaken belief that the latter vehicle was, in fact, the vehicle they had been pursuing, unreasonable. While there is no dispute that the Honda Accord is described as a silver vehicle in the accident report completed after the car chase and arrest of Person A, Person B, Person C, and both Respondents described the car as gray (T. 28, 47-48, 90; CCRB Ex. 4 at 12, 19; CCRB Ex. 5 at 6). In contrast, Person C described Person A's car as a light gray and Person B described it as a dark sedan (CCRB Ex. 4 at 19; CCRB Ex. 5 at 14-15, 27).

While it could be argued that Person C because of his association with Person A, might be biased toward his friend and likely disposed to support his description of the Honda as silver, his description instead supports the observations of both Respondents. Besides, Person B, a neutral third-party whose only involvement was as an unwilling participant in the vehicular accident, similarly described the Honda, corroborating Respondents and Person C. Accordingly, I find that Respondent Martinez's focus on Person A's Nissan Altima, while running past the very car he had been pursuing, was not unreasonable under the circumstances presented in this case. It was also possible that the suspect could have run to a different car to escape.

Based upon the alternative finding set forth above, I find Respondents Not Guilty of Specification 2 in Disciplinary Cases 2018 19002 and 2018-19003.

Disciplinary Case No. 2018-19002
Specification 3: Discourtesy

I find that CCRB has failed to meet its burden of proof by a preponderance of the relevant, credible evidence that Respondent Lambert was discourteous to Person A. Respondent Lambert admitted during his testimony that he told Person A, "You could have fucking killed somebody" (T. 116-117). This Tribunal has previously excused otherwise offensive language uttered by Members of Service when amid violent confrontations or stressful encounters (*see Disciplinary Case Nos. 2015-14616, 2015-14617* [Dec. 19, 2016]).

At the time this statement was made, Respondent Lambert had just engaged in a high-speed car chase after a fleeing suspect who possessed a firearm. By the time he and Respondent Martinez reached the intersection of Fulton Street and Clinton Avenue, the car they had been chasing had collided with several other vehicles, creating a somewhat chaotic scene.

Finally, upon Respondent Lambert's arrival at the intersection, they heard someone shout that a man had a gun. which could objectively raise their level of anxiety, especially considering the observation of a firearm they made during the car stop.

I note that the expletive was not used to disparage Person A or wielded in an act of verbal aggression. While it would have been preferable that Respondent Lambert display greater reticence in the expression of his emotions, under the circumstances present here, I find that such shortcoming was excusable.

Accordingly, I find Respondent Lambert Not Guilty of Specification 3.

Respectfully submitted,

Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

MAY 05 2020

DERMOT SHEA
POLICE COMMISSIONER