POLICE DEPARTMENT

May 2, 2024

In the Matter of the Charges and Specifications	:	
- against -	:	
Police Officer Joshua Navarro Tax Registry No. 957891 Warrant Section	:	Case No. 2022-25965
Detective Nicki Canady Tax Registry No. 960316 Intelligence Bureau	:	Case No. 2022-25967

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

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

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

For Respondent Canady: Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
White Plains, NY 10279

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2022-25965

1. Police Officer Joshua Navarro, on or about January 7, 2021, at approximately 0126 hours, while assigned to the 75 Precinct and on duty, in the vicinity of Pacific Street and Buffalo Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he stopped [redacted] without sufficient legal authority.

   P.G. 212-11, Page 6, Paragraph 20 — INVESTIGATIVE ENCOUNTERS

2. Police Officer Joshua Navarro, on or about January 7, 2021, at approximately 0126 hours, while assigned to the 75 Precinct and on duty, in the vicinity of Pacific Street and Buffalo Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked [redacted] without sufficient legal authority.

   P.G. 212-11, Page 8, Paragraph 36 — INVESTIGATIVE ENCOUNTERS

3. Police Officer Joshua Navarro, on or about January 7, 2021, at approximately 0126 hours, while assigned to 075 PCT and on duty, in the vicinity of Pacific Street and Buffalo Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he searched [redacted] without sufficient legal authority.

   P.G. 212-11, Page 8, Paragraph 40 — INVESTIGATIVE ENCOUNTERS

4. Police Officer Joshua Navarro, on or about January 7, 2021, at approximately 0126 hours, while assigned to the 75 Precinct and on duty, in the vicinity of Pacific Street and Buffalo Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he failed to provided [redacted] with a business card without police necessity.

   P.G. 203-09, Page 1, Paragraph 4
   now encompassed by A.G. 304-11 — PUBLIC CONTACT COMPLIANCE WITH NYC RIGHT TO KNOW ACT

Disciplinary Case No. 2022-25967

1. Detective Nicki Canady, on or about January 7, 2021, at approximately 0126 hours, while assigned to PBBN SU and on duty, in the vicinity of Pacific Street and Buffalo Avenue,

Kings County, abused her authority as a member of the New York City Police Department, in that she stopped [redacted] without sufficient legal authority.

P.G. 212-11, Page 6, Paragraph 20 — INVESTIGATIVE ENCOUNTERS

2. Detective Nicki Canady, on or about January 7, 2021, at approximately 0126 hours, while assigned to PBBN SU and on duty, in the vicinity of Pacific Street and Buffalo Avenue, Kings County, abused her authority as a member of the New York City Police Department, in that she frisked [redacted] without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 36 — INVESTIGATIVE ENCOUNTERS

3. Detective Nicki Canady, on or about January 7, 2021, at approximately 0126, while assigned to PBBN SU and on duty, in the vicinity of Pacific Street and Buffalo Avenue, Kings County, abused her authority as a member of the New York City Police Department, in that she searched [redacted] without sufficient legal authority.

P.G. 212-11, Page 8, Paragraph 40 — INVESTIGATIVE ENCOUNTERS

4. Detective Nicki Canady, on or about January 7, 2021, at approximately 0126, while assigned to PBBN SU and on duty, in the vicinity of Pacific Street and Buffalo Avenue, Kings County, abused her authority as a member of the New York City Police Department, in that she failed to provided [redacted] with a business card without police necessity.

P.G. 203-09, Page 1, Paragraph 4
now encompassed by A.G. 304-11 — PUBLIC CONTACT COMPLIANCE WITH NYC RIGHT TO KNOW ACT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on March 6, 2024. Respondents Navarro and Canady, through their counsel, entered a plea of Not Guilty to the charged misconduct. The Civilian Complainant Review Board (hereinafter "CCRB") called the complainant, [redacted], as a witness and offered video evidence in the form of one cell

phone video recorded by [redacted] and the Body-Worn Camera (hereinafter "BWC") footage from each of the Respondents and their partner, Officer Tofalli. Respondents each testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the Tribunal finds Respondent Navarro Guilty of Specifications 1-3 (unlawful stop, frisk and search) and Not Guilty of Specification 4 (failure to provide business card), and recommends the forfeiture of nine (9) vacation days.[1] This Tribunal finds Respondent Canady Guilty of Specifications 2 and 3 (unlawful frisk and search), but Not Guilty of Specifications 1 and 4 (unlawful stop & failure to provide a business card), and recommends the forfeiture of three (3) vacation days.

ANALYSIS

The following is a summary of the relevant facts that are undisputed. On the night of January 7, 2021, Respondents Canady and Navarro, while assigned to the Brooklyn North Public Safety Team, were patrolling the northern part of Brooklyn. At approximately 0126 hours, Respondents Canady and Navarro, along with their partner Officer Tofalli, were traveling in an unmarked police vehicle in the vicinity of the Kingsborough Public Housing area. Respondents observed a male (later identified as the complainant, [redacted]) walking through the Kingsborough Housing complex, who appeared to quicken his pace as soon as he realized that there were police officers in the area. They quickly lost sight of [redacted] because he "disappeared" behind a wall that led to a set of stairs. Respondents did not take any police action at this point in regards to [redacted], but rather continued patrolling the area. A short time

[1] This is the second of three matters in which Respondent Navarro appeared before me in March 2024. The matters were adjudicated separately and will be addressed in separate decisions.

later, [redacted] reappeared within view of Respondents and at this point, they noticed "a bulge in his pocket."

Respondent Navarro exited the police vehicle, identified himself and approached [redacted]. [redacted]. Respondent Navarro grabbed [redacted]'s pocket and as he did so, [redacted] pushed his hand and backed away from Respondent Navarro. [redacted] informed Respondent Navarro that the item in his pocket was his wallet. Respondent Navarro continued to attempt to grab [redacted]'s pocket and a brief struggle ensued.

Respondent Canady then exited the police vehicle to assist Respondent Navarro. Respondent Canady approached [redacted] and Respondent Navarro asked her to check his pocket. Respondent Navarro held [redacted] while Respondent Canady searched his pocket and confirmed that the bulge was not a weapon. Immediately after searching [redacted], Respondent Canady offered to give him a business card. Respondent Canady searched the police vehicle for a business card, but could not find one. Respondents and Officer Tofalli each provided their names and shield numbers to [redacted]. [redacted] was audibly angry after this police interaction and cursed at the officers before departing the scene.

[redacted] testified before this tribunal regarding the events that transpired on January 7, 2021. He testified that on the date in question, at approximately 01:25 he was walking by himself in the "Kingsborough Projects." He remembered it being cold outside, and that he was wearing a black puffer coat. (Tr. 13) As he was leaving the Kingsborough Projects, he recalled a car coming up the wrong side of the block on the sidewalk. At the time, he was unaware it was a police car. On cross-examination, he acknowledged it is not uncommon to see cars driving on the sidewalk. (Tr. 24) [redacted] tried to cross the street so as not to be in the car's path. As he started crossing the street, the car continued moving closer until he heard the

sound of a car door. [redacted] turned around and observed a male police officer (later identified as Respondent Navarro) approaching him. He conceded that when Respondent Navarro exited the car and was approaching, asking [redacted] to stop, he did not stop walking. He instead put his hands up as he was backing up, asking "why." He told Respondent Navarro not to touch him, but Respondent Navarro began asking what he had on him and grabbed him. [redacted] had one hand in the air and the other holding his phone, when Respondent Navarro approached. (Tr. 15-16, 33)

According to [redacted], he informed Respondent Navarro that the only thing he had in his pocket was his wallet, but Respondent Navarro proceeded to search him anyway. Once Respondent Canady approached him, [redacted] recalled that they proceeded to check every pocket he had. (Tr. 20) He recalled Respondent Canady touching inside his pants between his underwear and his skin. He felt as though he was being sexually assaulted, though he admitted he was not strip searched. (Tr. 50, 54) He was never informed why he was stopped or searched, nor did the officers answer him after he asked multiple times regarding why he was stopped.

After the search, [redacted] requested a business card. He was informed that the officers ran out of business cards. According to his testimony, [redacted] was not given a generic card that was filled in nor was he given paper to write the information down on. (Tr. 21)

When asked at trial what he was doing with his cell phone, [redacted] responded that he noticed the cops "leaving the projects" at the same time he was leaving and decided to "record the situation." He was recording his shadow to be inconspicuous, in order to not be obvious that he was recording. [redacted] testified that he records himself walking in the street any time he feels unsafe and estimated he has done so regularly. (Tr. 17, 25-26, 39)

CCRB's Exhibit 1- Cell Phone Video Recording by [redacted]

The first 20 seconds of the video is of [redacted]'s shadow and the sidewalk as he is walking.

00:23-00:25: A male voice can be heard saying, "Police, Police, Police," as [redacted] turns to his right.

00:25-00:26: An officer comes into the frame (later identified as Respondent Navarro), wearing a mask and a hat, with his arms stretched out in front of him and his hands out. He says to [redacted] "Don't move your hand, don't move your hand."

00:27-00:32: Respondent Navarro moves closer. [redacted] asks "What happened?" Respondent Navarro moves his right hand towards [redacted] and bends. It appears as though he begins feeling [redacted]'s left side. [redacted] begins backing away. Respondent Navarro tells him, "Relax." [redacted] states, "don't touch me."

00:33-00:35: [redacted] continues moving backwards while Respondent Navarro continues moving toward him. He informs Respondent Navarro that he is recording.

00:36-00:37: [redacted] tells the officer again not to touch him. Respondent Navarro, keeping his arms outstretched towards [redacted], asks if he has any weapons and warns him that he's about to back up into a car.

00:38-00:39: Respondent Navarro grabs [redacted], saying "stop, stop, stop" and begins frisking him.

00:40-00:44: [redacted] again tells the officer not to touch him. Respondent Navarro asks, "What is this? Is this your wallet?" [redacted] answers, "yes."

00:45-00:50: [redacted] asks again, "Why are you touching me? Get off of me." Respondent Navarro states he's just "making sure. Stop."

00:53-00:58: A female officer (later identified as Respondent Canady) approaches and tells [redacted] to "calm down." Respondent Navarro turns on his BWC and continues the frisk.

00:59-01:01: Respondent Navarro acknowledges to Respondent Canady that he thinks it is a wallet in [redacted]'s pocket, and says, "but I'm gonna double check."

01:07-01:13: Respondent Navarro tells Respondent Canady to "check it." She continues searching [redacted].

01:15- 01:24: Respondent Canady asks if [redacted] would like a business card. He says yes. Respondent Canady walks toward the police car.

01:25-01:27: [redacted] says he wants a business card from Respondent Navarro as well. Respondent Navarro points to his name and shield, and says, "take down my name and number."

01:28-02:04: [redacted] asks several times for a business card. Respondent Canady indicates she is out of business cards. Respondents Navarro and Canady, as well as their driver (later identified as Officer Tofalli) provide the information to [redacted] on video. [redacted] can be heard cursing and using profane language before the interaction concludes.

At trial, Respondent Navarro testified that on the night in question he was assigned to the Brooklyn North Public Safety Team which included Respondent Canady and Officer Tofalli. He stated that they were patrolling "high crime areas" in Brooklyn North. At approximately 0055 hours, while on patrol in an unmarked police vehicle, Respondent Navarro noticed [redacted] in the courtyard area of the Kingsborough Public Housing project between the buildings. [redacted] was the only person in the courtyard at that hour so he caught his eye. (Tr. 65-67)

Respondent Navarro described [redacted] as wearing a jacket and that he had his hands in his pockets with his "elbows flared out" to the sides (Tr. 67-68) He also noted that when [redacted] saw them, he quickened his pace. He then recalled that [redacted] hurriedly went down a staircase and out of their view. Although Respondent Navarro lost sight of [redacted], he and his team remained at the housing complex and continued patrolling the area. (Tr. 65, 67-69)

Respondent Navarro estimated that within less than five minutes, [redacted] reappeared in their line of sight. At a distance of approximately 30 feet away, Respondent Navarro stated that he saw [redacted] "notice the car on the sidewalk, he cuts into the street and walks across to get away from us." (Tr. 69-70) According to Respondent Navarro, nothing about [redacted]'s posture changed, but because he was briskly walking away from their police vehicle, Respondent Navarro could not see his hands. (Tr. 70-71)

At this time, Respondent Navarro exited his vehicle and attempted to get [redacted]'s attention by calling out to him, causing him to stop and face Respondent Navarro. Respondent

Navarro testified that when [redacted] turned to face him, he could see a cell phone in one hand and his other hand is in his pocket. (Tr. 72) Respondent Navarro then instructed [redacted] not to move his hand (referring to the one inside his pocket) because he could see that "there [was] an object weighing down to the opposite side of where he [was] holding his cell phone." (Tr. 74)

According to Respondent Navarro, as he approached [redacted], he backed away from him and Respondent Navarro "tr[ied] to get into a position where I can get, squeeze his pocket." When asked why he wanted to check his pocket, he responded, "his left arm is still cradled in his pocket and there's a heavy object pointing, I guess it would be toward the ground in his pocket." (Tr. 75) Respondent Navarro was able to feel the outside of the pocket, but [redacted] pushed his hand away while informing Respondent Navarro that the object in his pocket was a wallet. (Tr. 76-77)

Despite the fact that [redacted] claimed it was a wallet, Respondent Navarro pursued the search because according to him, "people are not forthcoming when they are in possession of a weapon and will say whatever to try to throw you off of the path." He further asserted that:

> While you're frisking somebody, the purpose of the frisk is to determine what the object is. You're not going in the pocket to search. And people lie. You have to conduct your investigation until you have enough belief in your mind that the object is what it is, either whether it just be a wallet or a gun or knife or weapon. (Tr. 77)

Respondent Navarro testified that as he was attempting to grab [redacted]'s pocket, he began fighting him. At this point Respondent Canady walked over to them to assist. Respondent Navarro asked Detective Canady to confirm what the object was and they ultimately determined that it was not a weapon. (Tr. 78)

Respondent Navarro further testified that immediately after this investigative encounter, Respondent Canady offered [redacted] a business card. She went to the car to procure a

business card, but there were none in the car. Seeing that they did not have business cards to provide to [redacted], each of the officers on scene provided [redacted] with their name and shield number so that he could memorialize it on his cell phone recording. (Tr. 78-79, 98-99) This testimony was corroborated by the video footage captured on CCRB's Exhibits 1, 2 and 3.

Respondent Canady's testimony was substantially similar to Respondent Navarro with few deviations. She testified that she noticed [redacted] walking through the courtyard of the Kingsborough housing complex and according to her, when he saw them, he had a "nervous" look on his face. She further elaborated that "his eyes got wide, he grabbed the middle of his waistband and pulled his jacket close together and he started to walk fast." (Tr. 109) Respondent Canady added that when they were able to drive closer to [redacted], she observed a "bubble" in his pocket. Shortly thereafter, [redacted] "disappeared behind [a] wall" and walked down a set of stairs at which time they lost sight of him. (Tr. 110-11)

According to Respondent Canady's estimation, less than one minute later, [redacted] reappeared in their line of sight. As he was crossing the street away from them, Respondent Canady stated that she still saw a bulge in his pocket. At this juncture, Respondent Canady suspected that [redacted] had a weapon on his person based upon "the weight and the way the individual was acting toward us." (Tr. 111-12)

Respondent Canady testified that Respondent Navarro exited the vehicle alone and tried to stop [redacted], but a scuffle ensued. She then decided to assist Respondent Navarro when she observed [redacted] being "combative" and not letting them frisk him. According to Respondent Canady, Respondent Navarro had to hold him so that they could conduct a frisk. Respondent Canady stated that she heard Respondent Navarro say that he thought it was a wallet in [redacted]'s pocket, but they still had to check him because they were unsure. (Tr. 113-14)

Respondent Canady proceeded to frisk [redacted]'s left jacket pocket and his waistband, and determined that the bulge was not a firearm. (Tr. 114-15) She could not definitively remember whether or not she searched inside his pockets, but offered, "I think I went into his pocket, felt the object to determine what it was. I didn't go straight into his pocket...I felt the outside first." (Tr. 115) She confirmed that the only object recovered from [redacted]'s clothing was a wallet. (Tr. 123) Finally, Respondent Canady denied reaching her hands under his pants or down his underwear, despite his claim to the contrary. (Tr. 115)

After this encounter, she recalled offering [redacted] a business card. She attempted to look for business cards in the police vehicle but could not find any, so she offered [redacted] her name and shield number instead. She also testified that Respondent Navarro and Officer Tofalli did the same. According to Respondent Canady, "not only did I give him an opportunity to record me, I verbally stated my information to him." (Tr. 117)

Specifications 1, 2 and 3: Stop, Frisk and Search of [redacted]

It is alleged that Respondents Navarro and Canady abused their authority as members of the NYPD by stopping [redacted] without sufficient legal authority, in violation of Patrol Guide section 212-11. The Patrol Guide places officers on notice as to their responsibilities during a street encounter with an individual. It provides guidance regarding the level of suspicion required for each type of encounter, the scope of a police officer's authority for each, and the permissible measures that may be taken to protect uniformed members of the service while also upholding civilians' constitutional protections.

It is well settled that a police officer may stop a person to search for weapons where the officer "reasonably suspects that such person is committing, has committed or is about to commit" a crime (N.Y. Crim. Proc. Law § 140.50 [1]; Patrol Guide 212-11), and when the

officer "reasonably suspects that he [or she] is in danger of physical injury." N.Y. Crim. Proc. Law § 140.50 [1], [3]; *see also* P.G. 212-11. "A stop based on reasonable suspicion will be upheld so long as the intruding officer can point to 'specific and articulable facts which, along with any logical deductions, reasonably prompted th[e] intrusion.'" *People v. Brannon*, 16 N.Y.3d 596 (2011), quoting *People v. Cantor,* 36 N.Y.2d 106, 113 (1975)

Ultimately, the touchstone in any evaluation of a street encounter between police and an individual is reasonableness. The question to be answered here is whether a reasonable officer would have acted as Respondents did, in light of the established standards of conduct, and the circumstances actually confronted by the officers in this case. I find that Respondent Navarro did not have the requisite level of suspicion to justify a stop. I further find that while Respondent Canady did not engage in the initial stop, both she and Respondent Navarro lacked sufficient legal authority to frisk and search [redacted].

Both Respondents testified that they observed a non-descript bulge in [redacted]'s jacket pocket. However, the bulge alone, "absent any indication of a weapon such as the visible outline of a gun or the audible click of the magazine of a weapon, does not establish the requisite reasonable suspicion that defendant had committed or was about to commit a crime." *People v. Ingram*, 114 A.D.3d 1290, 1293 (4th Dept. 2014), quoting *People v. Cady*, 103 AD3d 1155, 1156 (4th Dept. 2013), citing *People v. Riddick*, 70 A.D.3d 1422, 1422-23 (4th Dept. 2010). Moreover, "the mere fact that defendant was located in an alleged high crime area does not supply that requisite reasonable suspicion, in the absence of other objective indicia of criminality." *Riddick*, 70 A.D.3d at 1423. Accordingly, in the absence of any testimony which would indicate that Respondents were in fear for their safety or had other information indicative of criminality, the stop and subsequent frisk of [redacted] was not justified.

Respondent Navarro, without adequate justification, grabbed [redacted]'s pocket. It is important to note here that according to Respondent Navarro's testimony when he first observed [redacted] in the courtyard of the Kingsborough houses, he did not believe [redacted] was in possession of a weapon. (Tr. 84) It was not until he encountered [redacted] on the street a few minutes later that Respondent Navarro claims he saw "the outline of the object" which looked to him like a "handle." (Tr. 86) Respondent Navarro, however, did not provide a more specific description other than to say it was a handle of a weighted object. In reviewing the BWC footage (specifically CCRB Ex. 2), it appears that there is an object in [redacted]'s pocket, but the shape is not clearly identifiable. In addition, as depicted on CCRB's Exhibit 2 at 00:37, both of [redacted]'s hands are in the air and visible, thereby diminishing the concern that he may have his hand on a weapon.

Respondent Canady testified that she did not participate in the initial stop with Respondent Navarro and that fact is corroborated by the videos in evidence. However, she did approach them when, according to her, "a bit of a scuffle" ensued. (Tr. 112) When she approached them, Respondent Navarro told her that he believed the object in [redacted]'s pocket was a wallet, but that he needed her to confirm. Respondent Canady proceeded to frisk [redacted] and felt a "hard object" in his pocket. Respondent Canady further admitted that she went into [redacted]'s pocket after she felt this object, but she did not say that she believed the object to be a weapon. Based upon the testimony and video evidence, this Tribunal is not persuaded that either Respondent Navarro or Respondent Canady reasonably suspected that [redacted] was armed at the time they conducted the frisk and search.

Both Respondents testified that their attention was initially drawn to [redacted] because he was walking by himself, late at night in the courtyard of the housing complex,

wearing bulky winter clothing with his hands tucked in his pockets as if he were "cradling an object" and that upon making eye-contact with them, he quickened his pace in what appeared to them to be a desire to avoid interacting with them. (Tr. 82, 109) These observations, however, do not rise to the level of suspicion required under the law to justify a stop, frisk or search of [redacted]. While this Tribunal is sensitive to the need for, and recognizes the difficulties attendant upon, vigilant law enforcement efforts, it is also important to assure that such considerations do not overwhelm the constitutional safeguards which have historically ensured a civilian's right to be secure against unreasonable and unjustifiable governmental intrusions. Respondents Navarro and Canady's actions in this case constituted precisely such an unwarranted and unjustifiable intrusion upon a person's privacy and security.

For the reasons stated above, I find Respondent Navarro Guilty of Specifications 1, 2 and 3. However, I find Respondent Canady Guilty of Specifications 2 and 3 only, as she did not initiate the stop but rather became involved at the point at which the frisk and search were conducted.

Specification 4: Failure to Provide a Business Card to [redacted]

Respondents Navarro and Canady are charged with failing to provide [redacted] with a business card without police necessity pursuant to Administrative Guide 304-11. New York City's Right to Know Act (hereinafter "Right to Know Act") was legislation passed with the aim of protecting the rights of civilians during interactions with members of the Department. The intent of the law was to promote communication, transparency and accountability in everyday interactions between NYPD and the public.

A.G. 304-11[2] was implemented to ensure compliance with the Right to Know Act and requires officers to offer business cards to civilians upon the conclusion of certain law enforcement activities. These activities include investigative encounters, like this one, that do not result in an arrest or the issuance of a summons. The purpose of supplying civilians with a business card at the conclusion of such activities to ensure that they have the information needed, in writing, to identify an officer at the conclusion of an encounter.

It is undisputed that immediately after the conclusion of their investigative encounter, Respondent Canady offered [redacted] a business card as per protocol. (CCRB Ex. 3 at 01:17) When [redacted] indicated that he wanted the business card, Respondent Canady returned to the police vehicle to retrieve one. In her BWC footage, Respondent Canady seems to be looking in the police vehicle for a card, but quickly realizes there are none in the car. In the absence of a business card, Respondent Navarro and Respondent Canady (as well as Officer Tofalli) provide [redacted] with their names and shield numbers so that he can memorialize it on the cell phone he is using to record the interaction.

This Tribunal recognizes that strict compliance with A.G. 304-11 is important to further the purpose of the Right to Know Act and that deviations from the protocol may result in punitive measures. However, based upon the evidence in the record this Tribunal finds that Respondents Canady and Navarro took the appropriate affirmative steps to provide [redacted] with the information required by the Right to Know Act and A.G. 304-11, despite their inability to provide him with a physical business card. There is no evidence in the record to demonstrate Respondents willful noncompliance with the mandates of A.G. 304-11. On the contrary, this Tribunal finds that Respondents' earnest efforts to search for and provide [redacted] with the

[2] The predecessor to A.G. 304-11, P.G. 203-09, which was in effect at the time of this case, also laid out clear obligations for officers regarding Right to Know business cards.

required information comported with a genuine proclivity to adhere with the Right to Know Act. I therefore find Respondents Not Guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondents' employment history also was examined. *See* 38 RCNY § 15-07. Information from Respondents' personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent Navarro was appointed to the Department on January 7, 2015 and Respondent Canady was appointed on January 6, 2016; neither officer has a formal disciplinary history. The CCRB recommended the presumptive penalty of three (3) days for each specification charged, to run consecutively, for a total of 12 vacation days, be imposed against each Respondent. The Tribunal agrees that there must be accountability for Respondents' lack of adherence to the guidelines set forth by the Department regarding investigative encounters. This is especially important when there has been a street encounter fraught with tension, stemming from police action lacking legal authority.

Having found Respondent Canady guilty of two of the four specifications, I find that a lesser penalty is warranted for her. With regard to Specifications 2 and 3 (frisk and search), each specification carries a presumptive penalty of three days, which would therefore amount to a total of six days. The evidence clearly demonstrates that upon her approach, Respondent Navarro verbally communicated his belief that the object in [redacted]'s pocket was a wallet.

Notwithstanding that, Respondent Canady, at the behest of her partner, conducted a frisk and search without a sufficient legal basis. However, it was also evident from the testimony adduced at trial that Respondent Canady did not initiate the stop and that her interaction with [redacted] was occasioned by her duty to back up Respondent Navarro when a struggle ensued. In addition, the frisk and search happened quickly and almost simultaneously. Moreover, at the conclusion of the interaction, Respondent Canady made efforts to decrease the hostilities of the encounter. Considering the totality of the circumstances presented in this case, I am recommending the presumptive penalty of three (3) days for each charge to run concurrently for a total of three (3) vacation days.

As for Respondent Navarro, who initiated the stop and orchestrated the frisk and search of [redacted], I find that the forfeiture of nine (9) vacation days is appropriate, three (3) for each charge, to run consecutively. Respondent Navarro's actions during this investigative encounter did not align with the guidelines proscribed by the Patrol Guide and did not meet the legal threshold necessary to justify the stop, frisk and search of [redacted]. This penalty recommendation is aimed at deterring Respondent Navarro from repeating these actions in the future and holding him accountable for his misconduct.

Respectfully submitted,

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED
JUN 18 2024
EDWARD A. CABAN
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER JOSHUA NAVARRO
TAX REGISTRY NO. 957891
DISCIPLINARY CASE NO. 2022-25965

Respondent was appointed to the Department on January 7, 2015. On his three most recent performance evaluations, he received 4.0 overall ratings of "Highly Competent" in 2022 and 2023, and was rated "Exceptional" for 2020. Respondent has been awarded 13 medals for Meritorious Police Duty and 15 medals for Excellent Police Duty

Respondent has no formal disciplinary history. He was placed on Level 1 Force Monitoring in March 2024 for having received six or more CCRB complaints over a five-year period.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE NICKI CANADY
TAX REGISTRY NO. 960316
DISCIPLINARY CASE NOS. 2022-25967

Respondent was appointed to the Department on January 6, 2016. On her three most recent annual performance evaluations, she received 4.0 ratings of Highly Competent in 2022 and 2023, and was rated "Exceptional" for 2020. Respondent has been awarded 26 medals for Meritorious Police Duty and 13 medals for Excellent Police Duty.

Respondent has no formal disciplinary history. She was placed on Level 1 Force Monitoring in February 2022 for receiving three or more CCRB complaints in a one-year period.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials