



POLICE DEPARTMENT

October 19, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-24019
Police Officer Johnathan Aponte	:	
Tax Registry No. 961020	:	
Patrol Borough Staten Island	:	

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Christine McGrath, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

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

To:

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

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Johnathan Aponte, while off-duty and assigned to Patrol Borough Staten Island Ferry Security Unit, on or about September 19, 2021, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Police Officer Aponte operated a motor vehicle while said Police Officer's ability to operate a motor vehicle was impaired by the consumption of alcohol.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

NYS VTL Section 1192(1)

OPERATING A MOTOR
VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL –
DRIVING WHILE IMPAIRED

2. Said Police Officer Johnathan Aponte, while off-duty and assigned to Patrol Borough Staten Island Ferry Security Unit, on or about September 19, 2021, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Police Officer operated a motor vehicle while said Police Officer was intoxicated.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

NYS VTL Section 1192(3)

OPERATING A MOTOR
VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL –
DRIVING WHILE INTOXICATED

3. Said Police Officer Johnathan Aponte, while off-duty and assigned to Patrol Borough Staten Island Ferry Security Unit, on or about September 19, 2021, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Police Officer refused to submit to a chemical breath test.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

NYS VTL Section 1192(4)(1)(B)

REFUSAL TO TAKE A
BREATH TEST

4. Said Police Officer Johnathan Aponte, while off-duty and assigned to Patrol Borough Staten Island Ferry Security Unit, on or about September 19, 2021, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit; said Police Officer wrongfully consumed an intoxicant to the extent that he was unfit for duty.

A.G. 304-04, Page 1, Paragraph 2

FITNESS FOR DUTY

5. Said Police Officer Johnathan Aponte, while off-duty and assigned to Patrol Borough Staten Island Ferry Security Unit, on or about September 19, 2021, engaged in conduct prejudicial to the good, order, efficiency, or discipline of the Department, to wit: said Police Officer Aponte engaged in a physical altercation with a person known to the Department.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

6. Said Police Officer Johnathan Aponte, while off-duty and assigned to Patrol Borough Staten Island Ferry Security Unit, on or about September 19, 2021, engaged in conduct prejudicial to the good, order, efficiency, or discipline of the Department, to wit: said Police Officer Aponte possessed a duplicate shield of his Department issued shield. *(As amended)*

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 17, 2023.

Respondent, through his counsel, entered a plea of Not Guilty to Specification 5, the physical altercation charge, and pled Guilty to Specifications 1, 2, 3, 4, and 6. The Department called [REDACTED]

Person A as a witness. In addition, the Department entered three Body Worn Camera (hereinafter “BWC”) videos in 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 evaluated all of the evidence in this matter, the Tribunal finds Respondent guilty and recommends a penalty consisting of the forfeiture of thirty 30 suspension days already served and 40 vacation days, one-year dismissal probation, and cooperation with counseling and ordered breath testing.

STATEMENT OF FACTS

The following facts are uncontested. On September 19, 2021, Respondent was off duty and drove into a gas station on Arthur Kill Road, within the confines of the 123 Precinct. At the hearing, Respondent admitted that he had been driving while intoxicated immediately prior to his

arrival at the gas station. **Person A** who was also present at the gas station, engaged Respondent and expressed concern that Respondent had just hit a parked vehicle. A physical altercation ensued, the details and circumstances of which are disputed. At issue here is whether Respondent punching **Person A** constitutes sanctionable misconduct.

At the time of the incident, **Person A** was employed as an Assistant District Attorney for **[]** County. On the date of the incident, he was at the gas station with his girlfriend, filling up his vehicle at one of the pumps. He testified that while at the pump, he observed a black Nissan Altima back into a parked “silver or beige” Mercury towards the back end of the gas station. The Altima then parked and **Person A** observed that the Mercury had a tennis ball sized dent to the rear bumper. (Tr. 22-23, 25).

Person A then observed a man, whom he identified in the courtroom as Respondent, “wobbling” out of the vehicle. He recalled approaching Respondent and advising him, “You know you just hit that car, right?” Respondent told **Person A** to mind his business as he walked into the store of the gas station. **Person A** then alerted the gas station attendant that the Mercury was hit. The attendant, who was the owner of the car, looked at the damage and said it was “okay” (Tr. 23-25). **Person A** observed Respondent’s shirt was buttoned incorrectly, his hair appeared disheveled, his speech was slurred and he smelled alcohol on him, leading him to conclude that Respondent was intoxicated. (Tr. 26-27, 29)

According to **Person A** he then began walking away, but Respondent called out, “See, I told you, you should have mind[ed] your fucking business.” **Person A** recounted that as Respondent made this statement, he was advancing towards him with his arms extended outward in a menacing fashion. **Person A** demonstrated Respondent’s actions in court and it appeared to this Tribunal that Respondent took an objectively defiant posture that a person adopts when

initiating physical contact. Respondent approached **Person A** and they were standing “chest-to-chest” when Respondent repeated, “I told you to mind your business. I’m a cop. Mind your business, you should have just went home and left it alone.” At that point, **Person A** pushed Respondent to “create distance between us,” reiterating that they were already chest-to-chest. The push caused Respondent to fall to the ground immediately, which **Person A** contended happened “because of how drunk he was.”

Person A stated that Respondent stood up and punched him in the face with a closed fist. He testified that he was confused as the encounter was unfolding and had pain in his face after Respondent struck him. He detailed that he told Respondent, “That’s it, now I’m definitely calling 911” and proceeded to do so. **Person A** asserted that his main concern was Respondent driving due to his visibly impaired condition. (Tr. 45)

When the officers arrived, **Person A** did not initially inform the officers that he pushed Respondent to the floor. **Person A** testified during cross-examination that when he first described the altercation he said, “He got in my face. He punched me in the face.” It is **Person A**’s contention that although he was not immediately forthcoming regarding his actions against Respondent, he did inform the Lieutenant about it just minutes after he spoke with the responding officers on the scene. (Tr. 35)

When asked by officers if he needed medical attention or if he was in pain, **Person A** stated that he was not in “substantial pain” and that he did not need an ambulance. (Tr. 39) According to **Person A**, he had swelling, redness and bruising for three or four days following the incident. He stated that although he took photos, he did not preserve them and his phone has since been destroyed. **Person A** did not take any action to reduce pain and swelling nor did he seek medical attention on the night of the incident or at any time thereafter. (Tr. 28-29, 47, 52)

Respondent testified that on September 19, 2021, he worked in the morning and went to a bar after his tour ended at 2205 hours. At the bar, Respondent recalled consuming at least three Long Island iced teas. He admitted to being intoxicated. Respondent drove his vehicle to the bar, but upon leaving, a woman whom he had met at the bar initially, drove his car home. After learning that this woman had only possessed her driver's license for about a month, Respondent stated he was uncomfortable, so they switched places. Respondent admitted at trial that he did drive while intoxicated, and that he was impaired and unfit for duty. (Tr. 57-59)

According to Respondent, he intended to drive straight home, but the woman that was with him needed to use the restroom. Respondent pulled into the gas station located on Arthur Kill Road. He attempted to park his vehicle and he claimed to be unaware that he hit a parked car until **Person A** approached him. At the time, Respondent did not think he had hit the vehicle and an argument ensued. Respondent recalled being pushed to the ground by **Person A**, causing him to hurt his leg. In response, he punched **Person A** and the two began shoving each other. **Person A** then informed Respondent that he was going to call the police. Respondent proceeded to identify himself as a police officer and told **Person A** that he would talk to the owner of the vehicle that was struck and try to settle it with him. Respondent then proceeded to show **Person A** his police officer identification to "show him that I didn't mean any malice." (Tr. 60-61)

Shortly thereafter, Respondent's supervisor, Lieutenant Malone arrived on scene. Respondent spoke with Lieutenant Malone and admitted that he was intoxicated and had driven his vehicle. (Tr. 64-65) After being arrested and brought to the 120 Precinct, Respondent was asked to take a breathalyzer test, which he refused. He also admitted at trial to being in possession of a duplicate shield on the night of the incident. He stated it was to prevent him from

losing his actual shield and that it was his belief that many members of service have duplicate shields for this very purpose. (Tr. 65-66)

The Department submitted footage captured on three different officer's BWCs. Department Exhibit 1 is Lieutenant Malone's BWC. The footage on Department's Exhibit 1 captures Lieutenant Malone's arrival on scene through this apprehension and transport of the Respondent to the precinct. Upon arrival, Officer Payne approached Lieutenant Malone and informed him of the events that transpired that night. Lieutenant Malone can be seen individually interviewing Respondent, **Person A** and the woman that left the bar with Respondent that evening. Each individual provided a similar version of events. The Respondent and the woman that he was with, claimed that **Person A** initiated the altercation.

Lieutenant Malone asked **Person A** whether he was in any pain after the alleged altercation and **Person A** responds: "No, no substantial pain." (Dept. Ex. 1 at 05:22-05:30). **Person A** adamantly denied any wrongdoing. He asserted that he only pushed Respondent when he got too close and that it was Respondent who escalated the incident by punching him.

Department Exhibit 2, Officer Mattsson's BWC, shows his initial arrival on scene and his attempt at gathering information from each of the parties involved. It is worth noting that in both Department Exhibits 1 and 2, Respondent seems to be impaired and his appearance and demeanor is consistent with the testimony provided by **Person A** at trial. Moreover, no visible injuries can be seen on **Person A**'s face in either Department Exhibit 1 or 2. Department Exhibit 3, Officer Karim's BWC, captured Respondent refusing the breath test. (Dept. Ex. 3 at 09:56:28-09:56:33).

ANALYSIS

Respondent was candid in his admissions that he was drinking and driving on the night of the incident. He added that because of his military background, he believes in integrity and it was the “right thing to do” to inform the Lieutenant. He further admitted to possessing a duplicate shield despite his knowing they are prohibited under the Patrol Guide. (Tr. 65-66)

As stated above, Respondent pled guilty to all charged misconduct except Specification 5, in which he stands charged with conduct prejudicial to the good order of the Department by engaging in a physical altercation with **Person A**.

It is uncontested that **Person A** pushed Respondent first and that Respondent punched **Person A** immediately thereafter. I credit **Person A**'s version of events that the initial push of Respondent was to “create space” between them because they were chest to chest. (Tr. 40-41) Respondent avowed that punching **Person A** was a spontaneous reaction to being pushed by him, rather than an intentional act to cause **Person A** physical injury. Although not explicitly stated by Respondent, he asserted a justification defense because **Person A** pushed him first. However, this Tribunal is unpersuaded by this defense under the circumstances presented.

First, Respondent was clearly intoxicated and his judgment was likely impaired. He then engaged in an altercation after **Person A** accurately accused him of a minor collision. Respondent was clearly incensed by the accusation made by **Person A** and overreacted by twice telling him to “mind his business,” and then advancing toward **Person A**, positioning himself “chest to chest” with him. It was Respondent's drunken aggressiveness that provoked **Person A**'s push to “create distance” between them. **Person A** was not verbally threatening Respondent, nor did attempt to physically engage with Respondent after pushing him. Instead of walking away or contacting the police himself, Respondent unnecessarily escalated the

altercation by punching **Person A** in the face. This is unacceptable behavior for a member of service.

Police officers are held to a higher code of conduct both on and off duty. Respondent's collective actions on the night in question were unbecoming of a member of service and inexcusable. He exhibited poor judgment from the moment he consumed alcohol to the point that he was unfit for duty and decided to drive while intoxicated. His misconduct was further aggravated by engaging in a preventable physical altercation caused by his anger at being told that he damaged another car.

Accordingly, I find Respondent guilty of the misconduct in Specification 5.

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. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 6, 2016, pled guilty to Specifications, 1, 2, 3, 4 and 6 and was found guilty of the misconduct alleged in Specification 5. The Department is seeking termination of Respondent, because the penalty they seek exceeds 90 days and because, in their view, the physical altercation is tantamount to an assault. Defense counsel argued that while a substantial penalty is warranted, termination is excessive under these circumstances. This Tribunal, guided by the presumptive penalty recommendations in the

Disciplinary Matrix finds that for the specifications related to the DWI incident (Specifications 1, 2 and 3) – 30 suspension days, 20 penalty days, one year dismissal probation, and cooperation with counseling and ordered breath testing is the appropriate penalty. I also find that Department’s evidence supported several aggravating factors, including collision with another vehicle and DWI (with a passenger in the vehicle) therefore an additional 5 penalty days for these aggravating factors is fitting. I further find that the penalty for being Unfit for Duty results from the same underlying course of conduct and should run concurrent with the above-mentioned penalty.

Although a penalty is warranted for the off-duty physical altercation, this Tribunal is not persuaded by Department’s contention that this misconduct is akin to an Assault in Third Degree or even Attempted Assault in the Third Degree. While Respondent’s conduct was inappropriate, it does not rise to the level which would tip the scale and warrant termination. On balance, an additional 10 penalty days should be added to the penalty recommendation above to address the misconduct.¹ This will hopefully have a deterrent effect on Respondent and communicate the unequivocal message that this behavior will not be tolerated.

Finally, with regard to Specification 6, possession of a duplicate shield, this Tribunal opines that the presumptive penalty of 5 days suffices to address this charge without being overbroad and excessively punitive. Respondent was forthcoming in his testimony regarding this specification and asserted that was not intending to use the duplicate shield for any nefarious purpose.

¹ The Disciplinary Matrix does not specifically address “off-duty physical altercations.” However, the presumptive penalty for “Non-Deadly Physical Force Resulting in No Injury” while on duty is 10 penalty days. This is instructive guidance for determining a penalty in off-duty incidents of physical force.

Based upon the foregoing, I have determined that a significant penalty is warranted for the misconduct in this matter. His misconduct, while serious, has not appeared to impact his performance of his duties and responsibilities. In addition to a substantial penalty, a period of close monitoring will ensure that further misconduct does not reoccur.

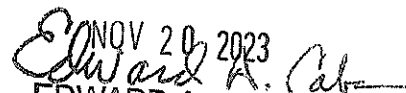
I therefore find that the appropriate disciplinary penalty for Respondent is forfeiture of thirty (30) suspension days already served, forfeiture of forty (40) vacation days and that he be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one (1) year pursuant to Section 14-115(d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings, and that he cooperate with counseling and ordered breath testing.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

NOV 20 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER JOHNATHAN APONTE
TAX REGISTRY NO. 961020
DISCIPLINARY CASE NO. 2021-24019

Respondent was appointed to the Department on January 6, 2016. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2021 and 2022, and “Meets Standards” for 2020.

Respondent has no formal disciplinary history. In connection with the instant matter, he was suspended without pay from September 19, 2021 through October 18, 2021, and placed on Level 2 Discipline Monitoring in November 2021. Monitoring remains ongoing.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials