



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :

- against - :

FINAL

Police Officer Luis Marte :

ORDER

Tax Registry No. 941288 :

OF

Manhattan Court Section :

DISMISSAL
-----X

Police Officer Luis Marte, Tax Registry No. 941288, having been served with written notice, has been tried on written Charges and Specifications numbered 2019-20278, as set forth on form P.D. 468-121, dated March 15, 2019 (amended July 1, 2020), and after a review of the entire record, Respondent is found Guilty of Specifications 1, 2, & 4, and Not Guilty of Specification 3.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Luis Marte from the Police Service of the City of New York.


KEECHANT L. SEWELL
POLICE COMMISSIONER

EFFECTIVE: 10/11/22



POLICE DEPARTMENT

June 15, 2022

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2019-20278
Police Officer Luis Marte	:	
Tax Registry No. 941288	:	
Manhattan Court Section	:	

-----X

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Samuel Yee, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Roger Blank, Esq.
136 Madison Avenue, 6th Floor
New York, NY 10016

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Police Officer Luis Marte, while assigned to the 44th Precinct, on or about March 1, 2019, improperly and without justification, used force against a prisoner in that said Police Officer repeatedly struck said prisoner.

P.G. 221-01

FORCE GUIDELINES –
TACTICAL OPERATIONS

P.G. 221-02

USE OF FORCE –
TACTICAL OPERATIONS

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Luis Marte, while assigned to the 44th Precinct, on or about March 1, 2019, while on-duty, wrongfully engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer spat at a prisoner while she was in a holding cell.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

3. Said Police Officer Luis Marte, while assigned to the 44th Precinct, on or about March 1, 2019, wrongfully made or caused inaccurate entries in a Department record, to wit: Threat, Resistance or Injury (T.R.I.) Incident Worksheet.

P.G. 203-05, Page 1, Paragraph 4

PERFORMANCE ON DUTY –
GENERAL REGULATIONS

4. Said Police Officer Luis Marte, while assigned to the 44th Precinct, on or about March 1, 2019, wrongfully made or caused inaccurate entries in a Department record, to wit: Aided Report. (*As added*)

P.G. 203-05, Page 1, Paragraph 4

PERFORMANCE ON DUTY –
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on May 10, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeants Armando Colon and Wilmer Marquez as witnesses, and introduced into evidence video footage of a precinct holding cell, and a written statement of a police officer from the Department of Homeless Services. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of Specifications 1, 2, and 4, Not Guilty of Specification 3, and recommend that he be DISMISSED from employment with the New York City Police Department.

ANALYSIS

On the evening of March 1, 2019, a homeless woman ("the prisoner") was arrested by police officers from the Department of Homeless Services ("DHS"). The prisoner was lodged inside a holding cell at the 44 Precinct in the Bronx. After causing difficulties with other jailed individuals, the prisoner was removed to the back cells of the precinct. It was there that the encounter between Respondent and the prisoner, which is the subject matter of this case, occurred.

The Department Advocate introduced into evidence video footage from the back jail cell, which shows the interaction between Respondent and the prisoner (Dept. Ex. 1). In that footage, the prisoner is escorted and placed inside the cell by a DHS officer, who removes the prisoner's handcuffs. Respondent follows behind them, and stands outside the cell with another DHS officer. The prisoner appears to be yelling at Respondent, and spits in his direction. After Respondent pulls the cell door shut, the prisoner continues to yell at him, and again spits at

Respondent. Respondent appears visibly agitated as he uses his keys to unlock the cell door, enters the cell, and rushes toward the prisoner, who has retreated onto a bench inside the cell. Respondent can be seen repeatedly swinging at the prisoner with his right hand approximately 10 times during a span of 10 seconds. Sergeant Armando Colon then enters the cell and escorts Respondent away from the prisoner. As he walks out of the cell, Respondent turns and spits once in the direction of the prisoner, before being steered away by the sergeant. (Tr. 62-67)

Neither DHS officer appeared to testify. Instead, the parties stipulated into evidence a written statement by one of the officers (Dept. Ex. 4). In that statement, Police Officer Cardwell describes how the prisoner was belligerent, calling one officer “a fucking spic,” and telling a female sergeant that she “fucked another sergeant to become a sergeant, you hoe.” The prisoner also was belligerent toward other detainees, so she was escorted to a single cell. As she was being placed inside that cell, the prisoner stated, “Why is this bald head motherfucker here,” referring to Respondent. She spat twice toward Respondent, with the second one landing on his face. Respondent then entered the cell and struck the prisoner with an open hand. Later that evening, the prisoner began to bang her own head against the cell wall, and was transported by EMS to the hospital for medical attention.

Sergeant Armando Colon testified that Respondent was the cell attendant that night. He did not witness Respondent striking the prisoner, and went to the cell only after hearing a commotion. Sergeant Colon escorted Respondent out of the cell, and asked him what happened. Respondent explained that the prisoner was “verbally belligerent” and spat in his face; in response, Respondent admitted that he “smacked her.” According to the sergeant, the prisoner was not cooperative with their investigation into the encounter with Respondent, stating only that “she deserved what she got.” The prisoner reported no injuries from this incident. However,

Sergeant Colon testified that the prisoner later injured herself in the cell, and EMS was called. (Tr. 74-76, 78-84)

Based on the information provided by Respondent, Sergeant Colon prepared a Threat, Resistance or Injury ("TRI") report (Dept. Ex. 3). In the "Reasons MOS Used Force" section on page 3 of that report, under "Defense of Self," the report indicates "Yes." In the same section, under "Overcome Resistance or Aggression," the report also indicates "Yes." (Tr. 61-62, 68-69, 76-77)

Respondent testified that when the prisoner initially was lodged in the common cell area, she was belligerent, cursing, and screaming at other prisoners, to the point where a male prisoner in another cell tried to climb a cell wall in order to hit her. As the DHS officers were moving the prisoner to the back cells, Respondent shielded her from the male who was trying to hit her. Respondent retrieved the keys to the cells and followed the DHS officers to the back. The prisoner called Respondent a "spic," and a "bald fuck," and said to him "you suck dick." (Tr. 97-101, 117)

After the prisoner was placed inside the cell and uncuffed, she spat at Respondent; the spit landed on the metal bars of the cell. Respondent testified that he closed the cell door and the prisoner spat at him a second time; this time, the spit landed on the right side of Respondent's face near his forehead. Respondent promptly used his keys to unlock the door, entered the cell, and proceeded to strike the prisoner multiple times; the first hit was an open-hand slap, but when she kicked at him he started striking her with a closed fist. Although he could not recall the exact number of blows he inflicted, Respondent conceded that he struck the prisoner approximately 10 times. Respondent said to her, "I'm a grown man, why would you spit in my fucking face?" Sergeant Colon arrived and escorted Respondent out of the cell. After exiting

the cell, Respondent spat at the prisoner, which he admitted was improper. The prisoner stood up, laughed, and told Respondent that he “hit like a bitch.” Respondent and Sergeant Colon left the area, and Respondent informed him what had transpired. (Tr. 101-06, 109-11, 118-20)

According to Respondent, the prisoner did not have any visible injuries as a result of his hitting her, nor did she complain of any injuries. Respondent insisted that he was not intending to give her “a full pounding” or to cause her bodily harm. He testified that when she spat on his face, he “felt attacked at the moment, and insulted, and just belittled.” After having reviewed video footage of what occurred, Respondent acknowledged that now he feels like his use of force was improper. (Tr. 104-06, 112, 119-20)

Later, after the prisoner had hurt herself in the cell, Respondent filled out an Aided Card. In the “Details” portion of the report (Dept. Ex. 2), Respondent wrote: “At T/P/O Deft. was brought in by DHS. Female was very combative with officers, screaming at officers, also spitting on NYPD officer. Deft. then began to strike herself against the wall and also grabbed clothing and wrapped it around her neck. EMS was called and was removed to Lincoln Hospital.” (Tr. 107, 115-16)

Specification 1 charges Respondent with improperly using force against the prisoner, in that he repeatedly struck her. Section 221-01 of the Patrol Guide states that “the primary duty of all members of the service is to protect human life.” All MOS are responsible and accountable for the proper use of force. “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life.” Any application of the use of force must be reasonable under the circumstances, and “excessive force will not be tolerated.”

It is undisputed that Respondent unlocked and entered a jail cell, where he repeatedly struck a female prisoner, first with an open hand and then with a closed fist. The video footage

in evidence shows what occurred, and Respondent conceded that he struck her approximately 10 times. At issue is whether Respondent's actions were reasonable. Under the totality of the circumstances presented here, I find that they were not.

On the one hand, the record established that the prisoner did much to initiate the confrontation, including verbally belittling Respondent and spitting in his face. The spitting was, as counsel for Respondent noted, offensive and disgusting, and Respondent was understandably nervous about possible health ramifications from being spat on.

However, it was the responsibility of Respondent, a trained police officer, to handle the situation in a professional manner. Even if the prisoner provoked him, that did not justify Respondent's excessive, violent response. As Respondent, himself, acknowledged, the prisoner was isolated in a locked cell, and Respondent could have walked away from the area. Rather than taking steps to de-escalate the situation, Respondent instead chose to unlock the cell door and enter the cell, where he repeatedly struck the prisoner about her body while she sat, defenseless, on a bench.

Police officers have a heightened duty of care toward prisoners in their custody. Under the circumstances presented here, there was no justification for Respondent's decision to enter a jail cell and rain down blows upon an unarmed female prisoner for approximately 10 seconds. The credible evidence has established that Respondent improperly used force against the prisoner. Accordingly, I find him guilty of Specification 1.

Specification 2 charges Respondent with wrongfully spitting at the prisoner while she was inside a holding cell. The video footage shows Respondent being escorted out of the cell by Sergeant Colon. Once outside the cell, Respondent turns back toward the prisoner, who is still inside the cell, and spits in her direction.

Respondent admitted that he spat at the prisoner. He, himself, acknowledged that his actions were improper. Under the circumstances presented here, there was no justification for Respondent's conduct. Accordingly, I find him guilty of Specification 2.

Specification 3 charges Respondent with wrongfully causing inaccurate entries to be made in the TRI report. Section 203-05 (4) of the Patrol Guide requires members of the service to make accurate, concise entries in Department records.

In the TRI report, which was prepared by Sergeant Colon, it indicates that Respondent used force against the prisoner in "defense of self," and that the force was used to "overcome resistance or aggression." The Department Advocate argues that based on the credible evidence, Respondent was neither defending himself nor overcoming resistance or aggression at the time he entered the cell and repeatedly struck the prisoner. Since the TRI report was prepared by the sergeant based on the information provided by Respondent, the Advocate contends that Respondent should be held accountable for the inaccurate entries.

Even if the Advocate is correct that Respondent's use of force here was not exercised in self-defense, the record has failed to establish that the inaccurate entries in the TRI report are the result of misconduct on Respondent's part. In the immediate aftermath of his heated confrontation with the prisoner, Respondent informed Sergeant Colon what had occurred. Based on the general information provided, the sergeant filled out the TRI report. There was no indication that the sergeant reviewed with Respondent which specific boxes to check off within the form. There also was nothing in the record to suggest that Respondent, at any time, specifically told the sergeant that he had acted in "self-defense," or had in any way provided a narrative to the sergeant that was incorrect.

As such, I find it more likely than not that the sergeant decided which boxes to check off within the TRI report based on his general understanding of what occurred, and not because Respondent specifically provided incorrect information. The record has failed to establish, by a preponderance of the credible evidence, that Respondent caused inaccurate entries in the TRI report, and I find him not guilty of Specification 3.

Specification 4 charges Respondent with wrongfully making inaccurate entries in the Aided report. In the narrative portion of that report, there is no mention of Respondent striking the prisoner; the Advocate argues that that omission constitutes an inaccurate entry.

On the one hand, EMS was summoned to remove the prisoner to the hospital only after she was banging her head against the cell wall, and not in connection with her encounter inside the cell with Respondent. Respondent argues, therefore, that there was no need to include information regarding how he repeatedly struck the prisoner.

That argument is not persuasive. As seen in the video footage, the prisoner was repeatedly struck in her body by Respondent; most of those blows were inflicted with a closed fist. This constituted significant, relevant information that warranted inclusion in an Aided report specifically prepared in connection with the prisoner. Indeed, Respondent did selectively include in the report some references to his interactions with the prisoner: he noted, for instance, how she was very combative with the officers, and he specifically mentioned how she did spit on one of them. In that context, Respondent's failure to include information that the prisoner was repeatedly struck by an officer constitutes an unacceptable omission.

Unlike the TRI report, the Aided report was completed by Respondent himself, and so he is directly responsible for the information contained therein. The report, as prepared, was

inaccurate, in that it omitted material details of what had transpired. Accordingly, I find Respondent 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. 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 July 10, 2006, has been found guilty of using improper force against a prisoner by repeatedly striking her while she was inside a holding cell. He also has been found guilty of spitting at her, and making inaccurate entries in an Aided report. The Department Advocate recommends that Respondent's employment be terminated. Counsel for Respondent argues that termination would be unfair in this context. He emphasizes that Respondent is not a robot, and he should not forfeit his job for what was a human response to being attacked by the prisoner.

The presumptive penalty for non-deadly use of force, where there is no injury, is 10 penalty days. However, aggravating factors can raise that penalty to termination. The Advocate emphasizes two particular aggravating factors: first, Respondent's actions had an improper, retaliatory motive, and second, Respondent's conduct resulted in criminal charges, which presently are pending in Bronx Supreme Court.

But more than those factors, what is most troubling here is how unhinged Respondent became during his interaction with the prisoner, a homeless woman in the custody of the Department. To be sure, the prisoner initiated the chain of events by verbally demeaning Respondent and spitting on him. However, with his extreme reaction to the prisoner's provocation, Respondent demonstrated a disturbing lack of self-control.

Members of the service are expected, when appropriate, to employ de-escalation techniques in order to eliminate the necessity to use force. Here, Respondent did just the opposite. The prisoner had already been securely placed and isolated inside the cell, with the door locked. Nevertheless, Respondent became so intent on confronting the prisoner that he spent several seconds using his keys to open the locked cell door in order to get at her. Once he opened the door, Respondent rushed into the cell, which was occupied only by the vulnerable female prisoner, and essentially pummeled her with a barrage of punches while she sat on a bench inside the cell.

Moreover, Respondent, who estimated he was 5'10" and approximately, 225-30 pounds, did not merely strike her once; rather, he violently beat the prisoner, without regard to the injury he could be inflicting. Respondent struck her approximately *10 times* as she sat *defenseless* on the bench, absorbing the punishing blows. He might have inflicted additional harm had it not been for the intervention of Sergeant Colon. Even after the arrival of the sergeant, Respondent, undeterred, continued to demonstrate a lack of restraint by spitting at the prisoner, further exacerbating the situation.

Even if this tribunal were to credit the testimony that there were no apparent injuries sustained by the prisoner, Respondent's conduct in striking her the way he did showed an

egregious disregard for the prisoner's well-being. His actions served no legitimate police purpose, and were completely unacceptable from a uniformed member of this Department.

Section 221-01 of the Patrol Guide states that "MOS who use excessive force will be subject to Department discipline, up to and including dismissal." Under the totality of the facts and circumstances, dismissal is warranted here. Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

OCT 11 2022

KEECHANT L. SEWELL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER LUIS MARTE
TAX REGISTRY NO. 941288
DISCIPLINARY CASE NO. 2019-20278

Respondent was appointed to the Department on July 10, 2006, after having been previously appointed under Tax Registry No. 938943 on July 11, 2005 and resigning on October 21, 2005. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2019, 2020 and 2021. He has been awarded one medal for Meritorious Police Duty.

In 2015, Respondent forfeited 13 vacation days after pleading guilty to failing to safeguard his Department parking permit, resulting in its duplication.

In connection with the instant matter, Respondent was suspended without pay from March 13 to April 11, 2019, and was placed on Level 2 Discipline Monitoring in May 2019; that monitoring remains ongoing. Respondent was again suspended without pay from November 19 to December 18, 2019.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials