



POLICE DEPARTMENT

May 3, 2018

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In the Matter of the Charges and Specifications : Case No.
- against - : 2017-18104
Police Officer Jonathan Vasquez :
Tax Registry No. 951370 :
47th Precinct :

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

Before: Honorable Paul M. Gamble
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: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

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

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Jonathan Vasquez, while on duty and assigned to the 47th Precinct, on or about June 1, 2017, having been involved in a vehicle pursuit, wrongfully failed to notify the radio dispatcher or have the radio dispatcher notified at the beginning or end of the pursuit.

P.G. 221-15, Page 1, Paragraphs 3 & 7

VEHICLE PURSUITS
TACTICAL OPERATIONS

2. Said Police Officer Jonathan Vasquez, while on duty and assigned to the 47th Precinct, on or about June 1, 2017, wrongfully failed to terminate a vehicle pursuit when the risk of injury outweighed the need to stop said vehicle.

P.G. 221-15, Page 1, Note

VEHICLE PURSUITS
TACTICAL OPERATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 28, 2018.

Respondent, through his counsel, entered pleas of Not Guilty to the subject charges. The Department called Sergeants Douglas Soriano and Yuriy Chuyko as witnesses. 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. After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Not Guilty of Specification 1 and Guilty of Specification 2.

ANALYSIS

In this case, the material facts are not in dispute. Respondent and his partner, Sergeant Douglas Soriano, engaged in a high-speed vehicle chase while on-duty. The subject of the pursuit, Person A, admitted that he attempted to evade the police by driving away from them at high speed. After appearing to have outrun the police, Person A and his passenger, Person B, collided with a minivan attempting to make a U-turn.

I credit the in-court testimony of Sergeant Soriano as truthful because it was logical, forthright and corroborated by other independent evidence. While Sergeant Soriano admitted that he was charged in connection with this case and took a plea prior to his appearance before the tribunal, his testimony did not appear to be shaded to minimize his own responsibility. In particular, Sergeant Soriano's admission that he was the recorder with the responsibility for making radio calls lent further credence to his testimony. I further find Respondent's in-court testimony to have been forthright, even taking into account his interest in the outcome of this case. Like Sergeant Soriano, his testimony aligns logically with the undisputed, independent evidence.

The hearsay statements of Person A and Person B, although not subjected to cross-examination, are also credible, as they are largely corroborative of not only the material portions of each other's statements, but also because they are corroborated by the independent video evidence. Moreover, despite their divergent vantage points and interests in the case, Person A's and Person B's recollections are consistent with those of Soriano and Respondent.

Boston Road, between Provost Avenue and Ropes Avenue, is a divided roadway bordering Bronx County and Westchester County which traverses the Eastchester Bridge (Department Exhibits 4A, 4B). Each side of the roadway contains two lanes of one-way traffic (Department Exhibits 11A, 11B). I take judicial notice that the distance between Provost Avenue and Ropes Avenue, according to mapping, is approximately one-half mile.

Department Exhibit 1 is a video recording taken from Mavis Discount Tire which depicts the intersection of Boston Road and Provost Avenue as Respondent first attempted to stop Person A. Department Exhibit 2 is a video recording taken from Universe Auto Body Center which depicts the intersection of Bronx-bound lanes of Boston Road as Respondent pursues Person A while

driving against traffic. Department Exhibit 3 is a video recording from Wendy's Restaurant which depicts the collision between Person A's vehicle and a white minivan at the intersection of Boston Road and Ropes Avenue.

In the early morning hours of June 1, 2017, Respondent was on-duty in the vicinity of Boston Road and Provost Avenue, as a member of the 47th Precinct Anti-Crime team (T. 102). Respondent was the operator of an unmarked vehicle, accompanied by Sergeant Soriano, the team supervisor (T. 20, 102). Police Officers Palmerini and Barbetto, also members of the Anti Crime team, were in another unmarked vehicle ("the second Anti-Crime car")(T. 20, 102).

At approximately 0229 hours, Respondent attempted to effect a stop of a white Mercedes-Benz coupe in the turn lane at the intersection of Provost Avenue and Boston Road (T. 23, 108). The Mercedes-Benz was operated by Person A, who was accompanied by a single passenger, Person B (Department Ex. 6A at 3, 11-12; Department Ex. 7A at 3). Person A was second in line for a turn, behind the second Anti-Crime car, while Respondent's vehicle was immediately behind Person A (T. 22-23, 105; Department Ex. 6A at 3).

In a June 1, 2017, hearsay statement, Person A admitted that although he was driving his cousin's rental vehicle, he did not possess a driver's license. As Person A waited on Provost Avenue at Boston Road, he saw what he believed to be an unmarked police car activate its lights behind him and heard a two-note siren. Person A became alarmed and turned his car a bit to the left. When Person A observed the car in front of him, which he also believed to be an unmarked police vehicle, turn in the same direction he had, he concluded that he was about to be trapped by both vehicles. Person A panicked, swerved away from the lead police car, made the left turn onto Boston Road and began accelerating (Dept. Ex. 6A at 3-4, 8-9; T. 23-24, 108-109; Department Ex. 1). Person A

immediately accelerated and pulled away from Respondent until he passed the crest of the Eastchester Bridge, where he disappeared from Respondent's sight (T. 25, 26, 110).

Person A admitted that while he was aware that he was driving against oncoming traffic on Boston Road, he wanted to get away from the police (*Id.* at 5, 6). Person A stated that he drove away fast enough that he eventually lost sight of the police car that was behind him (*Id.* at 10-11). In a June 2, 2017, hearsay statement, Person B corroborated Person A's assertion that he was attempting to evade the police while driving "the wrong way" (Department Ex. 7A at 4).

Respondent initially followed Person A into the oncoming traffic lane and accelerated in an attempt to catch up with him but eventually stopped accelerating, allowing his vehicle to slow down (T. 24-25, 110-111). While Respondent drove in the oncoming traffic lane, the second Anti-Crime car made the left turn into the outgoing traffic lane and drove parallel to Respondent (T. 27, 112-113). Respondent continued driving in the oncoming traffic lane until he reached the crest of the Eastchester Bridge, when he observed an apparent vehicular collision at the intersection of Boston Road and Ropes Avenue involving Person A and another vehicle (T. 26, 113- 114).

As Person A approached the intersection of Boston Road and Ropes Avenue, he saw a white car ahead of him attempting to make a U-turn (*Id.* at 4, 6). Person A stepped on his brakes but his car was traveling too fast to avoid colliding with the other vehicle (*Id.* at 7; Department Ex. 3).

At the direction of Sergeant Soriano, Respondent accelerated after he reached the foot of the bridge, where he observed Person A's vehicle on fire (T. 26-27, 114). After the collision, Person A left his vehicle and attempted to flee before Respondent apprehended him (*Id.* at 13, 15, 115-

117). While Respondent was chasing Person A, Sergeant Soriano, Palmerini and Barbetto rendered assistance to the remaining occupants of the vehicles involved in the collision (T. 28, 117).

The posted speed limit for Boston Road is 25 miles per hour (T. 92, 94). Respondent's vehicle traveled on Boston Road from Provost Avenue to Heathcote Avenue, and accelerated from 21.99 miles per hour to 56.66 miles per hour, before he stopped accelerating¹ (T. 70-71; Department Ex. 5A, 5B). Department Exhibits 8A, 8B, 8C, 9A, 9B, 9C and 9D establish physical injuries to Person A and Person B which they sustained in the collision (T. 73-75). Department Exhibits 10A, 10B, 10C, 10D and 10E establish the damage to the vehicles involved in the collision.

The issues in this case are: (1) whether Respondent correctly balanced the risk to the public against the need to stop Person A by continuing a high-speed pursuit; and (2) whether Respondent bears any responsibility for failing to make radio contact with dispatch while he was the operator of his vehicle and accompanied by his supervisor, who was also acting in the role of recorder.

Respondent testified that he first observed Person A as he was making a right turn from Conner Street onto Provost Avenue (T. 103). According to Respondent, Person A was already driving in the right lane of Provost Avenue, the same lane that Respondent was entering from Conner Street; as Person A came closer to Respondent's car, he made what Respondent characterized as "an unsafe lane change" into the left lane of Provost Avenue (T. 103-104). Respondent conceded under questioning from the tribunal that it was possible that Person A made the lane change to avoid colliding with Respondent (T. 132). Respondent did not make

¹any other

Department Exhibits 5A and 5B set forth the vehicle history for Respondent's vehicle from 0229 hours to 0233 hours on June 1, 2017, using the AVL (GPS vehicle tracker for Respondent's car).

observations of Person A or his vehicle which would have provided a basis for stopping him other than the lane change (T. 104-105, 132-133). Respondent then observed Person A drive up behind the second Anti-Crime car in the left lane while awaiting the traffic signal (T. 105).

Respondent told Sergeant Soriano that he intended to stop Person A for the unsafe lane change, then contacted the second Anti-Crime car, advising the officers to turn on their lights as soon as the light changed at the intersection of Boston Road and Provost Avenue; Respondent further advised them that he would be activating his lights (T. 105-106). As the traffic signal changed to green, Respondent activated his lights and siren, while the second Anti-Crime car activated its lights (T. 108). Person A turned his vehicle slightly to the left, an action which was mirrored by the second Anti-Crime car (*Id.*). Person A then accelerated away from the second Anti-Crime car into the intersection of Boston Road and Provost Avenue, before turning left into the oncoming traffic lane of Boston Road (T. 108-109). While Respondent initially thought Person A would pull over to the left, when Person A kept going straight at high speed, Respondent pursued him and accelerated (T. 110). Person A accelerated to the point where Respondent realized that he would not catch up to him, so he began decelerating (*Id.*). According to Respondent, by the time Sergeant Soriano told him to slow down, he had already begun lifting his foot from the gas pedal in order to reduce his speed (*Id.*, 111).

As Respondent began to coast in his vehicle, he realized that he was ascending a grade on Boston Road which led into a narrow roadway; since Respondent believed he had no room to turn around, he elected to continue driving in the same direction but use his lights and siren to ward off oncoming traffic (T. 111-112). By the time Respondent made the decision to continue up the grade, he had already lost sight of Person A (T. 112). Respondent estimated his top speed during the pursuit at 55 M.P.H and Person A's speed at 85-90 M.P.H. (*Id.*). As Respondent

proceeded up the grade, he observed the second Anti-Crime car driving parallel to him, in the outgoing traffic lane, with its lights on (T. 113). When Respondent reached the top of the grade, he observed a traffic accident in the distance (*Id.*). Respondent accelerated to approximately 75 M.P.H. toward the collision site, where he saw Person A emerge from the white Mercedes and begin to run (T. 114-115).

Sergeant Soriano testified that he was informed by Respondent that Person A had made an unsafe lane change and that he intended to stop him (T. 21, 35). While Sergeant Soriano did not witness the traffic infraction, he voiced no objection to stopping Person A (T. 35, 38). Sergeant Soriano estimated that by the time Respondent made the left turn onto Boston Road, Person A's car had traveled from a quarter, to one-half, of the length of the bridge (T. 38). In Sergeant Soriano's view, Person A had accelerated so quickly that he did not believe he and Respondent could catch up to him in their vehicle (T. 26). Sergeant Soriano testified that he then told Respondent to slow down, as they were not going to pursue Person A (T. 25). While Sergeant Soriano had no idea how fast either Person A or Respondent were traveling, Person A acquired a significant speed advantage over them in two to three seconds (*Id.*).

Despite directing Respondent to call off the pursuit, they continued driving in the same direction against traffic until they reached the crest of the Eastchester Bridge (*Id.*). Upon reaching the crest of the bridge, Soriano saw the aftermath of a car accident between Person A's vehicle and a white minivan (T. 26-27). Sergeant Soriano directed Respondent to speed up until they reached the intersection of Boston Road and Ropes Avenue, where they both got out of their car (T. 26-27, 30).

Sergeant Soriano acknowledged that during the time he was in the car with Respondent, he acted in the role of recorder, in addition to being the Anti-Crime supervisor (T. 32-33, 34).

Sergeant Soriano further acknowledged that while in that role, it was his responsibility to have made radio transmissions (T. 32). Sergeant Soriano explained his decision not to order Respondent to make a U-turn:

“At that point, it was more of a safety thing where I made the decision that if you try to make a U-turn and we get stuck, in my head I was thinking a vehicle was going to come at a high rate of speed and collide with us. I believe if we proceeded with our lights on and the other vehicle right next to us with our lights on, that hopefully we can clear that.”

(T. 41).

1. Failure to Terminate Vehicle Pursuit

Patrol Guide procedure 221-15 (eff. 5/17/17) requires UMOS, upon observing that there is a vehicle to be stopped, or there is a likelihood that vehicle pursuit may be imminent, to:

1. Initiate vehicle stop when feasible.
2. Determine the necessity for commencing and continuing a vehicle pursuit by considering the following:
 - a. Nature of offense
 - b. Time of day
 - c. Weather condition
 - d. Location and population density
 - e. Capability of Department vehicle
 - f. Familiarity with area.

(Patrol Guide 221-15, paragraphs 1 and 2).

I find the Department has met its burden of proof by a preponderance of the credible, relevant evidence that Respondent wrongfully failed to break off the vehicle pursuit when the risk to the public outweighed the need to stop the vehicle. The Note in Patrol Guide 221-15 states:

Department policy requires that a vehicle pursuit be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if the suspect is not immediately apprehended [italics in original].

According to his own testimony, Respondent realized that he was in an oncoming traffic lane on a divided road as soon as he turned onto Boston Road. While Person A was operating the Mercedes in an objectively reckless manner, the sure risk to the public manifested itself not in the fact that he had made an unsafe lane change on Provost Avenue but that he was attempting to evade the police at high speed while driving against oncoming traffic in the wee hours of the morning. While Person A may or may not have realized he was driving the wrong way, Respondent was aware of the proscribed flow of traffic on Boston Road. Sergeant Soriano asserted that by the time Respondent had made the turn onto Boston Road, Person A had already traveled from one-quarter to one-half of the length of the Eastchester Bridge; it was at that point he told Respondent not to pursue Person A. While Respondent claimed to have already begun decelerating when Sergeant Soriano told him to slow down, his limited pursuit of Person A under these conditions unnecessarily and avoidably exacerbated the danger to the public.

In addition, there is evidence that Palmerini and Barbetto, operating the second Anti-Crime car, were in a position to attempt to stop Person A without the additional risk of driving against traffic. It is not disputed that the distance between the inception of the pursuit and the location of the later collision was relatively short, approximately one-half mile. At any point Respondent and Sergeant Soriano could have directed the second Anti-Crime car to pick up the pursuit without driving on the wrong side of the street.

While it is speculative to opine whether a pursuit by Palmerini and Barbetto, as opposed to Respondent, might have avoided the accident which occurred at Ropes Avenue and Boston Road, it is undisputed that the accident was caused by Person A's direct flight from Respondent and his inability to slow down enough to avoid colliding with the minivan.

Accordingly, I find Respondent Guilty of specification 2.

2. Failure to Notify Radio Dispatcher

Upon commencing a vehicle pursuit, Patrol Guide procedure 221-15 requires UMOS to:

3. Notify radio dispatcher at start of pursuit and provide the following information:
 - a. Your location
 - b. Type of vehicle, color and direction of travel
 - c. Nature of offense
 - d. Registration number and state of registration
 - e. Occupants
 - f. Any other pertinent information.
4. Maintain contact with radio dispatcher but do not depress transmitter key unnecessarily.

* * *

5. Utilize vehicle's emergency signaling devices intelligently.

* * *

6. Inform radio dispatcher if vehicle changes direction.
 - a. Give last location of vehicle, speed, and direction of travel.
7. Notify radio dispatcher if pursued vehicle is lost or pursuit is terminated.

(Patrol Guide 221-15, paragraphs 3-7).

I find that the Department has failed to meet its burden of proof by a preponderance of the credible, relevant evidence that Respondent wrongfully failed to communicate either at the commencement or the termination of the vehicle pursuit. The uncontested evidence at trial established conclusively that Respondent was operating his vehicle and Sergeant Soriano, who was also his immediate supervisor, was acting as the recorder. The duties of the recorder in a police vehicle are well known and set forth in Patrol Guide procedure 202-23. As a purely practical matter, the operator of a police vehicle who is initiating a vehicle pursuit is engaged in a potentially hazardous operation which requires his full attention. It is logical that the responsibility to communicating over the police radio falls to the recorder, as a matter of practice, as well as policy.

In this case, Sergeant Soriano also happens to have been the person Respondent would have communicated with in order to keep his chain of command advised of his actions. Since Sergeant Soriano was present and acting in the role of recorder, the responsibility for making the notification to the radio dispatcher fell upon him. Sergeant Soriano, by his own admission, did not make a notification and offered no rational explanation for why he did not do so².

Accordingly, I find Respondent Not Guilty of Specification 1.

PENALTY

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

The Advocate has recommended that Respondent forfeit 10 vacation days.


In a relevant case, a respondent forfeited 10 vacation days after being found guilty of failing to terminate a vehicle chase (*Disciplinary Case No. 2016-16616 [March 2, 2018]*)[six-year police officer found guilty of failure to terminate a vehicle chase. Respondent intended to stop motorist for overly-tinted windows. Motorist refused to stop and fled from a city street onto a highway, striking multiple cars in the process. During the chase, the motorist made a U-turn and fled against oncoming traffic, after which Respondent continued the pursuit]). In that case, the tribunal found that "the risks to the officers and the public from this entire pursuit were too great, particularly when weighed against the nature of the original offense" (*Id.* at 7).

² Sergeant Soriano admitted that he had been charged with misconduct relating to this incident and entered a plea of *nolo contendere* to resolve the charges. The disposition is awaiting the approval of the Police Commissioner. The tribunal does not attach any probative value to Sergeant Soriano's disposition for purposes of determining whether Respondent committed misconduct.

In this case, Respondent's entire pursuit of Person A was conducted at high speed against oncoming traffic. The traffic infraction for which Respondent intended to stop Person A was minor and presented no manifest danger to the public of any consequence. It is unlikely that Person A would have evaded police action altogether, as the second Anti-Crime car was also in pursuit, notably from a much safer position. Even considering Respondent's use of his lights and siren to mitigate the potential risk to motorists, as well as the early hour of the morning, it was fortuitous that he did not encounter any oncoming traffic.

I find Respondent's candid testimony before the tribunal, his assignment to a specialized unit and his otherwise unblemished record to be mitigating factors.

Accordingly, I recommend that Respondent forfeit 8 vacation days.

Respectfully submitted,


Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUL 02 2018

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JONATHAN VASQUEZ
TAX REGISTRY NO. 951370
DISCIPLINARY CASE NO. 2017-18104

Respondent was appointed to the Department on July 6, 2011. On his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent." He has been awarded three medals for Excellent Police Duty and one medal for Meritorious Police Duty. [REDACTED]

Respondent has no prior disciplinary history.

For your consideration.

Paul M. Gamble
Assistant Deputy Commissioner Trials