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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
CAMERON REYNOLDS,	)	
Employee	)	OEA Matter No. 1601-0026-19
	)	
v.	)	Date of Issuance: May 6, 2020
	)	
METROPOLITAN POLICE	)	
DEPARTMENT,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
Cameron Reynolds, Employee <i>Pro-Se</i>	)	
Teresa Quon Hyden, Esq., Agency Representative	)	

**INITIAL DECISION<sup>1</sup>**

**Introduction and Procedural History**

On January 10, 2019, Officer Cameron Reynolds (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Metropolitan Police Department’s (“MPD” or “the Agency”) adverse action of suspending him from service for twelve (12) days. The event that gave rise to the instant matter occurred during a traffic stop on March 2, 2018, involving Mr. Kimberly Murray (“Mr. Murray” or “Complainant”) and Employee. This traffic stop was captured utilizing multiple Body Worn Cameras (“BWC”) of Employee and his colleagues. Employee questioned Mr. Murray regarding the out of state transit tags that were affixed to his vehicle, their alleged legality for its use and the tint on Mr. Murray’s windows. Mr. Murray took issue with the tone as well as the alleged threat of arrest by Employee. Mr. Murray filed a complaint with the MPD’s Office of Police Complaints (“OPC”)². The OPC investigated this matter and relying on Mr. Murray’s complaint and the interaction itself as it was captured by the BWC of Employee (and others). MPD found that Employee unduly harassed, and was discourteous toward, Mr. Murray in violation of MPD policy. This determination was forwarded

<sup>1</sup> This decision was issued during the District of Columbia's COVID-19 State of Emergency.

<sup>2</sup> The OPC is an independent office within the MPD that is tasked with investigating complaints from the public regarding alleged abuse from MPD members.

to the MPD so that an appropriate sanction could be meted out to Employee. After thorough review, MPD Chief of Police Newsham made the final determination that given Employee's history of discipline and the nature of the sustained offense to discipline Employee by imposing a twelve (12) work-day suspension.

This matter was assigned to the Undersigned and after review, the parties participated in a Prehearing/Status conference. During this conference, the Undersigned determined that an Evidentiary Hearing ("EH") was required. Accordingly, an EH was held on October 22, 2019. At the conclusion of the EH, the Undersigned ordered the parties to submit written closing arguments. The parties have complied by submitting their respective arguments. After reviewing the accumulated documents in the record, the Undersigned has determined that no further proceedings are required. The record is now closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

### ISSUES

Whether the Agency's adverse action was taken for cause. If so, whether the penalty was appropriate under the circumstances.

### Statement of the Charges

On October 29, 2018, Employee was served with the Notice of Proposed Adverse Action, charging him with the following:

**Charge No.1:** Violation of General Order Series 120.21, Attachment A, Part A-16, which states, "Failure to obey orders or directives issued by the Chief of Police."

**Specification No.1:** In that, on March 2, 2018, you conducted a traffic stop on a vehicle being driven by Mr. Kimberly Murray. While on the traffic stop, you made comments directed towards Mr. Murray, which he described as "unnecessary," "nasty," and "condescending." The Office of Police Complaints found that you spoke to Mr. Murray in "a disrespectful, unprofessional, and intimidating manner." Your misconduct is further described in General Order 201.26, Part V, Section C-1, which reads, "**All** members shall: Be courteous and orderly in their dealings with the public;" and Section C-2, which reads, in part, "**All** members shall: Be courteous, civil and respectful to their superiors, associates, and others whether on or off-duty." Your misconduct is also described in General Order 201.26, Part V, Section C-3, which reads, "All members shall: Refrain from harsh, violent, coarse, profane, sarcastic or insolent language. Members shall not use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person."<sup>3</sup>

### **Summary of Relevant Testimony**

Michael Gottert (Transcript pp. 22 – 123)

Michael Gottert ("Gottert") testified in relevant part that he is currently part of the Disciplinary Review Division ("DRD") within the MPD. According to Gottert, as the former Director of the DRD, its mission was to review all administrative investigations where there is a recommendation for an adverse action. Further, the DRD would make an initial recommendation of the appropriate charge(s) and discipline to be enforced on the member.<sup>4</sup> Gottert noted that a complaint was initially logged and then transferred to the DRD from the MPD Office of Police Complaints ("OPC"). The processing of complaints originating from the OPC is separate and distinct from the discipline review process that originates from within MPD. OPC is an independent arm of the MPD with the authority to impose discipline on members arising from complaints of police wrongdoing brought by members of the public. Gottert identified Agency Exhibit No. 1 as the OPC Findings of Facts and Merits Determination for OPC Complaint No. 18-

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<sup>3</sup> Agency Exhibit 3 at p. 1.

<sup>4</sup> Tr. p 22.

0331. This complaint was brought by a member of the public (“Complainant”) against Employee regarding Employee’s treatment of him during a traffic stop. Allegations therein include harassment and use of insulting, demeaning or humiliating language.<sup>5</sup> According to Agency Exhibit No. 2, the allegations against Employee were sustained. According to Gottert, the incident that gave rise to the instant cause of action involved Employee effecting a traffic stop of a car due to it displaying transit tags.<sup>6</sup> Gottert noted that Employee had a Body-Worn Camera (“BWC”) that captured this incident.<sup>7</sup> Of note, this recording contained wind noise that slightly interfered with hearing the interaction between Employee and Complainant. Gottert further noted that the OPC Investigator found reasonable cause to believe that Employee had violated MPD General Orders when he threatened Complainant with arrest for uncommitted offenses, acting in a disrespectful and intimidating manner, and harassment.<sup>8</sup>

Gottert identified Agency Exhibit No. 3, which detailed the proposed charges and their attendant specifications lodged against Employee in this matter. Gottert noted that it was apparent that Employee was rude and discourteous to the Complainant in violation of MPD General Order 120.26 § C. Gottert also noted that the Douglas Factors were thoroughly examined which led to the decision to discipline Employee with twelve days suspension without pay.<sup>9</sup>

During cross examination, Gottert explained that if the OPC sustains a complaint, the MPD is obligated to impose a discipline based upon that finding.<sup>10</sup> Gottert also characterized Employee’s conduct during the traffic stop as sarcastic and insolent. Gottert noted that Employee had been previously disciplined with a suspension and this was taken into account, as part of MPD’s Douglas Factor analysis.<sup>11</sup> Further, in this matter, Employee was subjected to progressive discipline due to this being the second infraction where Agency opted to impose discipline.<sup>12</sup>

During redirect examination, Gottert explained that even though it is very difficult to find the exact same fact pattern for prior discipline, MPD looks at a broader spectrum of cases in order to assert that discipline in one matter is consistent with other discipline that was imposed on other MPD members.<sup>13</sup>

#### Cameron Reynolds (“Employee”)

Employee was called to testify by the Agency as part of its case in chief. Employee was familiarized with Agency Exhibit No. 6, which is his written response to MPD Chief Newsham contesting the then proposed sanction of a 12-day suspension. Employee read a portion of his response into the record:

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<sup>5</sup> Tr. p. 30 – 32.

<sup>6</sup> Tr. p. 34

<sup>7</sup> Tr. pp. 34 – 38. *See also* Agency Exhibit 2 at Tab 9.

<sup>8</sup> Tr. pp 38 – 40.

<sup>9</sup> Tr. pp 50 – 62.

<sup>10</sup> Tr. pp 76 – 77.

<sup>11</sup> Tr. pp. 84 – 94.

<sup>12</sup> Tr. pp. 98 – 99.

<sup>13</sup> Tr. pp. 114 – 118.

Q: If you would look at the middle of the paragraph, it says: “in my case”  
... Could you please read that aloud?

A: I looked at my BWC from the traffic stop, and I definitely realized that I could have handled the traffic stop and my interaction with the driver better. And I’m not trying to dodge the responsibility for anything I did wrong...<sup>14</sup>

During Employee’s cross examination of himself, he asserted that the previous statement was subjective and that he felt that the Complainant’s attitude was ‘brash and hostile’ thereby necessitating his heightened response. Employee also had issue with the OPC report that “administratively” led to his suspension, Moreover, Employee took umbrage that he was unable to confront the Complainant administratively during the pendency of his appeal.

### **Findings of Facts, Analysis and Conclusion of Law**

The following findings of facts, analysis and conclusions of law are based on the documentary evidence as presented by the parties during the course of Employee’s appeal process with this Office. MPD, in its Closing Argument, succinctly summarized the pertinent facts of this matter as follows:

The facts of in this case are not in dispute as the entirety of Employee’s interaction with Mr. Murray was captured on Employee’s Body-Worn Camera (BWC). The uncontested facts are:

1. Employee was appointed to the Department on August 27, 2012. Agency Exhibit 3 at p. 2.
2. On March 2, 2018, Employee was assigned to the First District Crime Suppression Team and was in an unmarked cruiser with Officer Charles Smith and Officer Brian Green. Agency Exhibit 2 at p. 21.
3. Employee conducted a traffic stop of Mr. Murray as he was returning home from work near the intersection of the 16<sup>th</sup> Street and Benning Road, NE, at approximately 4:30 pm. Agency Exhibit 2 at p. 11.
4. Mr. Murray had recently purchased his car in Pennsylvania and it had temporary Pennsylvania license plates with an expiration date of March 13, 2018. Agency Exhibit 2 at pp. 16, 25, and 27; Employee’s BWC footage at 2:33 in thumb drive attached to Agency Exhibit 2.
5. Employee told Mr. Murray that he was stopped for driving with in-

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<sup>14</sup> Tr. p. 125.

transit license plates. Employee's BWC footage at 2:21.

6. Employee explained that when you buy a vehicle and are given in-transit tags, the tags can only be used for a specified period to go between point A and point B and cannot be used to "joy ride" in the vehicle. Employee's BWC footage at 2:42-3:01. Employee further advised Mr. Murray that he could drive the vehicle from Pennsylvania to DC, park it where he lived, and leave it there until he registered the vehicle. Employee's BWC footage at 3:02-3:12.

7. Employee asked Mr. Murray if he knew that he could not drive his vehicle with in-transit tags in DC and that it was an arrestable offense.<sup>15</sup> Employee's BWC footage at 3:22-3:24.

8. Mr. Murray replied that he did not know about the in-transit tags, but he now knew because Employee had just told him. Employee's BWC footage at 3:25-3:29.

9. Employee told Mr. Murray that was the law in DC, that it was called "misuse of tags" and that he could go to jail for it. Employee's BWC footage at 3:37-3:40.

10. Employee reiterated to Mr. Murray that what he was doing was illegal and then asked for his driver's license and registration. Employee's BWC footage at 3:43-3:47.

11. While Mr. Murray was searching for his driver's license and car registration, Employee asked him where he worked at, to which Mr. Murray replied, "I am not trying to be funny, but does that really make a difference?" Employee's BWC footage at 3:55-4:02.

12. Employee replied, "Alright if you want to be funny, I'll be funny too and I'll give you a ticket for each window that's illegally tint and then I'll take you to jail, if you want to be funny." Employee's BWC footage at 4:07-4:12.

13. Mr. Murray then stated, "I'm not being funny." Employee's BWC footage at 4:15.

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<sup>15</sup> The Report of Investigation (OPC Report of Investigation) concluded that there was no basis in DC or Pennsylvania law for Employee's assertion that the tags on Mr. Murray's vehicle were only for the purpose of transporting the vehicle. See Agency Exhibit 2 at 5 and 73-76.

14. Employee replied, "I'm trying to make conversation with you. If you want to be smart about it. I just told you that I can take you to jail and now you're trying to be smart, so obviously you don't care if you get placed in handcuffs and to jail, right?" Employee's BWC footage at 4:17-4:23.

15. Mr. Murray said that he was not being difficult, to which Employee replied "Okay, you're going to make it difficult if you're going to have an attitude." Employee's BWC footage at 4:24-4:29.

16. Employee then went to his cruiser to run Mr. Murray's information. When Employee returned to Mr. Murray's vehicle, he informed Mr. Murray "in DC if your tint is below 25% and you are operating on public streets your car can be impounded by us then you can be taken to jail for your tags because you are not doing what you're supposed to with them. Employee's BWC Footage at 6:32-6:43.

17. Employee told Mr. Murray: "I suggest you . . . next time don't get smart . . . I'm trying to make conversation to make conversation. If you don't want to talk then that's fine, but it might behoove you to have conversation when I'm trying to be cordial when I already have enough to take your freedom away. Does that make sense?" Employee's BWC Footage at 6:46-7:04.

18. Mr. Murray replied: "I understand what you are saying." Employee's BWC Footage at 7:05.

19. Employee then told Mr. Murray: "Alright, I know you are trying to bite your tongue and suck in your pride because you don't like the way I'm talking to you, but it is what it is. I mean you're born in 1963. Employee's BWC Footage at 7:07-7:13.

20. Mr. Murray replied, "That's correct." Employee's BWC Footage at 7:14.

21. Employee continued, "You're older than me. I understand all of that, but you're in a position that you're vulnerable and I'm in a position to take all of that away, so if I just want to ask you where you work . . . you know if you say DC Fire . . . if you had something to do with DC I'd like to do courtesy, cut breaks . . . I am not out here trying to handle the world. Do we understand each other?" Employee's BWC Footage at 7:14-7:37.

22. Mr. Murray replied: "I understand what you are saying." Employee's BWC Footage at 7:38.

23. Then Employee asks Mr. Murray: "Okay. . .I'm sure you don't want tickets or you don't want your car impounded. Right? And you don't want to go to jail, right?" Employee's BWC Footage at 7:39-7:44.

24. Mr. Murray told Employee that he did not want his car impounded and did not want to be locked up. Employee's BWC Footage at 7:44-7:48.

25. Mr. Murray was not issued a citation.

26. On March 6, 2018, Mr. Murray submitted an Online Complaint Form to the Office of Police Complaints alleging that Employee had spoken to him in a disrespectful, condescending, and nasty manner. Agency Exhibit 2 at 11-13.

27. Senior Investigator Jessica Rau of the Office of Police Complaints conducted an investigation into the allegations in Mr. Murray's citizen complaint and found that there was reasonable cause to believe that Employee harassed and spoke to Mr. Murray in a disrespectful, unprofessional, and intimidating manner. Agency 2 at p. 8.

28. The matter was then referred to Complaint Examiner Richard S. Ugelow to determine the merits of Mr. Murray's complaint. Agency Exhibit 1.

29. On July 25, 2018, Mr. Ugelow issued his Findings of Fact and Merits Determination (OPC Findings) and sustained the Harassment and Language or Conduct charges against Employee. Agency Exhibit 1.<sup>16</sup>

After carefully reviewing the record, I find that MPD's rendition of the uncontested facts to be a fair and accurate depiction of Employee's interaction with the Complainant. I further find that the facts as noted above are not subject to genuine dispute. Accordingly, I adopt said facts as my own in this matter. MPD, in making the determination to discipline Employee, reviewed the BWC footage as well as took into consideration the independent OPC investigation and determined that Employee was unduly discourteous, insolent and sarcastic with Complainant. Taking this into account, MPD asserts that the determination that Employee acted egregiously is plain to see and is not subject to genuine dispute. Employee asserts that he did not harass the Complainant nor was he discourteous or insolent during the traffic stop. Employee notes that he did not issue a ticket

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<sup>16</sup> Agency's Closing Argument pp. 1 – 4 (February 13, 2020).



or otherwise detain Complainant after his initial stop. Employee asserts that given the brevity of the stop and the fact that the Complainant was not otherwise detained is proof that MPD's selection of sanction was overly harsh and unwarranted. After reviewing Employee's BWC footage I find that this traffic stop involved multiple threats of arrest and other innuendo that were unnecessarily menacing and threatening towards the Complainant.

While contesting this sanction before it was finalized by the MPD, Employee submitted a written appeal to Chief Newsham. In this appeal, Employee stated the following "I looked at my BWC from the traffic stop, and *I definitely realized that I could have handled the traffic stop and my interaction with the driver better.* And I'm not trying to dodge the responsibility for anything I did wrong..."<sup>17</sup> While testifying on his own behalf during the EH, Employee alleged that his *written* statement was somehow taken out of context and that the Complainant was brash thereby necessitating the more aggressive tone that was used during this traffic stop. After reviewing the BWC footage and Employee's written response to Chief Newsham, I find that Employee's statement to Chief Newsham is an admission. During the EH, I had the opportunity to observe the demeanor, poise, and credibility of Gottert. I find his testimony relative to this matter to be both credible and persuasive. I contrast this with Employee's demeanor and credibility during the EH and find his explanation is, at best, self-serving and not credible. Moreover, the Board of the OEA has previously held that an employee's admission is sufficient to meet Agency's burden of proof.<sup>18</sup> Considering as much, I find that the Agency has met its burden of proof relative to the charge of Failure to Obey Orders or Directives issued by the Chief of Police.

### Motion to Dismiss

During the pendency of this matter, Employee submitted a Motion to Dismiss. The crux of his argument therein centered on the following:

- Employee asserted his constitutional right prohibiting forced self-incrimination was allegedly violated when he was forced to answer and account for his actions during the OPC investigation into this matter.
- Employee asserts, without legal reference, that his right to due process was violated<sup>19</sup> when MPD decided against calling the Complainant to testify during the EH.
- Employee contested that his fellow officers, who were present during the traffic stop in question, were not interviewed by the OPC Investigator during the initial inquiry into this matter.

Agency aptly responds to these arguments by noting that the investigation of this matter was, from its onset, always administrative, and Employee was never the subject of a criminal

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<sup>17</sup> Tr. p. 125. *Emphasis Added.*

<sup>18</sup> See *Employee v. Agency*, OEA Matter No 1601-0047-84, 34 D.C. Reg. 804, 806 (1987).

<sup>19</sup> During the OPC investigation and the MPD's prosecution of this matter before the OEA.

investigation. Therefore, his Fifth Amendment Constitutional Right prohibiting forced self-incrimination was not at issue. Agency further notes that “the warnings required under *Miranda v. Arizona*, are only implicated when a person is subjected to custodial interrogation by police or other law enforcement officers with regard to a criminal matter. *Brown v. United States*, 278 A.2d 462, 465 (D.C. 1971). *Miranda* warnings are not required in connection with the investigation of administrative matters, as in the subject case. *Id.* at 466; *United States v. Delamarra*, 275 F. Supp. 1, 4 (D.D.C. 1967).”<sup>20</sup> MPD further asserts that a *Garrity* or *Reverse Garrity* warning was not required because the investigation into Employee’s alleged harassment and unprofessional conduct was never criminal in nature. Therefore, the requirement that Employee comply with the internal investigation conducted by the MPD *vis a vis* the OPC was legally appropriate.<sup>21</sup>

Agency counters Employee’s argument that MPD violated his Constitutional Right to confront his accuser (Mr. Murray) when Agency opted to not call him for the EH and by the OPC deciding not to interview the two other officers who were present for the traffic stop. MPD asserts that the Sixth Amendment Confrontation Clause may only be invoked in a criminal matter. Agency further notes that the OPC was well within its authority to not interview the other officers present considering that Employee and the other officers *ALL* had their BWC on and the OPC Investigator reviewed the footage from all of those cameras. MPD asserts that the first-hand testimony from the Complainant and the other officers was unnecessary due to the entire encounter being videotaped from multiple angles.

Regarding Employee’s Motion to Dismiss, I find that this matter was always, and only, administrative in nature. Considering this, I find that Employee’s argument that his Fifth and Sixth Amendment Constitutional rights were violated must fail. I further find that Employee’s Constitutional right to confront his accuser is not applicable to this non-criminal matter. Moreover, Agency had access to the BWC footage from Employee and his colleagues that provided an incontrovertible first-hand account of the traffic stop. I find the BWC footage submitted in this matter legally adequate to explain and sustain Agency’s adverse action.

#### Appropriateness of the Penalty

When assessing the appropriateness of the penalty, OEA is not to substitute its judgment for that of the agency. *Stokes v. District of Columbia*, 502 A.2d 1006, 1985 (D.C. 1985). The OEA itself recognized in *Employee v. Agency*, 29 D.C. Reg. 4565, 4570 (1982):

Review of an Agency imposed penalty is to assure that the Agency has considered the relevant factors and has acted reasonably. Only if the Agency failed to weigh the relevant factors or the Agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for this Office to specify how the Agency's penalty should be amended. This office is guided

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<sup>20</sup> Agency’s Memorandum in Opposition to Employee’s Motion to Dismiss p. 3 (July 22, 2019).

<sup>21</sup> If the inquiry is administrative or disciplinary, the **Garrity Warning** is commonly given. Police Officers who are interviewed in a disciplinary setting should be warned that they are under investigation for violation of departmental rules, that they are obligated to give statements for internal purposes, and these answers may not be used against them in a criminal proceeding. *Garrity v. New Jersey*, 385 U.S. 493, 87 S.Ct. 616 (1967).

in this matter by the principles set forth in *Douglas v. Veterans Administration*, [supra].

Although the OEA has a "marginally greater latitude of review" than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate. *Douglas v. Veterans Administration*, supra, 5 M.S.P.B. at 327-328. The "primary discretion" in selecting a penalty "has been entrusted to agency management, not to the [OEA]." *Id.* at 328.

Selection of an appropriate penalty must . . . involve a responsible balancing of the relevant factors in the individual case. The [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.

*Id.* at 332-333. See also *Villela v. Department of the Air Force*, 727 F.2d 1574, 1576 (Fed. Cir. 1984).

In this case I find that the relevant *Douglas* factors were carefully considered when the appropriate penalty for Employee was determined. Also, the twelve-day suspension for the sustained charge and specification is within the range set forth in the Table of Offenses and Penalties.

### **ORDER**

It is hereby **ORDERED** that Agency's action of suspending Employee from service for twelve days is **UPHELD**.

FOR THE OFFICE:

/s/ Eric T. Robinson  
Eric T. Robinson, Esq.  
Senior Administrative Judge