



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 28, 2024

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Ricky Poh**
Tax Registry No. 961110
Highway Unit 3
Disciplinary Case No. 2022-27414

The above named member of the service appeared before Assistant Deputy Commissioner Anne E. Stone on July 29, 2024, and was charged with the following:

DISCIPLINARY CASE NO. 2022-27414

1. Police Officer Ricky POH, on or about September 20, 2021, at approximately 1841, while assigned to HWY 02 and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that [Officer Poh] pointed [his] gun at [REDACTED] without police necessity.

P.G. 221-02, Page 2, Prohibitions 11 & 12 USE OF FORCE

2. Police Officer Ricky POH, on or about September 20, 2021, at approximately 1841, while assigned to HWY 02 and on duty, in the vicinity of [REDACTED] Kings County, abused their authority as a member of the New York City Police Department, in that [Officer Poh] threatened [REDACTED] with the use of force without sufficient legal authority.

P.G. 221-02, Page 2, Prohibitions 11 & 12 USE OF FORCE

3. Police Officer Ricky POH, on or about September 20, 2021, at approximately 1841, while assigned to HWY 02 and on duty, in the vicinity of [REDACTED] Kings County, was discourteous, in that [Officer POH] stated to [REDACTED] in sum and substance, "pull the fuck over", without police necessity.

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

In a Memorandum dated September 11, 2024, Assistant Deputy Commissioner Stone found Police Officer Poh guilty of all Specifications in Disciplinary Case No. 2022-27414. The facts and circumstances presented in the Memorandum from Assistant Deputy Commissioner of Trials, Stone, have been carefully considered. While I agree

with the proposed penalty recommendation of twenty-five (25) vacation days, I do not agree with the guilty finding of Specification No. 1.

In this matter, on September 20, 2021, Police Officer Poh, while working alone, was conducting speed enforcement along the westbound Belt Parkway in Brooklyn. On that date, Police Officer Poh observed an orange Lexus traveling 70 mph in a 50 mph zone. Police Officer Poh eventually caught up with the complainant and issued him five summonses for various offenses. As a result of this interaction, the complainant filed a CCRB complaint alleging, among other things, that Police Officer Poh pointed a firearm at him.

Police Officer Poh here felt the complainant was trying to flee from him. Additionally, Police Officer Poh stated that he drew his firearm because it gave him a tactical advantage. The Police Commissioner agrees that Police Officer Poh improperly pointed his firearm at the complainant. Here, Police Officer Poh did not “use” a deadly weapon so much as threaten to use it. The committed act is best described under the “threat of force.” Police Officer Poh drew and displayed his firearm but did not discharge it. As such, this specification cannot be established by the preponderance of the evidence; the Police Commissioner will not impose discipline concerning the first specification as it was not the proper charge. This charge is best analyzed under the threat of force.

It is therefore directed that Police Officer Poh forfeit twenty-five (25) vacation days for Specification Nos. 2 and 3, and be found not guilty of Specification No. 1.

A handwritten signature in black ink, appearing to read 'Thomas G. Donlon', is positioned above the printed name and title.

Thomas G. Donlon
Police Commissioner



POLICE DEPARTMENT

September 11, 2024

-----X
In the Matter of the Charges and Specifications :

- against - :

Police Officer Ricky Poh :

Tax Registry No. 961110 :

Highway Unit 3 :
-----X

Case No.

2022-27414

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Deanna Everett-Johnson, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

John Tynan, Esq.
Worth, London & Martinez, 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. Police Officer Ricky Poh, on or about September 20, 2021, at approximately 1841 hours, while assigned to Highway 2 and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that [Officer Poh] pointed [his] gun at [REDACTED] without police necessity.

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

2. Police Officer Ricky Poh, on or about September 20, 2021, at approximately 1841 hours, while assigned to Highway 2 and on duty, in the vicinity of [REDACTED] Kings County, abused [his] authority as a member of the New York City Police Department, in that [Officer Poh] threatened [REDACTED] with the use of force without sufficient legal authority.

P.G. 221-02, Page 2, Prohibitions 11 & 12

USE OF FORCE

3. Police Officer Ricky Poh, on or about September 20, 2021, at approximately 1841 hours, while assigned to Highway 2 and on duty, in the vicinity of [REDACTED] Kings County, was discourteous in that [Officer Poh] stated to [REDACTED] in sum and substance, "pull the fuck over," without police necessity.

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

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 29, 2024.

Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB called [REDACTED] to testify, as well as entering video footage of the incident into 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, I find Respondent Guilty of all three specifications and recommend that he forfeit twenty (25) vacation days.

ANALYSIS

This case arises from a vehicle stop initiated by Respondent, who, on the date of the incident, was a member of Highway Unit 2. The following is a summary of the facts which are undisputed. On September 20, 2021, Respondent, who was working by himself, was parked in a police car (“RMP”), on the shoulder of the westbound Belt Parkway in Brooklyn. He was close to Exit 1, conducting speeding enforcement. At approximately 1830 hours, he observed an orange Lexus driving 70 miles per hour in 50 miles per hour zone. Respondent later learned that the car was operated by [REDACTED] (“Complainant”). (Tr. 69-72)

Approximately seven seconds later, Respondent began to follow Complainant, who drove off the Parkway at Exit 1. (CCRB Ex. 2, *dashboard camera footage*, at 00:33-00:40, Tr. 17, 36, 72) Approximately one minute later, Respondent caught up with Complainant’s vehicle and engaged his turret lights and siren. A quarter of a block after that, while driving through an intersection, Respondent maneuvered his vehicle adjacent to the driver’s side of Complainant’s car. Respondent then drew his firearm and instructed Complainant to, “Pull the fuck over! Pull over, pull over, pull over!” (CCRB Ex. 2 at 01:52-02:12) Complainant moved his vehicle to the side of the road, approximately eighteen seconds after Respondent first activated his turret lights. When Respondent approached on foot, Complainant asked, “Why [did] you have your gun on me?” (CCRB Ex. 1, *body-worn camera footage*, at 01:19-01:21; Tr. 28)

Complainant handed Respondent his license and registration, as well as courtesy cards issued by the Captain’s Endowment Association and the Lieutenant’s Benevolent Association. Respondent called both members of service who had given Complainant their cards. Respondent informed each of them that he had to “pull his gun” on Complainant to get him to pull his vehicle over. (CCRB Ex. 1 at 08:09-08:12, 11:02-11:11) After these conversations, Respondent issued

Complainant a total of five summonses. The summonses, which Complainant is challenging in traffic court, alleged that he had been speeding; changed lanes in an unsafe manner; failed to signal; ignored pavement marking; and did not stop when required to do so. (Tr. 28, 79-80)

CCRB Exhibit 2, dashboard camera footage

CCRB entered the footage of the incident recorded by Respondent's dashboard camera into evidence:

00:33-00:38- Complainant's vehicle passes Respondent in the far left lane.

00:40-01:22- Respondent begins driving in same direction; Complainant's vehicle is no longer visible.

01:24-01:30- Respondent exits Belt Parkway, begins to drive to the left at a fork in the road, and then abruptly drives to the right.

01:38-01:43- Complainant's vehicle comes into view at the end of the street, then makes a right turn at a green light.

01:52-01:57- Respondent makes a right turn, comes up within a car length of Complainant, who is stopped at a light, and, for the first time, activates his turret lights. There are several cars stopped in front of Complainant.

01:58-02:05- Respondent uses his siren for the first time and the turret lights remain on. Complainant slowly passes two parked cars, a driveway, then another two parked cars, and drives through an intersection with Respondent directly behind him.

02:09-02:15- Respondent pulls next to Complainant's car on the driver side and yells, "You'd better pull the fuck over, pull over, pull over."

02:16-02:20- Complainant moves to the side of the road and stops the car.

Complainant appeared before the tribunal and testified that on the date of the incident, he was driving by himself on the Belt Parkway, getting ready to exit when he saw a police vehicle on the right shoulder. Complainant explained that he was driving the same velocity as the other cars around him, estimating his speed was "in the sixties." (Tr. 17-19) Complainant continued, "I just got off the exit. I pulled up to a stop sign, continued going straight to the light, it was green, I made a right, and I was pulled up at a red light behind two cars, waiting." (Tr. 21) Complainant

contended that it was at this point that he noticed the police RMP was behind him. He recalled that he was “stuck” behind two other cars when Respondent activated the emergency lights and siren. Complainant asserted that the vehicles in front of his prevented him from immediately pulling his Lexus to the side of the road. (Tr. 22-23)

Complainant recounted, “[Respondent] then came to the side of me and pulled out his gun and pointed it at me and told me to pull over.” (Tr. 24) Complainant estimated that Respondent pointed his gun, at his head for three to four seconds. He detailed driving for about six seconds, including getting through an intersection, before he came to a stop. Aside from acknowledging operating his car above the speed limit, Complainant denied violating any other traffic rules. (Tr. 25-27, 35-41, 48-49)

Respondent took the stand on his own behalf. He explained that his attention was drawn to Complainant’s vehicle by the Doppler radar device, which measures the speed of a group of vehicles. Respondent then utilized his handheld LIDAR to confirm that Complainant’s Lexus was driving at 70 miles per hour. Respondent also asserted that, in addition to speeding, he saw Complainant weaving in and out of traffic in an unsafe manner. He described that Complainant abruptly moved from the left lane to the right then drove over the “zebra stripe” pavement markings in order to exit the Parkway. Respondent recalled driving “80 to 90” miles per hour in order to catch up to Complainant’s car. Respondent testified that Complainant continued to drive fast through the residential neighborhood, where pedestrians were present. (Tr. 71-72, 85-86, 90-91)

Respondent described drawing his gun and telling Complainant to “pull the fuck over.” He detailed that he pulled his service weapon from its holster located on his left hip. Respondent explained that he had his foot on the brake and was using his right hand to speak into the

loudspeaker. After a couple of seconds, he placed the gun back into the holster. Respondent denied pointing the firearm at Complainant's head, insisting that he was holding it in a "low ready" position. Respondent conceded that he must have held the gun high enough for Complainant to see it, because Complainant asked him about it. (Tr. 80-81, 114-19)

During cross-examination, Respondent offered that he displayed the firearm because Complainant tried to flee from him, opining, "[w]hen you move the vehicle when I tell you to stop...you're fleeing." Respondent admitted that he did not activate his lights and sirens until he was directly behind Complainant's Lexus. When asked how Complainant would know he was being pulled over, Respondent replied, "I was right behind him." (Tr. 99-102) Respondent testified that he told CCRB investigators that he drew his firearm because it gave him a "tactical advantage." However, he acknowledged that beyond the observation of reckless driving, he had no further information, such as a crime in progress call, indicating that Complainant's behavior constituted an imminent threat to himself or the public. (Tr. 119-23)

Specifications 1 and 2: Use of and Threat of Force¹

Respondent stands charged with pointing his gun at Complainant without police necessity in violation of Patrol Guide 221-02. CCRB has characterized this same act as both a use of force and a threat of force in Specifications 1 and 2. Respondent acknowledges that he drew his service weapon and pointed it in the direction of Complainant. The question for the tribunal is whether, under the circumstances, he was justified in doing so. I find that he was not.

Patrol Guide 221-02, paragraphs 11 and 12 instructs that officers will, "[a]pply no more than the reasonable force necessary to gain control; and assess the situation continually and

¹ Specifications 1 and 2 stem from the same underlying acts, and will be analyzed together.

adjust the use of force as necessary.” In addition, note 2 of Patrol Guide section 221-01, provides officers with the following guidance with regard to brandishing of their gun, “Drawing a firearm prematurely or unnecessarily limits a uniformed member of the service’s options in controlling a situation and may result in an unwarranted or accidental discharge of the firearm. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present.... When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of the service will holster the firearm as soon as practicable.” These procedures provide the framework for analyzing Respondent’s actions.

Complainant testified that he did not realize Respondent was pursuing him until he was stopped at a stoplight behind two other cars and observed Respondent’s RMP behind him with the lights and siren activated. Complainant described that shortly thereafter, Respondent pulled up beside him, pointing his gun at him and told Complainant to “pull the fuck over” before he had a chance to move his car to the side of the road. He recalled being unable to pull over immediately because of the vehicles in front of him, but did so as soon as he was able. I credit Complainant’s version of events, which is corroborated by the footage from Respondent’s dashboard camera, CCRB’s Exhibit 2. In that video, two stopped cars are visible in front of Complainant’s Lexus when Respondent pulls behind the Lexus and activates his turret lights. To the right of Complainant, one can see part of a parked vehicle, which he passes, then another, a driveway, and two more parked cars before getting to the intersection, which he is driving through when Respondent pulls his vehicle next to him and yells at Complainant to “pull the fuck over.” Clicking can be heard on the video, which appears to be Respondent drawing, then re-holstering his weapon, which Respondent confirmed doing when he testified. Approximately

eighteen seconds pass between when Respondent first activated his lights and when Complainant pulled to the side of the road.

Respondent contends that he drew his firearm as a result of Complainant's reckless driving and alleged failure to pull over. Respondent argues that Complainant should have been aware that he was being pursued by the police, even before Respondent activated his turret light, because Respondent was driving behind him. I disagree. Law enforcement vehicles are equipped with lights and sirens in order to alert members of the public that they need to move to the side of the road, either to allow the police to pass, or to pull them over. It is not logical to expect a motorist to pull over simply because a police car is behind them. Indeed, Respondent's vehicle was not directly behind Complainant's when he was speeding on the Belt Parkway. It was not until Complainant was stopped at a light in a residential neighborhood that Respondent caught up to him. Finally, there is no evidence that Complainant attempted to flee upon becoming aware that Respondent was trying to pull him over. CCRB's Exhibit 2 shows cars in front of Complainant, who continued to drive slowly, apparently looking for a safe place to stop, and doing so within less than thirty seconds. (CCRB Ex. 2 01:58-02:05)

"In determining whether the use of force was reasonable, the trier of fact must allow for police officers' frequent need to make 'split-second' judgments about how much force is necessary 'in circumstances that are tense, uncertain, and rapidly evolving.'" *Pacheco v. City of New York*, 104 A.D.3d 548 (1st Dept. 2013), quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989). In a recent disciplinary case involving the pointing of a firearm at a motorist during a vehicle stop, this tribunal found that, "[e]ach of these factors, acceleration, evasion, visibility issues, on their own may not have been enough to justify Respondent pointing his firearm at Complainant." *See Case No. 2022-25079* (June 24, 2024) Taken together, however, the officer in

that case possessed a reasonable belief that there was a potential for serious physical injury which justified the officer's drawing and pointing his service weapon. In contrast, Respondent's observations of Complainant speeding, even in conjunction with other traffic violations, without any other information, was not enough to justify drawing and pointing his gun at Complainant.

Accordingly, I find Respondent Guilty of Specifications 1 and 2.

Specification 3: Discourtesy

In CCRB Exhibit 2, Respondent can be heard telling Complainant to "pull the fuck over." Indeed, Respondent admitted that he used profanity while he was pointing his gun in the direction of Complainant. His explanation for doing so was to get Complainant to pull his vehicle to the side of the road, which Complainant did within seconds after Respondent made the statement.

As a preliminary matter, the statement made by Respondent was discourteous on its face. Counsel for Respondent made the argument that his use of profanity was not misconduct, because it was made in the course of a high-stress situation. While it is true that this tribunal has found officers not guilty of discourtesy when profane language was used in the context of a dynamic situation over which the officer is attempting to gain control, those circumstances were not present in the instant matter.

As is clear from Respondent's and Complainant's testimony, as well as the recording of the interaction, the statements were made while Complainant was attempting to find a place to safely stop his car. The profanity was wholly gratuitous and served no legitimate purpose. For the foregoing reasons I find Respondent Guilty of Specification 3.

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 has no formal disciplinary history, was appointed to the Department on January 6, 2016. He has been found guilty of pointing his firearm at Complainant without justification, which also constituted an improper threat of force, in addition to addressing Complainant in a discourteous manner. CCRB has recommended the mitigated penalty for the use of deadly physical force resulting in no injury. The mitigated penalty for that misconduct is forfeiture of thirty (30) suspension days, plus thirty (30) vacation days and dismissal probation for a period of one (1) year.

While I agree that Respondent improperly pointed his firearm at Complainant, I disagree with CCRB's Matrix classification, namely that Respondent "used" a deadly weapon. Although Respondent's behavior constitutes a use of force, the section relied on by CCRB defines deadly physical force as, "[p]hysical force which under the circumstances in which it is used, is readily capable of causing death or other serious physical injury (e.g. the *use* of a deadly weapon, such as *discharging* a firearm against a person.)" (*emphasis added*, Disciplinary Matrix at p. 22). Here, Respondent drew and displayed his firearm, but did not discharge it. Based on the plain language of the Matrix definition, the CCRB's proposed penalty category is inapplicable.

Inasmuch as Respondent's misconduct does not fall squarely within the Matrix categories, the tribunal is applying the penalty range for "threat of force" to determine the appropriate penalty. The presumptive penalty for an improper or wrongful threat of force is the forfeiture of ten (10) days, with an aggravated penalty of twenty (20) days. (Disciplinary Matrix at p. 28) Drawing a firearm and pointing it at Complainant without police necessity is an aggravating factor. In addition, this took place in a residential area, where pedestrians were walking and other cars were driving. Respondent's actions were excessive and unnecessary. Pointing a firearm under these circumstances further supports the imposition of an aggravated penalty. Accordingly, I recommend the forfeiture of twenty (20) vacation days for Specifications 1 and 2.

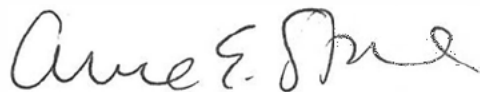
With respect to the discourtesy charged in Specification 3, while the circumstances surrounding Respondent's use of profanity appear to have been stressful, they were not so fraught as to excuse Respondent's use of profanity. Although Respondent readily admitted that he used profanity during this interaction, NYPD officers are required to treat members of the public with civility and courtesy, which Respondent failed to do. I believe that the presumptive penalty of five (5) vacation is appropriate to address this misconduct.

Although the facts underlying all three specifications occurred simultaneously, the use of force and threat are distinct from the discourtesy, and therefore I believe that the penalties should run consecutively, for a total forfeiture of twenty (25) vacation days.

DISAPPROVED

THOMAS G. DONLON
POLICE COMMISSIONER

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER RICKY POH
TAX REGISTRY NO. 961110
DISCIPLINARY CASE NO. 2022-27414

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, 2022, and 2023.

Respondent has no formal disciplinary history. He was placed on Level 1 Performance Monitoring in November 2022; monitoring remains ongoing.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials