



POLICE DEPARTMENT

May 21, 2024

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In the Matter of the Charges and Specifications :

Case No.

- against - :

2023-27943

Police Officer Jhovanny Ysabel :

Tax Registry No. 943976 :

Police Service Area 9 :

-----X  
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, 10<sup>th</sup> 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 Jhovanny Ysabel, on or about October 3, 2021, at approximately 0035 hours, while assigned to PSA 9, and on duty, in the vicinity of [REDACTED] [REDACTED] Queens County, engaged in conduct prejudicial to good order, efficiency, or discipline of the Department in that, [Officer Ysabel was] discourteous, to [REDACTED] Person A [REDACTED] by stating in sum and substance: "You better use that fist motherfucker, let's go," "Face the wall and don't fucking move;" "You're on fucking time out, motherfucker;" and "shut the fuck up," without police necessity.

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

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND  
VALUES OF NYPD

2. Police Officer Jhovanny Ysabel, on or about October 3, 2021, at approximately 0035 hours, while assigned to PSA 9, and on duty, in the vicinity of [REDACTED] [REDACTED] Queens County, engaged in conduct prejudicial to good order, efficiency, or discipline of the Department in that, [Officer Ysabel was] discourteous to, [REDACTED] Person A [REDACTED] by stating in sum and substance; "oh you're crying now you little bitch" without police necessity. *(As amended)*

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

PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND  
VALUES OF NYPD

3. Police Officer Jhovanny Ysabel, on or about October 3, 2021, at approximately 0035, while assigned to PSA 9, and on duty, in the vicinity of [REDACTED] [REDACTED] Queens County, used offensive language, in that, [Officer Ysabel made] remarks to [REDACTED] Person A [REDACTED], based upon the gender of Person A [REDACTED] by stating in sum and substance; "oh you're crying now you little bitch." *(As added)*

A.G. 304-06, Page 1, Paragraph 2

PROHIBITED CONDUCT

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 16, 2024.

Respondent, through his counsel, entered a plea of Not Guilty to Specifications 2 and 3, and pled Guilty to Specification 1. The CCRB presented a hearsay case, entering body-worn camera

footage 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 Not Guilty of Specifications 2 and 3. In accordance with his plea, I find him Guilty of Specification 1, and recommend a forfeiture of five (5) vacation days, and that Respondent attend training.

### ANALYSIS

This case arose out of a CCRB complaint which alleged that Respondent, while removing Person A from his apartment to the hospital, was discourteous to, and used offensive language against Person A. Respondent has pled guilty to directing the following statements at Person A at various times during the encounter, "You better use that fist, motherfucker, let's go"; "Face the wall and don't fucking move"; "You're on fucking time out, motherfucker"; and "Shut the fuck up." (Tr. 24, 26, 41-42, CCRB Ex. 1 at 19:05-19:09, 20:50-20:58, 22:50-23:00) What remains in dispute is whether Respondent also said to Person A, "Oh, you're crying now you little bitch," and if so, whether that statement constitutes discourteous and offensive language.

Person A did not appear before the Tribunal, nor did he give a statement to the CCRB during the course of the investigation. In support of its case, CCRB presented body-worn camera footage of the incident recorded by Respondent and Police Officer Cottone. (CCRB's Exhibits 1 and 2) The footage depicts the interaction between Respondent and Person A, which occurred in the apartment, including the disputed sentence, from two different vantage points.

Respondent, who has worked in PSA 9 since 2016, testified that on October 3, 2021, he and "four to six" other officers, arrived at [REDACTED] [REDACTED] in Queens. They were

there in response to a report of a violent emotionally disturbed person. (Tr. 15-16, 18-19; *see* CCRB Exs. 1-2) Respondent described entering the apartment and hearing Person A, who was in one of the bedrooms, “yelling and screaming and just being irate.” (Tr. 21) Respondent recalled that New York City Fire Department Emergency Medical Services (EMS) personnel, who were also on the scene, examined Person A and determined that he required hospitalization. (Tr. 22; CCRB Ex. 1 at 17:20-17:25) A lieutenant on the scene instructed Respondent and his partner, Police Officer Christopher Busutil, to escort Person A to the ambulance. (Tr. 21-22)

Respondent stated that Person A had a previous injury to his leg, for which he was wearing a medical boot. (Tr. 31) Respondent and Police Officer Busutil stood at the door of the bedroom and informed Person A that he needed to go to the hospital. Person A and his female companion objected. (Tr. 22, 30; CCRB Ex.1 at 19:00-19:05) Respondent warned, “You’re going to the hospital whether you like it or not.” Person A repeatedly stated to the officers in sum and substance, “touch me, I dare you.” Respondent detailed approaching Mr. Person A, who was seated on a bed. He recalled observing that Person A had balled his fist and taken a “fighting stance.” In response Respondent told Person A, “You better use that fist, motherfucker, let’s go.” (Tr. 24; CCRB Ex.1 at 19:03-19:09)

Respondent explained that Person A’s companion placed herself on top of Mr. Person A on the bed, apparently attempting to prevent Respondent and Police Officer Busutil from taking him to the hospital. Respondent began to pull the companion off of Person A and a scuffle ensued. Respondent continued, “somebody grabbed her and then [Person A] managed to jump up and he took a swing at me and then we all fell on top of the bed.” (Tr. 23; CCRB Ex. 1 at 19:28-19:29) During the struggle someone stepped on or banged into Person A’s



injured foot. Person A began crying and screaming during which a muffled voice can be heard saying, “Oh, you’re crying now, you little bitch.” (CCRB Ex.1 at 19:58-20:02; CCRB Ex. 2 at 20:26-20:30)

After handcuffing Person A, Respondent detailed escorting him to the ambulance via the elevator. Respondent described that Person A was “passive combative... just dropping his weight, and I just didn't want him to... spit at me, so I tried to put him against the wall.” (Tr. 27) Respondent admits that he said to Person A, “Face the wall and don’t fucking move; you’re on fucking time out, motherfucker.” (Tr. 25; CCRB Ex. 1 at 20:50-20:58)

Person A was then brought to the ambulance. Respondent testified that shortly after he was seated inside of it, Respondent entered and heard Person A saying to EMS staff, “He stomped on my foot, he stomped on my foot.” Respondent acknowledged that he muttered, “Shut the fuck up.” Person A apparently heard the statement and replied, “You shut the fuck up. If you’re gonna say that to me get off of this bus.” (Tr. 40-41; CCRB Ex. 1 at 22:50-23:00)

#### *Specification 1: Discourtesy*

Respondent has entered a plea of guilty to Specification 1- discourteously stating to Person A, “You better use that fist motherfucker, let’s go”; “Face the wall and don’t fucking move”; “You’re on fucking time out, motherfucker”; and “Shut the fuck up.” Having reviewed all of the evidence and in accordance with his plea, Respondent is found guilty. I have set forth my recommendation and reasoning regarding an appropriate penalty below.

#### *Specifications 2 and 3: Discourtesy and Offensive Language*

The only comment at issue in Specifications 2 and 3 is the accusation that Respondent said to Person A, “Oh, you’re crying now, you little bitch.” CCRB contends that this

sentence is discourteous, and also that it constitutes offensive language based on Person A's gender. Respondent has denied making this remark and it is not readily apparent from the video evidence that the comment is attributable to him. As such, before analyzing the content of the statement, the Tribunal must determine whether Respondent was the person who made the remarks.

The relevant statement is captured on CCRB Exhibit 1, Respondent's body-camera at 19:58-20:02, and CCRB Exhibit 2, Police Officer Cottone's body-worn camera at 20:26-20:30. The statement is muffled and difficult to hear on both recordings, but it is particularly muted on CCRB's Exhibit 1, Respondent's body-worn camera. Indeed, in order to make out what was said on each video, I had to raise the volume, slow down the playback, and watch the footage multiple times. By taking those steps, it was just possible to conclude that the voice sounded male, however, it was impossible to determine where the person was located when they spoke. Neither video reveals who is making the statement. It is difficult to see anything, because the officers are engaged in a close-quarters struggle with Person A and their cameras are mostly pointing at clothing.

During summation, the CCRB prosecutor made a process of elimination argument in support of their position that Respondent uttered this sentence. They started with the unsupported premise that the individual who made the statement was in the bedroom. Respondent agreed that it appeared from the body-worn camera footage that there were only four officers in the bedroom when the comment was made and that the lieutenant could be ruled out because she is female. (Tr. 40) CCRB then argued that Police Officer Cottone was excluded because, "he wore the camera and the voice was not made from his person." (Tr. 54) Police Officer Busuttil was ruled out because he made a "separate and distinct" statement, which was made immediately after and

“crosses” this statement. (Tr. 54) According to CCRB, Respondent is therefore the only possible culprit. This reasoning would be more convincing if Respondent, the lieutenant, Police Officer Cottone, and Police Officer Busuttil were the only outsiders in the apartment. There is ample evidence, both video and testimonial, that at least two other male police officers and at least two male EMTs were present in the apartment, near the doorway of the bedroom during this incident. (Tr. 40; CCRB Ex.1 at 18:49; CCRB Ex. 2 at 18:55, 19:37)

Additionally, the same reasoning that eliminated Police Officer Cottone as the speaker can be applied to Respondent -if he did say the words- they would have been captured on his body-worn camera. The other statements he made were easy to hear on the footage from his camera. Instead, for this comment, it was almost impossible to decipher the words on the recording, as though the comment might have been made at a distance from Respondent’s camera.

Respondent has admitted that he was discourteous to **Person A** during the course of their interaction on October 3, 2021. However, on the stand, he denied calling **Person A** a “bitch” or referencing crying. (Tr. 28) Respondent also testified that when asked if he made the comment during his official interview with CCRB, he told investigators that he didn’t recall saying it, that the voice did not sound like his, and that he did not know who said it. (Tr. 38-40, 42-43)

With the video failing to confirm the speaker’s identity by a preponderance of the evidence, the Tribunal examined the full trial record, but ultimately found it to be devoid of any corroborating evidence supporting this charge. Neither **Person A** nor his companion, appeared before the Tribunal, and no statements from them were presented. None of the other officers who were present testified and CCRB did not call any EMS personnel. The only

evidence put forth in support of these specifications was the body-worn camera footage. Those videos did not contradict, and in some respects supported Respondent's denial of culpability. Ultimately, the burden lies with CCRB to establish the misconduct charged by a preponderance of the credible evidence. While it is undisputed that someone in the vicinity of that bedroom said, "Oh, you're crying now, you little bitch," there is insufficient evidence to determine that it was Respondent who made the remark. Because the Tribunal has not found that Respondent actually made the comment, the questions of whether he used discourteous and/or gender-based offensive language are moot. Accordingly, Respondent is found Not Guilty of Specifications 2 and 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 was appointed on January 10, 2007, has conceded that on October 3, 2021, he made the following discourteous statements to Person A: "You better use that fist, motherfucker, let's go"; "Face the wall and don't fucking move"; "You're on fucking time out, motherfucker"; and "Shut the fuck up." Consistent with that admission, Respondent has pled guilty to engaging in conduct prejudicial to the good order, efficiency and discipline of the Department in violation of the Administrative Guide.

The CCRB has recommended a penalty of the forfeiture of five (5) vacation days, the presumptive penalty for discourtesy to a civilian. Counsel for Respondent has asked for training.



As discussed below, I believe a combination of forfeiture of vacation days, as well as training is suitable to address the misconduct. I find that a loss of five (5) vacation days is fair and appropriate under the circumstances.

As a preliminary matter, I find that each of the statements which Respondent has admitted to directing at **Person A** “You better use that fist, motherfucker, let’s go”; “Face the wall and don’t fucking move”; “You’re on fucking time out, motherfucker”; and “Shut the fuck up,” are discourteous on their face. Patrol Guide section 200-02 requires officers to, “[v]alue human life, respect the dignity of each individual and render our services with courtesy and civility.”

I note that the events which took place in the apartment that night escalated, in large part, due to the actions of **Person A** and his companion, who not only verbally, but physically, resisted his removal to the hospital. **Person A** refused to voluntarily accompany the officers. He appeared to be threatening Respondent and the other officers present with violence when he repeatedly stated, “touch me, I dare you,” while making a fist. **Person A's** companion placed herself on top of him to prevent officers from taking him out of the bedroom. Indeed, while Respondent was attempting to place handcuffs on him, **Person A** swung at Respondent. Even after he was in handcuffs, **Person A** was not cooperative while walking to the elevator and out of the building.

Respondent acknowledged that, in the course of his seventeen-year policing career, he has used “harsh language” “hundreds” of times. With regard to the statements, “You better use that fist, motherfucker, let’s go,” “Face the wall and don’t fucking move,” and “You’re on fucking time out, motherfucker,” Respondent contends that he used those phrases to assert his authority and as a tool to gain compliance from an uncooperative **Person A**. He described

the statement in the ambulance, “shut the fuck up,” as something he muttered to himself in response to Person A, telling the EMTs that his injured foot was “stomped “on. Respondent professes that the words were not said to Person A, and he did not intend for them to be heard by anyone.

The events which occurred in the bedroom, prior to Person A being handcuffed were tumultuous, and the stress of that encounter continued until he was placed into the ambulance. However, those factors do not mitigate Respondent’s misconduct. His use of the statements, “You better use that fist, motherfucker, let’s go”; “Face the wall and don’t fucking move”; “You’re on fucking time out, motherfucker”; and “Shut the fuck up,” was gratuitous, made out of frustration, and served no legitimate law enforcement purpose.

Counsel for Respondent has argued that the use of “harsh language” is preferable to the use of physical force to gain compliance from recalcitrant members of the public. However, many officers are able to gain compliance from uncooperative individuals using a “command” voice and presence without resorting to profanity. In this case Respondent had the advantage of numbers, and could have utilized better team tactics.

It is also important to consider that Respondent was not interacting with a person who had committed a crime and was resisting being taken into custody. Person A was experiencing a medical episode and being taken involuntarily to the hospital. Members of the public in such situations should be treated with compassion, even when they are acting erratically. The Patrol Guide 221-13 requires officers to “Avoid any action which might agitate or provoke the [emotionally disturbed person].” Here, Respondent made not just one, but multiple profane and discourteous comments to Person A, which aggravated the situation. He should have, in the view of the Tribunal, exercised more restraint with his words.

In determining an appropriate penalty all of the circumstances surrounding the discourtesy must be taken into consideration. Respondent, who has no formal disciplinary history, has been candid about his history of using harsh language in the past. It is the hope of this Tribunal that this incident causes Respondent to be more thoughtful about resorting to using profanity with members of the public, particularly those in need of medical assistance. I believe that a penalty of five (5) vacation days strikes the correct balance between the inappropriate nature of the misconduct and the challenging events that preceded it. In addition, it is my opinion that Respondent would benefit from training regarding tactical communications.

Respectfully submitted,



Anne E. Stone

Assistant Deputy Commissioner Trials

**APPROVED**

JUN 11 2024  
  
EDWARD A. CABAN  
POLICE COMMISSIONER



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD  
POLICE OFFICER JHOVANNY YSABEL  
TAX REGISTRY NO. 943976  
DISCIPLINARY CASE NO. 2021-27943

Respondent was appointed to the Department on January 10, 2007. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2021, 2022, and 2023.

Respondent has no formal disciplinary history.

For your consideration.

Anne E. Stone  
Assistant Deputy Commissioner Trials