



POLICE DEPARTMENT

September 21, 2022

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Rafael Tatis :

Tax Registry No. 947951 :

26th Precinct :

Case No.

2021-23042

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

Before: Honorable Paul M. Gamble  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Theresa Freitas, Esq.  
Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

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

To:

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

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## CHARGES AND SPECIFICATIONS

1. Police Officer Rafael Tatis, on or about August 17, 2019, at approximately 0900, while assigned to the 026 PCT and on duty, in the vicinity of Brooklyn Central Booking at 120 Schermerhorn Street, Kings County, wrongfully used force, in that he kicked the cell slot door closed on Complainant's<sup>1</sup> hand without police necessity.

P.G. 221-01, Page 3, Prohibition 2  
P.G. 221-02, Page 2, Prohibition 11

FORCE GUIDELINES  
USE OF FORCE

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 16, 2022. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The CCRB presented video footage of the incident obtained from surveillance cameras operating inside Brooklyn Central Booking. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal finds Respondent Guilty of the charged misconduct.

## ANALYSIS

This case involves an allegation of using force without police necessity on August 17, 2019. The following is a summary of the facts which are not in dispute.

Respondent was assigned to Brooklyn Central Booking as a cell attendant. Complainant was being held in a holding cell with approximately 20 other individuals. On the holding cell is a rectangular cell slot door that opens outward and is typically used to hand items over to individuals inside of the holding cell.

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<sup>1</sup> Complainant's identity is known to the Tribunal.

The Tribunal received in evidence several videos of the Central Booking holding cell area from various angles; these videos do not have any audio component (CCRB Exs. 1, 1A, 1B, 1C, 2, 3, 4, 5).

The following is a summary of the relevant footage from CCRB Exhibit 1, which captures the front of the holding cell and the office space around it:

- |                  |   |
|------------------|---|
| 8:59:57-9:01:49: | Respondent enters the holding cell area through a door on the left-hand side of the screen. Respondent walks out of frame.  |
| 9:01:49-9:01:55: | Respondent comes back into frame and is seen holding a stack of cups. His back is to this camera; he appears to be opening the cell door slot with a key.   |
| 9:01:55-9:02:05: | The cell slot door is open. Respondent goes to shut the cell slot Door, but it is pushed back down.   |
| 9:02:05-9:02:11: | Respondent is seen holding the stack of cups in his hand again.   |
| 9:02:11-9:02:18: | Respondent steps back away from the holding cell and appears to place the stack of cups on a desk off-camera.   |
| 9:02:18-9:02:45: | Respondent walks over to the door on the left-hand side of the screen. Complainant is seen sticking his arm completely out. It appears that Respondent and Complainant are speaking with each other. Respondent's back is to the camera. Respondent appears to be ducking his head to look through the open cell door slot to speak with Complainant. |
| 9:02:45-9:02:50: | Respondent walks over to the holding cell. Both of Complainant's arms are out of the cell slot door. Respondent reaches back and grabs a pair of handcuffs.   |
| 9:02:50-9:02:51: | Respondent is bracing against the holding cell door with one hand and steps back; the hand holding the handcuffs swings backwards.  |
| 9:02:51-9:02:52: | Respondent kicks at the cell slot door. Complainant's hand is seen resting on the open cell slot door.  |
| 9:02:52-9:02:55: | Complainant pulls his arm back into the holding cell. Respondent kicks at the cell slot door again, shutting it.  |

Below is a summary of the relevant footage from CCRB Exhibit 3, which captures a side view of the holding cell area:

- 9:01:43-9:01:54: Respondent comes out of back room holding a stack of cups and walks back over to the holding cell.
- 9:01:54-9:02:00: Respondent uses key to open cell door slot. He passes the stack of cups through the slot.
- 9:02:00-9:02:02: Complainant's hand pushes on the cell door slot as Respondent tries to close it and holds out the stack of cups. Respondent takes the stack of cups back from Complainant.
- 9:02:02-9:02:12: Respondent takes the key out of the lock and has his hand on the handle of the door while Complainant's fist is still leaning on it. Respondent appears to be speaking with Complainant. Complainant then pushes down onto the cell door slot, leading Respondent to let go of the handle, and Complainant has both forearms leaning on it.
- 9:02:12-9:02:45: Respondent walks over to the desk with the stack of cups. Respondent walks away and is out of frame of this camera. Complainant brings his arms back inside the holding cell and then has one arm up to his elbow sticking out of the cell door slot. Complainant gestures using his hand and arm as he speaks to Respondent.
- 9:02:45-9:02:48: Respondent approaches the holding cell and tries to grab Complainant's hand, but Complainant pushes his other hand through the cell slot door to push Respondent away.
- 9:02:48-9:02:49: Respondent steps toward the desk and grabs a set of handcuffs and attempts to grab Complainant's arms again.
- 9:02:49-9:02:51: Complainant grabs at the handcuffs between his index finger and his thumb and yanks the handcuffs into the cell. Respondent places his hand on the holding cell to brace against the force of the pull and pulls the handcuffs away. Complainant brings his hands back outside of the cell on top of the cell slot door.
- 9:02:51-9:02:52: Respondent kicks at the cell slot door and Complainant's forearm is still leaning down on the cell slot door as Respondent kicks it, preventing it from closing. Complainant brings his arm back inside the cell.

9:02:52-9:02:55: Respondent kicks at the cell slot door a second time. Complainant does not have his arm leaning on the cell slot door. The cell slot door is now shut.

The following is a summary of the relevant evidence presented at trial.

Respondent testified that Complainant asked him for water; accordingly, he retrieved a stack of cups to give to Complainant. Respondent used a key to open the cell slot door to pass the stack of cups to Complainant and told him he needed to get the water from the sink next to the toilet inside the holding cell (T. 49, 51, 82).

According to Respondent, Complainant appeared agitated and upset, saying, "I ain't drinking that dirty toilet water. You drink it." He testified further that Complainant asked one of the other individuals in the holding cell to fill up the cup and "he would splash us." Respondent interpreted that to mean that Complainant would splash water outside of the cell, including the hallway, the desk, the computer, himself and the other officer present (T. 52-53).

Respondent then retrieved the stack of paper cups from Complainant and placed them on a nearby desk. He testified that he then asked Complainant to put his arms back inside the cell and Complainant refused. Respondent then tried to push Complainant's hands into the cell, but Complainant slapped his hand away. Respondent stated that he looked into the courtroom for other officers to assist him, but no one was in there yet. He then went to handcuff Complainant through the cell slot door, but Complainant pulled on the handcuffs "very hard." According to Respondent, he was concerned that Complainant would obtain control of the handcuffs, creating a safety issue inside the holding cell (T. 58-61).

Respondent recounted that he pulled back the handcuffs, stepped back to raise his knee, and then attempted to kick the cell slot door shut. The first kick was unsuccessful; Respondent did not recall seeing Complainant's arm because "[his] intention was to close the slot, and retain

the cuffs simultaneous[ly].” Respondent kicked the cell slot door a second time and the door closed (T. 63, 80).

Respondent testified that once the cell slot door was shut, Complainant started “agitating other prisoners, and claimed that he was hurt,” so he offered him medical attention, which Complainant refused. Respondent testified that he did employ de-escalation tactics; however, none were successful when dealing with Complainant during this incident. He conceded that kicking a metal door on someone’s hand could cause injury (T. 64, 67-68, 94).

*Specification 1: Wrongful Use of Force*

I find that CCRB has met its burden of proof by a preponderance of the relevant, credible evidence that Respondent wrongfully used force without police necessity by kicking a cell slot door on Complainant’s hand.

It is uncontroverted that Respondent twice kicked a cell slot door in a cell area while he was on duty: Respondent admitted doing so in his trial testimony and the video evidence clearly depicts him kicking the door (T. 63, 65-66, 82, 95-96, 98-99; CCRB Exs. 1, 3, 6B, 6D). Respondent further admitted, and the video evidence shows, that at the time Respondent launched his first kick at the door, Complainant’s right hand was extending through the slot from inside the cell area (T. 92; CCRB Exs. 1, 9:02-9:02.4; 3, 9:02-9:02.4). Finally, the video evidence shows that Respondent’s first kick caused the door to swing upward and strike Complainant’s right hand (T. 98-99; CCRB Exs. 1, 9:02.25; 3, 9:02.25; 6B). By the time Respondent launched his second kick a second later, Complainant had withdrawn his hand from the slot and Respondent’s kick caused the door to slam shut (T. 98; CCRB Exs. 1, 9:02.4; 3, 9:02.4; 6D).

Respondent offered the defense that he was authorized to use reasonable force to close the cell slot door in response to the threat Complainant posed to the Members of Service on duty in the cell area, as well as to the property in the cell area. He also argued that his kicks were reasonable and necessary. As discussed below, the Tribunal rejects this defense and finds that Respondent's kicks were neither reasonable nor necessary.

In order to for Respondent's kicks to be necessary, there would have to exist some imminent threat of harm that cried out for immediate police action. According to Respondent, he heard Complainant asking another inmate to fill a cup with water from the sink inside the cell so that he could throw it on Respondent (T. 53, 68, 76, 95). It is undisputed that at the time Respondent kicked at the cell slot door, Complainant had nothing in his hands. While it is true that Complainant grabbed Respondent's handcuffs and attempted to pull them into the cell area seconds before Respondent kicked at the door the first time, it is undisputed that Respondent retained control of those handcuffs and had them in his right hand as he drew his leg back to kick at the cell slot door (T. 81, 82; CCRB Exs. 1, 6A, 6B, 6C, 6D). Any threat posed by Complainant at that time was mitigated by his position behind a locked cell door. Even if I credit Respondent's assertion that Complainant threatened to throw water on him, that would not constitute a threat warranting immediate pre-emptive force.

Based upon my review of the video evidence, I find that the force Respondent used to deliver a kick to the cell slot door was sufficient to cause serious physical injury, had Complainant not moved his hand and wrist (*see People v. Herrera*, 202 AD3d 517, 519 [1st Dept. 2022][comminuted fracture of the left hip socket and right ulna]; *People v. McCabe*, 182 AD3d 772, 774 [3d Dept. 2016][numerous broken bones]; *People v. Coy*, 45 AD3d 1050, 1051



[3d Dept. 2007][broken facial bones]; P.L. § 10.00). I further find that the use of such force against a detained, unarmed detainee was unreasonable.

This Tribunal does not credit Respondent's testimony and takes notice that Respondent was given a direct order to testify in this proceeding. Respondent's testimony that he was concerned about the complainant splashing water onto Respondent and the area outside the door was self-serving. Although he stated that Complainant threatened such action, the complainant did not have the cups, or anything else, in his hands to be able to do that. While Respondent's additional concern of Complainant gaining control of the handcuffs is valid, the handcuffs were in Respondent's control once he pulled them away from Complainant, prior to kicking the cell slot door shut.

I, therefore, find Respondent Guilty of Specification 1.

### PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined (*See* 38 RCNY § 15-07). Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on January 14, 2009, has a formal disciplinary history. In 2021, Respondent forfeited 55 penalty days, was placed on dismissal probation, and required to undergo counseling and breathing testing after being found guilty of leaving the scene of a vehicle collision, refusing to submit to a breathalyzer test, and being unfit for duty to do consuming alcohol.



The presumptive penalty for use of non-deadly force against another resulting in no injury is 10 penalty days. The mitigated penalty is 5 penalty days; the aggravated penalty is termination. There is nothing in the evidence presented, nor in Respondent's testimony, which warrants a mitigated penalty.

The CCRB has recommended a forfeiture of 10 days; based upon the record before me, I find this penalty inadequate to address the seriousness of Respondent's misconduct.

Respondent has a duty of care to anyone in his custody, regardless of the nature of the offenses with which they may be charged. Complainant was a detained prisoner awaiting arraignment on criminal charges, not a convict sentenced to a gulag. The Disciplinary Guidelines recognizes the use of force against a handcuffed or otherwise restrained prisoner as an aggravating factor.

Respondent engaged in willful misconduct which he attempted to justify by fabricating a threat. His suggestion that the possibility of having a cup of water thrown at him through a slot in cell door warrants the use of force stands in stark contrast to the men and women of this Department who exercised greater forbearance during volatile demonstrations during the summer of 2020.

In order to validate the high standards that Members of Service hold themselves to, a serious sanction is warranted. Accordingly, I recommend that Respondent forfeit 20 vacation days.

**APPROVED**

NOV 23 2022  
KRECHANT L. SEWELL  
POLICE COMMISSIONER

Respectfully submitted,

Paul M. Gamble  
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 RAFAEL TATIS  
TAX REGISTRY NO. 947951  
DISCIPLINARY CASE NO. 2021-23042

Respondent was appointed to the Department on January 14, 2009. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2019, 2020 and 2021. He has been awarded one medal for Excellent Police Duty.

In 2021, Respondent forfeited 32 pre-trial suspension days, 23 vacation days, was placed on one-year dismissal probation and directed to comply with breath testing and counseling after being found guilty of being unfit for duty due to consuming alcohol, refusing to submit to a breathalyzer test, and being involved in a motor vehicle collision and leaving the scene.

For your consideration.

Paul M. Gamble  
Assistant Deputy Commissioner Trials