



POLICE DEPARTMENT CITY OF NEW YORK

January 9, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Juan Cabrera  
Tax Registry No. 948314  
40 Precinct  
Disciplinary Case No. 2015-14038  
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**Charges and Specifications:**

1. Said Police Officer Juan Cabrera, while on-duty and assigned to the 84th Precinct, on or about August 28, 2014, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Cabrera did wrongfully engage in a verbal and physical altercation with New York City Police Sergeant Stephen Volpe of the 84th Precinct.  
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT – GENERAL REGULATIONS
2. Said Police Officer Juan Cabrera, while on-duty and assigned to the 84th Precinct, on or about August 28, 2014, was discourteous to New York City Police Sergeant Stephen Volpe, in that said Police Officer Cabrera screamed at Sergeant Volpe and repeatedly said "Fuck you!"  
P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – PROHIBITED CONDUCT – GENERAL REGULATIONS

**Appearances:**

For the Department: Anna Krutaya, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: John Tynan, Esq.  
Worth, Longworth & London, LLP  
111 John Street – Suite 640  
New York, NY 10038

**Hearing Date:**

October 19 and 20, 2016

**Decision:**

Guilty

**Trial Commissioner:**

ADCT Nancy R. Ryan

**REPORT AND RECOMMENDATION**

The above-named member of the Department appeared before me on October 19 and 20, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Sergeant Sean Riker, Sergeant John Kocher, Police Officer Leonard Clarke, Sergeant Stephen Volpe and Lieutenant Frank Jurs as witnesses. Respondent called Police Officer Thomas Murray and Police Officer Lamont Pinckney 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.

**DECISION**

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

**FINDINGS AND ANALYSIS**

It is undisputed that on August 28, 2014, Respondent was working a 1500 to 2335 tour assigned to patrol in the 84 Precinct in Brooklyn, with a partner, Officer Lamont Pinckney. At about 1530, Respondent and Officer Pinckney brought a larceny complaint victim into the Precinct. While they were in the area of the muster room with the complainant, Sergeant Riker, the patrol supervisor at the time, called Respondent over to the front desk. Sergeant Riker told Respondent that he was to transport a prisoner to the

hospital with another officer. Respondent got upset. A short time later, Respondent exchanged words with Officer Clarke, whose team had arrested the prisoner who needed to go to the hospital. While they were near the stairs leading from the front desk to the second floor, Officer Clarke made a comment to Respondent which, while the exact words are in dispute, included the word "clown." Officer Clarke walked up the stairs to the second floor. Respondent walked up the stairs after him. Officer Pickney followed Respondent up the stairs. Officer Pickney grabbed Respondent in an attempt to defuse the situation. Sergeant Volpe and Lieutenant Jurs entered the second floor hallway. Sergeant Volpe moved Respondent against the wall. The events immediately preceding this, and the actions of both Sergeant Volpe and Respondent during this encounter, are in dispute.

Sergeant Riker testified that after he gave Respondent the assignment to transport the prisoner, he described Respondent's demeanor as, "a little argumentative," and that he seemed, "visibly upset." (Tr. 12) Sergeant Riker further testified that there was an argument between Officer Clarke and Respondent near the stairway door during which Officer Clarke called Respondent immature and a clown. Officer Clarke proceeded up the stairs and Respondent went up behind him. (Tr. 14) When Sergeant Riker saw Officer Pinckney go up the stairs, he eventually moved toward the stairs. While he was near the downstairs door to the stairs he could hear "some kind" of argument going on upstairs. (Tr. 15-16) When he arrived on the second floor he saw Sergeant Volpe and Respondent "locked in arms," with Respondent positioned against the wall. Respondent had his back touching the wall and Sergeant Volpe was in front of him. Sergeant Riker observed their arms in their mid-section region. Sergeant Riker heard Sergeant Volpe asking Respondent if he wanted to be suspended and Respondent saying, "Let me go,"

and "Get off of me." (Tr. 16-17, 38-39, 41) When Sergeant Riker first arrived on the second floor he was about 15 feet away from Respondent and Sergeant Volpe and no one was between him and where they were. He immediately went to separate them but Sergeant Kocher came up behind him and he removed Respondent to his office. Sergeant Riker remembers that Respondent went willingly with Sergeant Kocher. (Tr. 17-18, 43) He doesn't remember Respondent using profane or threatening language at the time. (Tr. 48-49)

Police Officer Leonard Clarke testified that he was assigned to the Anti-Crime Unit in the 84 Precinct on August 28, 2014. He and his partner, Officer Murray, arrested an individual for gun possession and brought him back to the 84 Precinct to process the arrest. (Tr. 84) Officer Clarke testified that while he was in the parking lot outside the stationhouse, he was approached by Respondent who asked him why he had to transport Officer Clarke's prisoner to the hospital. He further testified that he told Respondent he couldn't take the prisoner because it was almost the end of his tour and he had to help his partner out with the paperwork for the gun arrest. (Tr. 85) Officer Clarke testified that Respondent said, "I have gun collars that don't take the whole team to process them," and he responded, "Dude, I'm not going. That's the bottom line. If you have a problem, talk to ...the supervisors" (Tr. 87-88)

According to Officer Clarke, after the conversation in the parking lot, he walked into the lobby area of the Precinct and Respondent walked in behind him and said he doesn't feel he should have to transport the prisoner. Officer Clarke testified that he then said to Respondent, "Dude, you're in front of the desk. Stop acting like a fucking clown." He further testified that when he walked to the door leading to the second floor,

Respondent, who was "mad" and "upset" said, "What did you say to me?" and "Don't walk away from me, talk to me like a man." (Tr. 89) Respondent then followed Officer Clarke up the stairs and repeatedly said, "Don't walk away from me, talk to me like a man." Officer Clarke testified that when he got to the second floor Respondent was yelling and screaming and telling him to look at him like a man. Officer Clarke and Officer Murray were walking towards the Special Operations Lieutenant's office while Officer Pinckney, who was now behind them, was holding back Respondent. Sergeant Volpe and Lieutenant Jurs came into the hallway and instructed Officer Clarke and Officer Murray to go into the office, which they did. The door was closed but he could hear yelling and screaming. He heard Sergeant Volpe say, "Stand down," more than once (Tr. 90, 122-23) He never heard Respondent yelling, "Fuck you." (Tr. 110)

Sergeant Volpe testified that he was the Anti-Crime supervisor in the 84 Precinct on August 28, 2014. He had never directly worked with Respondent and he was not his direct supervisor. (Tr. 127-28) At about 1645 hours Sergeant Volpe was in the second floor crime office with Lieutenant Jurs, his direct supervisor, who was instructing him on how to process a gun arrest since he had never done one before. (Tr. 128-29) While he was in the office he heard a commotion which "sounded like an escaped prisoner possibly on the second floor." (Tr. 132) He and Lieutenant Jurs exited the office. Sergeant Volpe testified that once he entered the hallway he saw Officers Clarke and Murray walking calmly towards him and Officer Pinckney, "holding Officer Cabrera by his waist by the stairwell trying to restrain him as he was 'fighting past' Officer Pinckney screaming, 'What the fuck you saying? Where are you going?'" (Tr. 133) Sergeant Volpe estimated that Respondent was about ten feet from the Special Operations office when he first saw

him. (Tr. 161) He described the hallway as less than five feet wide. (Tr. 214) Sergeant Volpe described Respondent's demeanor at this point as, "completely violent and out of control." (Tr. 133) After he saw Respondent break the grasp of Officer Pinckney, Sergeant Volpe testified that, "I was able to isolate him against the wall with my body frame. As I was holding him against the wall, I was passively restraining, he continued to violently and aggressively fight past me." (Tr. 133) Sergeant Volpe told Respondent to calm down and when he wasn't responding he said, "Calm the fuck down. Stand the fuck down." (Tr. 133) Sergeant Volpe testified that Respondent was saying, "Fuck you, get the fuck off me," while Respondent was striking and pushing and punching him. (Tr. 134) Sergeant Volpe described his own state of mind as being nervous that Respondent was going to continue to fight. As he saw him starting to move his hands towards his firearm, Sergeant Volpe moved closer and put his hand over Respondent's firearm to secure it. (Tr. 134-35, 149-50) Sergeant Volpe testified that Respondent was "smacking" his hands down, pushing him away and at one point striking him in the ribs on his left side. (Tr. 135, 147, 196) Sergeant Volpe sustained minor abrasions on his forearms which he later photographed. (See Dep't. Ex. 1A and 1B, Tr. 137) Sergeant Volpe told Respondent that he was suspended and he was to draw and present his firearm. (Tr. 150) At trial, Sergeant Volpe testified that Respondent said, "Fuck you. Come and get it from me." (Tr. 181) Sergeant Volpe did not include that last sentence in his response to a GO-15 question about what he heard during his encounter with Respondent. (Tr. 184) Sergeant Volpe testified that the incident ended when Sergeant Kocher removed Respondent from the situation by dragging him by the collar. (Tr. 148) He described the level of force he himself had used against Respondent as the "minimum amount required." (Tr. 151) He

testified that he felt he had to end the aggression and violence or it could have gotten worse. (Tr. 151) Lieutenant Jurs was standing on Sergeant Volpe's right side during the encounter. Sergeant Volpe is 6' 4" and he estimated that Lieutenant Jurs is approximately 5'6" or 5'7". Sergeant Volpe testified that Lieutenant Jurs was also trying to control Respondent and had his hands on him but he doesn't know where Lieutenant Jurs' hands were exactly. (Tr. 193, 196) Lieutenant Jurs was using Respondent's first name, Juan, and yelling at him to calm down. (Tr. 194-95)

Lieutenant Jurs testified that he was the Special Operations Lieutenant on August 28, 2014. Respondent had previously been a subordinate of Lieutenant Jurs for approximately two and a half years and Lieutenant Jurs described having a good working relationship with him as he felt Respondent was a "hard working" and "well-rounded" police officer. (Tr. 232-233) On the afternoon of the incident, Lieutenant Jurs was in his office with Sergeant Volpe explaining firearm invoices to him. (Tr. 234) During this time he heard what he described as a large commotion in the hallway which he thought might have been caused by a prisoner escape. He testified that it sounded like a scuffle in the hallway with loud voices. He exited his office right behind Sergeant Volpe. (Tr. 236) When he exited the office he observed Officer Clarke against the wall and Officer Pinckney positioned in between Officer Clarke and Respondent. He further testified that, "Cabrera [Respondent] was making aggressive motions toward the personal space of Officer Clarke and Officer Pinckney appeared to be trying to prevent that from happening." (Tr. 237) He further described Respondent as "angry." (Tr. 241) Officer Pinckney was not being successful in stopping Respondent from getting near Officer Clarke. (Tr. 241) Lieutenant Jurs described Sergeant Volpe as immediately positioning

himself between Respondent and Officer Pinckney and then restraining Respondent against the wall, holding him in the bicep/tricep area. (Tr. 237-38) At this point Officer Clarke left and walked behind Lieutenant Jurs, "probably into my office." (Tr. 237) Lieutenant Jurs was positioned to Respondent's left and Sergeant Volpe's right. He did not have a view of their entire bodies but he did not witness anyone strike anyone. (Tr. 255) Lieutenant Jurs also believed Respondent's gun would have been on his left side and would have been out of his view. (Tr. 263-64) Lieutenant Jurs testified that, Respondent seemed, "inconsolable" even though he was yelling his name many times. Respondent was being aggressive and yelling variations of, "Fuck this, fuck you." Sergeant Volpe said, "stand down," to Respondent multiple times. (Tr. 239) Respondent wasn't complying and was able to "whirl" and "wiggle" on the wall trying to break Sergeant Volpe's grasp. (Tr. 242) Lieutenant Jurs indicated that Respondent could have moved his arms probably from the elbow to his hands. (Tr. 265) Lieutenant Jurs heard Sergeant Volpe say, "Draw and present your firearm." (Tr. 240) Lieutenant Jurs, while he did not see Respondent reach for his firearm, testified that at the time he heard the order to draw and present, he doesn't really remember where either Respondent's or Sergeant Volpe's arms were. (Tr. 256) Lieutenant Jurs did finally get Respondent's attention and the incident drew to a close as Sergeant Kocher made an effort to have Respondent go down the hallway to his office. (Tr. 241) Lieutenant Jurs doesn't know how Sergeant Kocher intervened. (Tr. 257) Based on what he observed, Lieutenant Jurs did not feel the need to intervene between Respondent and Sergeant Volpe or to prevent Sergeant Volpe from taking any of the actions he took. (Tr. 247)



Sergeant Kocher testified that he was working as the Crime Analysis Sergeant at the 84 Precinct on August 28, 2014, when he heard "a lot of loud arguing" outside his second floor office. He went to the back of the second floor where the sound was coming from. (Tr. 75) He observed pushing and shoving and "some kind of confrontation going on." He saw Respondent, whose demeanor he described as "agitated, upset," in the middle of the hallway. He grabbed him by the back of his clothing and told him to go into his office. Respondent turned and went towards Sergeant Kocher's office and Sergeant Kocher followed him. (Tr. 76-77) Sergeant Kocher testified that he couldn't tell who was in the group on the other side of Respondent nor did he pay attention to what anyone was saying. (Tr. 79-80) He couldn't say he heard anyone say, "Fuck you." (Tr. 81)

Respondent testified that he and Officer Pinckney were taking the complaint of a grand larceny victim in the muster room of the 84 Precinct when Sergeant Riker called him to the front desk and told him he needed him to take a prisoner to the hospital with another officer. Respondent asked Sergeant Riker if someone else could do it because the prisoner was yelling and since Respondent was on force monitoring he didn't want to get involved with that prisoner. (Tr. 324-26) Respondent doesn't recall walking away from the desk and saying, "This is bullshit." (Tr. 355-56) When Sergeant Riker called him back to tell him he had to send him, Respondent became upset, but he testified that he said, "All right, Sarge," and proceeded to the rear of the Precinct to retrieve his lunch bag and memo book. (Tr. 326) Respondent testified that when he went outside he saw Officer Clarke and asked him if he or anyone on his team could transport the prisoner to the hospital. Officer Clarke said his team couldn't do it because they had a gun arrest. Respondent laughed and told Officer Clarke that it didn't take a whole team to process a

gun arrest. Officer Clarke said he was going to call his sergeant and started to dial his phone. Respondent and he continued to "have words." (Tr. 327, 329) When Respondent returned inside the Precinct he saw the prisoner he was assigned to transport on a gurney (Tr. 367) Respondent saw Officer Clarke who was now inside the Precinct near the entrance to the stairway, point two fingers towards him while saying, "You need to shut the fuck up, you clown. I'm not the one." Respondent got upset and took those words to be a challenge. (Tr. 330) Respondent testified that at that point he did not follow the gurney but rather, "I dropped my bag and shit, I was like, 'What did you say to me? What'd you say?'" Officers Murray and Clarke proceeded up the stairs and Respondent entered the stairwell and followed Officer Clark. As he entered, Officer Clarke was on the top landing and Respondent again asked Respondent what he said and told him, "Don't go anywhere." Officer Clarke kept saying, "Shut the fuck up, you clown. You ain't going to do shit." (Tr. 331, 369-72) Respondent and Officer Clarke "kept arguing" and Respondent kept saying, "Wait for me, wait right there." (Tr. 331) Respondent saw Officer Pinckney enter the stairwell and grab him saying, "Cabrera, Cabrera, come on, let's go." (Tr. 332) When Respondent got to the top of the stairs he saw Officers Clarke and Murray in front of the Special Operations Lieutenant's office. Officer Clarke was cursing at Respondent. Respondent walked towards the office and Officer Pinckney got in front of him. Respondent saw Lieutenant Jurs come out of the office and heard him say, "Everyone get the fuck out of the hallway." (Tr. 333) While Officer Pinckney was in front of him, Respondent saw Officer Pinckney pushed to the side and he felt someone grab him and slam him on the wall. When he looked up he saw that it was Sergeant Volpe. (Tr. 334) Respondent testified that Sergeant Volpe put his left forearm across his

chest and said, "Who the fuck do you think you are?" He further testified that Sergeant Volpe's fingers started "nicking" or tapping his nose. (Tr. 334-35) Respondent then pushed Sergeant Volpe's hand and said, "Get your fucking hands out of my face." At that point Sergeant Volpe, who Respondent estimated to be around 6' 4" tall, grabbed Respondent, who testified that he was 5'8" tall, and slammed him again. (Tr. 334-35) Respondent doesn't recall Sergeant Volpe ever telling him to stand down or to draw and present his gun. (Tr. 388) Respondent said to Sergeant Volpe, "Get your fucking hands off me." (Tr. 335) Respondent never said that Sergeant Volpe was hurting him nor did he ever file any line of duty paperwork concerning the incident. (Tr. 385) Sergeant Volpe next stated, "You're fucking suspended," and he tried to rip Respondent's gun out of his holster. Respondent grabbed his gun and pushed down on it as hard as he could because Sergeant Volpe's hand was on his holster. Respondent testified that Officer Pinckney then pushed Sergeant Volpe off him and Sergeant Volpe, Officer Pinckney and Lieutenant Jurs, "kind of got into a little shoving match." Sergeant Kocher then grabbed Respondent and told Respondent to come with him. Respondent admitted on cross-examination that up until this point he hadn't stopped struggling to get away from Sergeant Volpe. (Tr. 387) After Sergeant Kocher grabbed him, Respondent walked ahead of Sergeant Kocher to the Crime Analysis office. (Tr. 335-36) Sergeant Volpe was outside the door to the office saying, "He's fucking suspended." (Tr. 337) Respondent unloaded his gun and placed it on a table in the office. Respondent was not suspended but was placed on modified duty for approximately two months. (Tr. 337-38)

The defense called Officer Thomas Murray to testify. He was assigned to Anti-Crime patrol and was Officer Clarke's partner that day. (Tr. 268) He remembered an

argument between Respondent and Officer Clarke taking place on the first floor of the Precinct and he remembered Respondent following them up the stairs to the second floor. (Tr. 280) He doesn't remember any arguing in the stairwell. (Tr. 282) He heard an argument involving yelling outside the Special Operations office, but doesn't remember who was in the office with him, nor does he remember anyone leaving the office. He doesn't remember seeing Respondent during the argument. (Tr. 270, 275) He does remember that Sergeant Volpe and Lieutenant Jurs were in the hallway but doesn't know where they were prior to that. (Tr. 283)

The defense also called Officer Pinckney to testify. He was working as Respondent's partner on August 28, 2014. While he was interviewing a complainant in the muster room, he heard Respondent say, "This is bullshit," after Sergeant Riker gave him an assignment to transport a prisoner. (Tr. 304) Officer Pinckney described Respondent as upset and agreed on cross-examination that he could tell from his body language that he was agitated. (Tr. 304-05) Later, while he was still in the muster room, Officer Pinckney heard an argument between Officer Clarke and Respondent taking place outside the building, but he couldn't hear what was being said. (Tr. 288-89) Once they came inside, they were still exchanging words and Officer Pinckney heard Officer Clarke say to Respondent, "You're a fucking clown, I'm not the one." Officer Pinckney interpreted this as street terminology for a challenge. (Tr. 290, 306) Officer Pinckney testified that Respondent then got agitated and started asking Officer Clarke what he meant by that. (Tr. 290-91) Officer Murray and Officer Clarke were going up the stairs when Respondent started "rushing" towards the stairwell door. Officer Pinckney went after Respondent and "tried to restrain him." (Tr. 292-93) When they got to the second

floor, Officer Pinckney was still trying to hold Respondent back but was unable to restrain him when Sergeant Volpe came out of the office, and pushed Officer Pinckney aside while telling him, "Stand down. I got this." (Tr. 294, 311) Sergeant Volpe then "aggressively" pushed Respondent on the wall and held his upper body and neck area. Lieutenant Jurs was also in the hallway. (Tr. 294, 313) Officer Pinckney estimated he was about seven feet away from where Respondent and Sergeant Volpe were. (Tr. 295) Respondent was "trying to slap the sergeant's arms away," and was saying, "Get off me, get the fuck off me." (Tr. 298, 313-15) He did not see Respondent punch Sergeant Volpe nor did he see Respondent reach for his gun. He did hear Sergeant Volpe say, "Draw and present." (Tr. 295-96) Sergeant Volpe had Respondent against the wall approximately 3 or 4 minutes until Sergeant Kocher grabbed Respondent by his collar and told him to go into his office. (Tr. 296)

Much of the testimony in this case revolves around Respondent's assignment to transport a prisoner on August 28, 2014, and who gave him that assignment and why it was given to him and whether he complied with the assignment. While the testimony regarding the assignment is somewhat useful in providing a sequence of events culminating in the Respondent's presence on the second floor, as well as providing some evidence concerning Respondent's state of mind in the period of time immediately preceding the incident, it is clear that Respondent in this case has been charged with two specifications of misconduct. These pertain only to his physical and verbal interactions with Sergeant Volpe on the second floor of the 84 Precinct on August 28, 2014.

Lieutenant Jurs, Sergeants Volpe, Riker and Kocher, and Officers Murray, Clarke, Pinckney and Respondent all testified as to observations they made and sounds they

heard on the second floor, at and around the time of the incident. As can be expected when eight people who arrived at a location at different times, were located in different positions and had different levels of involvement are asked to recall what happened, there were differences in details of their testimony, such as time and distances. There was, however, an overall consistency in certain significant aspects of the incident.

By all accounts, including his own, Respondent was upset when he arrived on the second floor. Sergeant Riker described Respondent as a little argumentative and visibly upset right before he went upstairs. Officer Clarke described Respondent as "mad" and "upset" as he was entering the stairwell and then as yelling and screaming when he got to the second floor. When Sergeant Volpe first saw Respondent on the second floor, he described his demeanor as "completely violent and out of control," as he was fighting to get past Officer Pinckney. Officer Pinckney described Respondent as upset and agitated when he got the prisoner transport assignment and as being "agitated" again when he confronted Officer Clarke. Respondent's actions as he went to the second floor were such that Officer Pinckney felt he had to try to restrain him, which he was unable to do by holding him. Lieutenant Jurs, who previously had been Respondent's supervisor and in an unbiased manner testified about positive aspects of Respondent's performance, also testified that when he first observed Respondent on the second floor, Respondent was angry and was making "aggressive motions" towards Officer Clarke. Respondent himself testified that he was upset at the assignment and at Officer Clarke. His actions of dropping his bag, ignoring the prisoner on the gurney he was assigned to transport, and following Officer Clarke up the stairs to the second floor to pursue what he described as a

challenge from Officer Clarke, all lend substantial credence to the witness testimony that Respondent was agitated and was the aggressor when he arrived on that second floor.

These consistency of the depictions of Respondent's state of mind and aggressive actions while on the second floor of the Precinct, and the lack of any similar consistent descriptions of anyone else's aggressive behavior, all support the necessity of the intervention into the situation by Sergeant Volpe and his isolation of Respondent against the wall. The necessity and appropriateness of Sergeant Volpe's actions were confirmed by Lieutenant Jurs, the senior supervisor present at the time. He testified that he saw no need to intervene between the Respondent and Sergeant Volpe or to prevent Sergeant Volpe from taking any of the actions he did.

As with the events leading up to this isolation, there are discrepancies among the witnesses about where people's arms were positioned or the manner in which Sergeant Volpe isolated Respondent against the wall or even where different people were standing during the incident. Again, discrepancies are to be expected in some details when more than one person is testifying about an event. However, the charge in Specification 1 is that Respondent did wrongfully engage in a verbal and physical altercation with Sergeant Volpe and there is consistency in the important descriptions of what was taking place after Sergeant Volpe isolated the Respondent. Sergeant Volpe testified that Respondent continued to "violently and aggressively" try to fight past him when he was holding him on the wall. He further testified that Respondent did not clam down despite being ordered to do so and stand down. Sergeant Volpe also described Respondent as trying to smack his hands down and at one point striking him in the ribs and moving his hands towards his gun. Lieutenant Jurs, the person who knew and had supervised Respondent, and was

standing right next to Sergeant Volpe during the encounter, on the side opposite from where Sergeant Volpe described being hit, also could not get the Respondent to calm down and stop being aggressive. Lieutenant Jurs described Respondent as "inconsolable" at this point as he continued to move around to try to break Sergeant Volpe's grip. Even Officer Pinckney, who was by his own estimation was seven feet away from the encounter and therefore not as close as Lieutenant Jurs, testified that Respondent was slapping the Sergeant's arms away while saying, "Get the fuck off me."

While Respondent in his testimony describes being slammed against the wall by Sergeant Volpe, he also admits to the important fact that he did not cease struggling to get away from Sergeant Volpe until Sergeant Kocher grabbed him. He also admitted several facts that provide some support for Sergeant Volpe's description of how Respondent scratched his arms and his testimony that Respondent had his hand near his gun. Respondent testified that his hands were free enough that he could push down hard on his own gun holster. He also confirmed that he used profane language towards Sergeant Volpe during the course of the interaction when he told Sergeant Volpe to, "Get your fucking hands off me." While Respondent testified that he took these various actions, and said what he did, in response to Sergeant Volpe's actions in slamming him and nicking his nose and moving his hand toward his gun, the essential point is that by his admissions, as well as from the testimony of the witnesses, Respondent continued to physically struggle with, and use curse words toward, a superior officer who, with sufficient justification based on Respondent's level of aggression, was attempting to restrain him and have him calm down. I therefore find Respondent Guilty of Specification 1.



Specification 2 charges that Respondent screamed at Sergeant Volpe and repeatedly said, "Fuck you!" Both Sergeant Volpe and Lieutenant Jurs both testified that Respondent was yelling at Sergeant Volpe and yelling variations of, "Fuck you" at him. They were the two people standing directly in front of and next to Respondent during the time he was against the wall. I found them both to be credible witnesses based on their demeanor while testifying, and the corroboration of the key portions of their testimony found in testimony of other witnesses, including the Respondent. I also note again that Lieutenant Jurs, in particular, evidenced a complete lack of bias against the Respondent in that he responded to a question merely asking what his relationship was to Respondent by adding positive remarks about the Respondent. I note that Sergeant Volpe also used profane language during his encounter with Respondent, however that does not justify Respondent speaking as he did to a superior officer who was trying to calm him down. Based on the credible evidence in the case, I find that Respondent is Guilty of Specification 2.

### PENALTY RECOMMENDATIONS

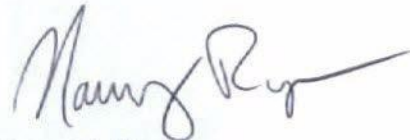
In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 14, 2009. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Accordingly, I recommend that Respondent's penalty be the forfeiture of 25 vacation days as recommended by the Department Advocate's Office. This is consistent

with recent caselaw. For example, in a recent case where the officer was verbally abusive to a superior officer, he received a penalty of the forfeiture of 20 vacation days. In that case it was found that a 15 year police officer with no prior formal disciplinary record was loud and verbally aggressive towards a lieutenant and continued speaking to the lieutenant in this manner even after the lieutenant ordered him to stop. Disciplinary Case No. 2013-10026, signed February 17, 2016.


In the present case, however, the Respondent engaged in both a physical altercation and was verbally abusive to a superior officer and therefore the higher penalty of the loss of 25 vacation days is appropriate.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

MAY 23 2017  
  
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 JUAN CABRERA  
TAX REGISTRY NO. 948314  
DISCIPLINARY CASE NO. 2015-14038

Respondent was appointed to the Department on July 14, 2009. In his last three performance evaluations, he received a 4.5 "Highly/Extremely Competent," 4.0 "Highly Competent," and a 4.5 "Highly/Extremely Competent." He has received eight medals for Excellent Police Duty and four medals for Meritorious Police Duty.

On December 2, 2014, he forfeited 10 vacation days for stopping, frisking and searching an individual without sufficient legal authority and for stating to the individual, you know what goes on in that fucking building." From May 28, 2013 to May 28, 2014, he was placed on Level One Force Monitoring as a result of receiving three or more CCRB complaints in one year. On October 27, 2015, he was placed on Level Two Disciplinary monitoring as a result of the instant case; this monitoring remains ongoing.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials