



POLICE DEPARTMENT CITY OF NEW YORK

December 20, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Garthlette James  
Tax Registry No. 951845  
50 Precinct  
Disciplinary Case No. 2016-16616  
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**Charges and Specifications:**

1. Said Police Officer Garthlette James, while assigned to the 50<sup>th</sup> Precinct, on or about December 8, 2015, at about 1140 hours, while on-duty, wrongfully failed to terminate a vehicle pursuit due to the risks to Members of the Service and the public.  
P.G. 221-15, Page 1, Paragraph 2 - VEHICLE PURSUITS  
TACTICAL OPERATIONS
2. Said Police Officer Garthlette James, while assigned to the 50<sup>th</sup> Precinct, on or about December 8, 2015, at about 1140 hours, while on-duty, while initiating and pursuing a vehicle, wrongfully failed to notify and maintain contact with the radio dispatcher to provide his location, a description of the vehicle pursued, and the nature of the offense as a basis of the pursuit.  
P.G. 221-15, Page 1, Paragraphs 3 & 4 - VEHICLE PURSUITS  
TACTICAL OPERATIONS

**Appearances:**

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

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

FIRST DEPUTY COMM.  
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**Hearing Date:**

November 8, 2017

**Decision:**

Specification 1: Guilty

Specification 2: Not Guilty

**Trial Commissioner:**

ADCT Jeff S. Adler

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 8, 2017.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges.<sup>1</sup> The Department called Lieutenant Kevin Yeh as a witness. 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 Specification 1, for wrongfully failing to terminate a vehicle pursuit, but not guilty of Specification 2, for wrongfully failing to notify and maintain contact with the radio dispatcher.

## FINDINGS AND ANALYSIS

This case involves a high-speed vehicle pursuit by Respondent that began in the Bronx at approximately 1138 hours on December 8, 2015. Respondent was the operator of the RMP, and Officer Romeo Francis, who has since retired, was the recorder. At issue is whether Respondent

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<sup>1</sup> The Charges and Specifications cite Section 221-15 of the Patrol Guide as the relevant procedure. However, as the Court noted at the outset of the trial, at the time of the incident the relevant section was 212-39, which had identical wording as the current procedure. Both sides agreed to proceed with this understanding.

wrongfully failed to terminate the pursuit, and whether he wrongfully failed to provide relevant information to the radio dispatcher during the pursuit.

Lieutenant Kevin Yeh of the Force Investigation Division testified regarding his investigation into the incident.<sup>2</sup> From his review of the ICAD report containing the radio transmissions (Dept. Ex. 1) and the AVL (GPS tracker for Respondent's RMP) (Dept. Ex. 2), as well as interviews with various witnesses, the lieutenant was able to reconstruct the events of December 8. At approximately 1138 hours, in the vicinity of West 262<sup>nd</sup> Street and Broadway in the Bronx, Respondent attempted to pull over a Nissan for excessively tinted windows. The driver of the Nissan sped away, and Respondent pursued him south on Broadway. From the AVL tracker, it was determined that Respondent drove as high as 80 mph during a stretch of the pursuit down Broadway. (Tr. 25, 32, 35-37, 56; Dept. Ex. 2)

According to Lieutenant Yeh, the Nissan turned onto the Henry Hudson Parkway ("HHP") and proceeded north, with the RMP still in pursuit. While merging onto the HHP, the Nissan collided with two vehicles, and continued driving north. The RMP continued to follow the speeding Nissan as the HHP turned into the Saw Mill River Parkway ("SMRP"). For segments of this pursuit, Respondent's speed was in excess of 100 mph, despite a posted speed limit of 50 mph. It was a clear day, the road was dry, and traffic was light-to-moderate. (Tr. 35-36, 46, 57-59, 65-66; Dept. Ex. 2)

Lieutenant Yeh testified that as the driver of the Nissan approached Exit 4 on the SMRP, he made a U-turn and began driving southbound in the northbound lane. Respondent also made the U-turn, and continued to follow the Nissan against traffic. At approximately 1141 hours near

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<sup>2</sup> FID investigated this matter because of what transpired after the vehicle pursuit. [REDACTED]

[REDACTED]

southbound Exit 3 of the SMRP, the vehicle pursuit came to an end, as the Nissan collided with additional cars and the driver fled on foot into the woods. [REDACTED]

[REDACTED]. (Tr. 43-46, 60, 66-67)

From his review of the radio transmissions, Lieutenant Yeh testified regarding the information put over the radio by the recorder, Officer Francis. A 10-53 was transmitted indicating the Nissan's initial vehicle collision, but no details were provided stating that the RMP was in pursuit of the Nissan. The recorder asked Central to run the Nissan's plate, but did not specify why there was a need to do so. No precise locations were provided, nor was there any notification that the pursuit was taking the RMP outside the city limits into Yonkers. There was a transmission that the Nissan turned and drove southbound against traffic, but not that the RMP also did so in pursuit. There was no request for backup until after the Nissan collided with cars a second time and the driver of the Nissan fled on foot. After the driver of the Nissan fled into the woods, there was a request for Aviation. (Tr. 28-31, 39-43, 45, 48-53, 64; Dept. Ex. 1)

Respondent testified that Officer Francis was not his steady partner, and that this was probably only their third time working together. Respondent, who was driving the RMP, confirmed that he attempted to stop the Nissan for heavily tinted windows, but the driver of the Nissan ignored the lights and sirens and sped south on Broadway. The Nissan drove in and out of traffic, crossing double yellow lines, with the RMP in pursuit. The RMP was in good working order, but Respondent recognized that the Nissan was a faster car, and that he would be unlikely to catch up to it. He considered terminating the chase, but instead continued to pursue the Nissan as it turned onto the HHP. (Tr. 71-73, 85, 88)

According to Respondent, he observed the Nissan collide with two moving vehicles shortly after entering the HHP. Rather than stop and attend to the cars that were struck, Respondent chose to continue his pursuit, since the driver of the Nissan was putting other people's lives in danger and the officer wanted to terminate the threat. Respondent acknowledged that he drove over 100 mph as he pursued the Nissan on the parkways. Before Exit 4 on the SMRP, the Nissan made a sudden stop. The RMP went past the Nissan and then came to a stop as well. As Respondent and his partner were preparing to Exit their vehicle, they realized the Nissan had made a U-turn and now was driving south in the northbound lane. Respondent continued the pursuit, also driving against traffic. Near Exit 3 on the SMRP, the Nissan crashed into another vehicle, and the driver fled into the woods on foot. Respondent ran after and engaged the driver without any assistance from his partner, who fell and injured himself during the foot pursuit. (Tr. 74-85, 88-92, 98)

Regarding the radio transmissions, Respondent testified that he relied upon his partner, as the recorder, to transmit the relevant information to the dispatcher. As the pursuit was in progress, Respondent was aware that Officer Francis was communicating information over the radio, such as a description of the Nissan, the plate number, and the direction of flight. However, Respondent, as the operator, was focused on driving, and so he could not testify as to what precisely his partner was putting over the radio. The two officers did not discuss what information Officer Francis was providing to central. At no point did Respondent hear any communication from a supervisor over the radio. (Tr. 74-75, 82-84, 93-96)

Specification 1 charges Respondent with wrongfully failing to terminate the vehicle pursuit. Then Section 212-39 of the Patrol Guide, the applicable section at the time of the

incident, instructs members of the service regarding when to terminate such pursuits. It provides a list of factors for an officer to consider:

- a. Nature of offense
- b. Time of day
- c. Weather condition
- d. Location and population density
- e. Capability of Department vehicle
- f. Familiarity with area

Each side contends that these factors support their position, and indeed the factors can be interpreted according to one's point of view. The initial basis for the stop, excessively tinted windows, was admittedly minor; but when the driver of the Nissan crashed into other vehicles, the nature of the offense became more serious. The time of day, approximately 1138 hours on a Tuesday, wasn't in the heart of rush hour; but it also wasn't as quiet as conditions in the middle of the night. It was a clear day, and so the weather conditions were good. Traffic was described as "mild," but the high-speed pursuit started down Broadway before continuing onto the parkways. The RMP was in good working order, but not as fast as the Nissan. Respondent apparently had familiarity with the area, though at some point he exited the confines of the city, and was less sure of his exact location at the time he chased the driver into the woods.

In this particular case, more useful guidance for assessing the pursuit is found in the Patrol Guide note that follows the list of factors. The note states: "*Department policy requires that a vehicle pursuit be terminated whenever the risks to uniformed members of the service and the public outweigh the danger to the community if suspect is not immediately apprehended.*"

Applying this framework to the facts here, this tribunal agrees with the Advocate that Respondent wrongfully failed to terminate the vehicle pursuit. Specifically, Respondent attempted to stop the Nissan for excessively tinted windows, a minor offense. When the driver of the Nissan sped off, Respondent initiated the pursuit down Broadway at speeds as high as 80

mph, creating an unjustifiable risk to the safety of the officers, pedestrians, and other drivers right from the start.

The Nissan, with the RMP in pursuit, then collided with other vehicles as it entered the HHP. Respondent used those collisions to justify his continued pursuit onto the parkways. However, those initial collisions may never have occurred were it not for Respondent's unauthorized high-speed chase down Broadway. Indeed, collisions such as these are the very harm the Patrol Guide section is looking to prevent in the first place.

Respondent exacerbated the situation by pursuing the Nissan on the parkways at speeds exceeding 100 mph. He chose to do so even though the officers had the license plate number of the Nissan, an alternate means of investigation. When the Nissan did a U-turn and proceeded to drive south in the northbound lane, Respondent continued the pursuit, *driving against traffic as well*. This tribunal is mindful of Respondent's desire to terminate the threat posed by the driver of the Nissan. However, even with the mild traffic conditions that existed at the time, the risks to the officers and the public from this entire pursuit were too great, particularly when weighed against the nature of the original offense. Beginning on Broadway, and continuing onto the parkways, Respondent wrongfully failed to terminate his high-speed pursuit of the Nissan. Accordingly, I find Respondent guilty of Specification 1.

Specification 2 charges Respondent with wrongfully failing to notify and maintain contact with the radio dispatcher during the pursuit. Section 212-39 (3) and (4) of the Patrol Guide instructs members of service to notify the radio dispatcher at the start of a vehicle pursuit and to provide pertinent information such as location, type of vehicle, the direction of travel, and the nature of the underlying offense. Officers also are instructed to maintain contact with the

dispatcher during the pursuit. However, as counsel for Respondent points out, section 203-23 (4) of the Patrol Guide assigns the task of operating the radio to the RMP's recorder. (Resp. Ex. A)

In this case, it is undisputed that Respondent was the operator of the RMP, and his partner, Officer Francis, was the recorder. Officer Francis did provide the radio dispatcher with at least some of the pertinent information: he made a request to run a plate number, indicated that there was a vehicle accident, and stated that there was a vehicle being driven against the flow of traffic, southbound on the SMRP near Exit 3. However, as noted by the Advocate, there also were significant details missing from the transmissions, including any mention of the initial pursuit down Broadway, the basis for that pursuit, and the speeds being traveled there and on the parkways. There was no mention that the RMP, too, was driving against traffic on the parkway, no indication that a supervisor was consulted during the vehicle chase, and no request for back-up until the foot pursuit.

The issue is whether Respondent, as the operator, should be held accountable for the missing information. The Advocate argues that he should, because the RMP is a single unit responsible for making the appropriate transmissions, and Respondent, as the operator, cannot put on "blinders" and ignore the details of what his partner is putting over the radio. This argument would be more compelling if this were a situation where the recorder was sitting there silently, and the operator allowed that failure to communicate to continue. Instead, what occurred here was that Respondent heard his partner putting communications over the radio regarding the pursuit. Respondent's focus, understandably, was on driving the vehicle during the pursuit, and so he reasonably relied on his partner to provide the pertinent details to the dispatcher. As the Advocate correctly pointed out, Respondent already was engaged in a high-risk vehicle pursuit. For Respondent to have diverted attention from his driving in order to



become involved in the radio transmissions would have made an already dangerous situation even more dangerous.

In a prior matter referenced by both sides, the trial commissioner ruled on a situation where the radio dispatcher was not notified of a vehicle pursuit. In *Disciplinary Case Nos. 6501/11, 6520/11, & 7357/12* (Dec. 17, 2014), only the vehicle's recorder was found guilty of failing to notify the dispatcher of the pursuit; the vehicle's operator, and the supervising sergeant who was also present in the police vehicle, were found not guilty of the same charge. The trial commissioner there specifically held that the duty to notify the dispatcher "properly fell to the recorder." He added that the other two respondents "should not be charged with doing so during such a tense and fast-moving incident."

Similarly, Officer Francis, the RMP's recorder, was responsible for making the appropriate radio transmissions regarding the pursuit of the Nissan. Under the specific circumstances of this case, it would not be reasonable to hold Respondent, the operator of the RMP, accountable for the failure to provide the pertinent information to the dispatcher. The record has failed to establish, by a preponderance of the credible evidence, that Respondent committed misconduct by failing to notify and remain in contact with the radio dispatcher, and I find him not guilty of Specification 2.

### PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 9, 2012. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.


Counsel for Respondent argues that taking away vacation time from Respondent would be "draconian," and recommends a penalty of instruction or retraining. This tribunal disagrees with that assessment. Even though Respondent has been found not guilty of one of the two specifications, his conduct here warrants the Advocate's recommended penalty of ten (10) vacation days.

In *Disciplinary Case Nos 6501/11, 6520/11, & 7357/12* (Dec. 17, 2014), discussed above, the operator of the police vehicle forfeited ten (10) vacation days. That penalty is appropriate here as well. Respondent used poor judgment in speeding down Broadway in pursuit of the Nissan for excessively tinted windows, a minor offense. Respondent then compounded that error in judgment by pursuing the Nissan onto the parkway at an even higher rate of speed, more than once exceeding 100 mph. Finally, after the Nissan did a U-turn and drove south in the northbound lane, Respondent dangerously chose to continue the pursuit against traffic as well, an additional aggravating factor. The collisions that resulted during this chase are precisely the type of harm that the Patrol Guide section on "Vehicle Pursuits" is designed to prevent. Indeed, considering the nature of this pursuit, it is fortunate that further damage wasn't caused by the Nissan or the RMP.

Taking into account all the facts and circumstances in this matter, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,

**APPROVED**

MAR 02 2018  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER



Jeff S. Adler  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER GARTHLETTE JAMES  
TAX REGISTRY NO. 951845  
DISCIPLINARY CASE NO. 2016-16616

Respondent was appointed to the Department on January 9, 2012.

On his last three annual performance evaluations, Respondent received overall ratings of 4.0 "Highly Competent" in 2014, 2015, and 2016.

[REDACTED]

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials