



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

April 15, 2016

Memorandum for: Deputy Commissioner Trials

Re: **Police Officer Jeremy Pohl**
Tax Registry No. 948405
Police Service Area 2
Disciplinary Case No. 2013-9848

Police Officer Vincent Chow
Tax Registry No. 948319
Police Service Area 4
Disciplinary Case No. 2013-9850

Police Officer Yale Margolis
Tax Registry No. 948381
Police Service Area 2
Disciplinary Case No. 2013-9851

The above named members of the service appeared before Assistant Deputy Commissioner Robert W. Vinal on April 27, 2015, charged with the following:

DISCIPLINARY CASE NO. 2013-9848

1. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED], abused his authority as a member of the New York City Police Department, in that he stopped Person A, Person B, Person C, Person D and unidentified individuals, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1

STOP AND FRISK

2. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED] abused his authority as a member of the New York City Police Department, in that he frisked Person C and an unidentified individual, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2

STOP AND FRISK

POLICE OFFICER JEREMY POHL
POLICE OFFICER VINCENT CHOW
POLICE OFFICER YALE MARGOLIS

DISCIPLINARY CASE NO. 2013-9848
DISCIPLINARY CASE NO. 2013-9850
DISCIPLINARY CASE NO. 2013-9851

3. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED] was discourteous to Person A, Person B, Person C, Person D and unidentified individuals.
P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT -
GENERAL**

4. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED] used excessive force against Person A, Person B, Person C, Person D and unidentified individuals, in that he pointed his gun at them without sufficient legal authority.
P.G. 203-11

USE OF FORCE

DISCIPLINARY CASE NO. 2013-9850

1. Said Police Officer Vincent Chow, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED] abused his authority as a member of the New York City Police Department, in that he stopped Person A, Person B, Person C, Person D and unidentified individuals, without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 1

STOP AND FRISK

DISCIPLINARY CASE NO. 2013-9851

1. Said Police Officer Yale Margolis, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED] abused his authority as a member of the New York City Police Department, in that he caused the stop of Person A, Person B, Person C, Person D and unidentified individuals, without sufficient legal authority.
P.G. 212-11, Page 1, Paragraph 1

STOP AND FRISK

POLICE OFFICER JEREMY POHL
POLICE OFFICER VINCENT CHOW
POLICE OFFICER YALE MARGOLIS

DISCIPLINARY CASE NO. 2013-9848
DISCIPLINARY CASE NO. 2013-9850
DISCIPLINARY CASE NO. 2013-9851

In a Memorandum dated August 20, 2015, Assistant Deputy Commissioner Robert W. Vinal found Police Officer Pohl Guilty of Specification Nos. 1, 2 and 4, and recommended that Specification No. 3 be Dismissed in Disciplinary Case No. 2013-9848. Police Officer Chow was found Not Guilty of the sole Specification in Disciplinary Case No. 2013-9850 and Police Officer Margolis was found Not Guilty of the sole Specification in Disciplinary Case No. 2013-9851. Having read the Memorandum and analyzed the facts of this matter, I disapprove the Guilty findings for Police Officer Pohl and the Not Guilty finding for Police Officer Margolis.

I have considered the totality of the issues and circumstances in this matter and determined that Police Officer Pohl is Not Guilty of Specification Nos. 1, 2 and 4 in Disciplinary Case No. 2013-9848. I have also determined that Police Officer Margolis is Guilty of the sole Specification in Disciplinary Case No. 2013-9851. Therefore, Police Officer Margolis is to receive a Reprimand, as a disciplinary penalty.


William J. Bratton
Police Commissioner



POLICE DEPARTMENT

August 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jeremy Pohl
Tax Registry No. 948405
Police Service Area 2
Disciplinary Case No. 2013-9848

Police Officer Vincent Chow
Tax Registry No. 948319
Police Service Area 4
Disciplinary Case No. 2013-9850

Police Officer Yale Margolis
Tax Registry No. 948381
Police Service Area 2
Disciplinary Case No. 2013-9851

The above-named members of the Department appeared before me on April 27, 2015, charged with the following:

Disciplinary Case No. 2013-9848

1. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED] abused his authority as a member of the New York City Police Department, in that he stopped Person A, Person B, Person C, Person D and unidentified individuals, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 STOP AND FRISK

2. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED], abused his authority as a member of the New York City

Police Department, in that he frisked Person C and an unidentified individual, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

3. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED], was discourteous to Person A, Person B, Person C, Person D and unidentified individuals.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT - GENERAL

4. Said Police Officer Jeremy Pohl, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED], used excessive force against Person A, Person B, Person C, Person D and unidentified individuals, in that he pointed his gun at them without sufficient legal authority.

P.G. 203-11– USE OF FORCE

Disciplinary Case No. 2013-9850

1. Said Police Officer Vincent Chow, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED], abused his authority as a member of the New York City Police Department, in that he stopped Person A, Person B, Person C, Person D and unidentified individuals, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

Disciplinary Case No. 2013-9851

1. Said Police Officer Yale Margolis, on or about January 1, 2012, at approximately 2000 hours, while assigned to PSA 2 and on duty, [REDACTED], abused his authority as a member of the New York City Police Department, in that he caused the stop of Person A, Person B, Person C, Person D and unidentified individuals, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

The Civilian Complaint Review Board was represented by Vanessa McEvoy, Esq.

Respondents were represented by John Tynan, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9848

Respondent Pohl is found Guilty of Specification Nos. 1, 2 and 4. It is recommended that Specification No. 3 be Dismissed.

Disciplinary Case No. 2013-9850

Respondent Chow is found Not Guilty.

Disciplinary Case No. 2013-9851

Respondent Margolis is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTED

It is not disputed that on January 1, 2012, all three Respondents were on duty, in uniform, assigned to Police Service Area 2 (PSA 2) performing patrol duties. (Tr. 33, 59, 74-75). Their specific assignments that day were foot posts [REDACTED]

[REDACTED]. Respondent Margolis and his partner, Police Officer Herman Lai, were assigned to a foot post that was adjacent to that of Respondent Chow and his partner Respondent Pohl. (Tr. 34, 60). Because Person A and Person B did not appear to testify at this trial and because Person C is deceased,¹

¹ Person C was shot to death in February, 2015.

CCRB presented a hearsay case by offering the transcripts of their CCRB interviews into evidence. (CCRBX 1-3).

Person A, who was interviewed at the CCRB on January 20, 2012, stated that he was standing in front [REDACTED] with his cousin, Person B, and his friend, Person C, talking and waiting for the arrival Person C's cousin Person D. for about ten minutes. (CCRBX 1 at p.3-4). He explained that once Person D came outside, the group proceeded to walk away but heard an argument and turned around. (*Id.* at p.16). Person A asserted that he saw Respondents Pohl and Chow grab an individual by his shirt. (*Id.* at pp.12-13, 22-23). Person A pulled out his cell phone and started recording. (*Id.* at p.26). Respondent Pohl walked fast, got in front of them, yelled at them to "get on the fucking gate," and then pulled out his firearm. (*Id.* at p. 24-32). Person A asserted that none of the men had their hands in their pockets and that Respondent Pohl never said anything about hands in pockets. (*Id.* at p.31). When everyone backed up against the gate, Respondent Pohl put away his firearm. (CCRBX 1 at pp.34-35). Respondent Pohl patted down Person C. (*Id.*). They were then allowed to leave the area.

Person B's account does not differ significantly from that of his cousin Person A in that he stated that he was waiting with Person A and Person C outside [REDACTED] for Person D to arrive. (CCRBX 2 at p. 4). As soon as Person D arrived, they began walking away quickly because it was raining. As they were walking away they observed two officers "harassing" two men who were standing outside [REDACTED]. One of the men was screaming. (*Id.* at pp. 9-11). Respondent Pohl then screamed at them to "get on the fucking fence" (*Id.* at pp.23-24).

Person B recalled that “we took our hands out of our pockets since he made us.” (Id. at p.27) However, he later stated that “once we got near the cops, none of us had our hands in our pockets” and that Respondent Pohl did not direct them to remove their hands from their pockets. (Id. at p.28).

Person C stated at his CCRB interview that he waited outside [REDACTED] [REDACTED] for his cousin Person D and that when he arrived (CCRBX 3 at pp. 3-7) they all walked off together. Person C asserted that he heard walkie-talkies and turned around to see Respondent Pohl and Respondent Chow grabbing an individual by his arms. (Id. at pp.13-15). They all got up against the gate when Respondent Pohl directed them to do so and they put their hands up before Respondent Pohl displayed his firearm. (Id. at pp.21-24). Person C told Respondent Pohl to calm down. (Id.). Respondent Pohl patted down his waist. (Id. at p.26). Respondent Pohl walked off after searching him and they had no further interaction. (Id. at p.28). Person C recalled that the first individual who was stopped called Respondent Pohl a “pussy” and that Respondent Pohl “taunt[ed] him” back. (Id.).

Respondent Margolis testified that when he and Officer Lai entered [REDACTED] [REDACTED] to perform a routine vertical patrol, he observed a group of men exiting as they entered. (Tr. 35). He then observed that the padlock on the first floor janitor’s closet was open and was “swaying.” (Tr. 36). He opened the closet and discovered a gun inside. He then called Respondent Pohl to inform him that the men who had exited the building when he and Officer Lai were entering were now congregating outside. (Tr. 38). Respondent Margolis testified that because he suspected that one of the men who had exited may have placed the gun in the closet, he told Respondent Pohl that he had just

found a handgun and that the group of men who had exited the building just as he was entering it were outside. He gave Respondent Pohl "a brief description of what some of them were wearing." (Tr. 39). He explained that he did not leave the building to follow them because he wanted to maintain chain of custody over the gun until his supervisor arrived. (Tr. 39). He had no involvement in stopping anyone other than relaying description information to Respondent Pohl. (Tr. 40).

On cross examination, Respondent Margolis agreed that he did not see any of the men who had exited the building doing anything suspicious before he found the gun and that no one was standing "right at" the janitor's closet door when he entered the lobby. (Tr. 41, 46). He agreed that he did not tell his CCRB interviewer that the lock was swaying, but he was never specifically asked about that. (Tr. 51-55). He agreed that he "probably" told Respondent Pohl to stop the men that he described to Respondent Pohl. (Tr. 48).

The parties stipulated that if Officer Lai had appeared to testify he would have stated that he and Respondent Margolis found a gun in the building inside an unlocked janitor's closet and that although he observed a group of males outside the building, he did not recall seeing these males leaving the building. (Tr. at pp.17-18).

Respondent Chow testified that Respondent Margolis provided descriptions of the individuals who Respondent Margolis had seen exiting the building just before Respondent Margolis discovered a gun in a closet. (Tr. 62). They headed outside and immediately encountered a group of males who matched Respondent Margolis' descriptions. (Tr. 63). They initially interacted with only two individuals but Respondent Pohl speed walked ahead of Respondent Chow to get in front of a larger

group of men. (Tr. 68-69). These men were uncooperative and cursed and laughed at the officers. Respondent Chow told one individual who was screaming to calm down but he did not tell anyone to stop and he did not remember having any physical contact with anyone. (Tr. 63-64). On cross examination, after he was shown the cell phone video, Respondent Chow agreed that he is depicted in the video placing his hand on an individual who is heard screaming, "I was just going to get a fucking hat." (Tr. 72-73).

Respondent Pohl testified that Margolis provided specific descriptions to him including that one man was wearing a blue shirt with the number 10 on the back of the shirt. (Tr. 77). He saw individuals matching these descriptions as soon as he and Respondent Chow went outside. When these individuals began to quickly walk away, he called out to them "numerous" times before he eventually ordered them to "stop." (Tr. 78). As he jogged ahead of them, he saw them reaching into their pockets and pulling out objects. (Tr. 79). He told them to get up against a fence and he withdrew his firearm because he believed that they might possibly possess guns and he feared for his safety. (Tr. 79-80). He based this belief on their actions of reaching into their pockets, the fact that Respondent Margolis had discovered a gun in the janitor's closet and the fact that gunshots had been fired in that Development earlier that day. Since the men became compliant after he displayed his firearm, he quickly re-holstered his firearm. (Tr. 80). He frisked the pockets of two men who he had seen reaching into their pockets but he did not frisk everyone. (Tr. 81). When one of the men called him a "pussy," he screamed it back at the man because he was shocked. (Tr. 82-83). The men then walked away and dispersed. He and Respondent Chow were unable to contain the group of men. (Tr. 81).

On cross examination, Respondent Pohl agreed that the men were not free to leave or to refuse his order to stop and that he would have frisked all of the men if he and Respondent Chow had been able to contain the group. (Tr. 95-96, 100). He testified that when someone on the street curses at him, he "sometimes" repeats the curse word back at them. (Tr. 100-101). He confirmed that no one was arrested or served with a summons. (Tr. 108).

In the cell phone video provided to CCRB by Person A (CCRBX 4), Respondent Pohl is heard telling the men to "get up against the fucking fence;" it depicts Respondent Pohl patting down Person C, who is wearing a blue shirt, and it depicts Respondent Pohl withdrawing his firearm from its holster, pointing his firearm at the men with both hands on the firearm and with his arms extended. After a few seconds, Respondent Pohl is seen re-holstering his firearm. As the men walk away, one of them is heard calling Respondent Pohl a "pussy" and Respondent Pohl is heard saying "pussy" back to the man.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2013-9848

Specification Nos. 1, 2 and 4

Respondent Pohl is charged with having stopped Person A, Person B, Person C, Person D and other unidentified individuals without sufficient legal authority; having frisked Person C and an unidentified individual without sufficient legal authority; and having used excessive force in that he pointed his gun at them without sufficient legal authority.

A uniformed member of the service (UMOS) who initiates a street encounter with one or more civilians must follow the procedural rules governing such encounters that are delineated in Patrol Guide Procedure No. 212-11 and the Activity Log insert STREET ENCOUNTERS – LEGAL ISSUES (PD 344-153).

Patrol Guide Procedure No. 212-11 “Stop and Frisk” defines a “stop” as “to temporarily detain a person for questioning” and it states that “a uniformed member of the service” may lawfully “frisk” a person only “if you reasonably suspect you or others are in danger of physical injury.”²

The Activity Log insert STREET ENCOUNTERS – LEGAL ISSUES (PD 344-153) informs UMOS of the four levels of encounters established by the New York Court of Appeals in *People v DeBour*, 40 NY2d 210 (1976). A Level I inquiry is a request for information, which requires no suspicion of any criminal activity, simply an objective, credible reason for the request. A Level II inquiry, also known as the Common Law Right of Inquiry, must be based upon a founded suspicion that criminal activity is afoot and allows police to interfere with a citizen’s liberty to obtain information. However, the insert states that the person is free to walk away and need not answer questions. A Level III inquiry must be supported by reasonable suspicion that the person has committed, is about to commit, or is committing a felony or a misdemeanor. This level of encounter permits police to engage in a brief detention of a suspect while they complete their investigation. During this detention, police may engage in a limited search of the outside of a suspect’s clothing, that is a pat-down or frisk, for weapons if they possess a

² Patrol Guide Procedure No. 212-11 UNIFORMED MEMBER OF THE SERVICE.

reasonable fear for their safety. Finally, a Level IV encounter is an arrest, which must be supported by probable cause to believe the suspect has either committed a crime or an offense in his presence (*Criminal Procedure Section 140.10*).

I find Respondent Pohl Guilty based on the video in evidence and his own testimony. Respondent Pohl is heard on the video telling the men to "get up against the fucking fence;" he is seen patting down Person C and he is seen withdrawing his firearm and pointing it at the men with both arms extended. Respondent Pohl testified that he believed that he possessed reasonable suspicion to forcibly stop and frisk all of the men who were in front of the building because he believed they may have had weapons on them and he feared for his safety. He testified that he based this belief on the fact that they were reaching into their pockets, the fact that Respondent Margolis had found a gun inside the building, and the fact that gunshots had been fired in that Development earlier that day. Respondent Pohl also agreed that none of the men were free to leave or to refuse his order to stop; that he ordered all of the men to get up against a fence so that they could be frisked; and that he would have frisked all of the men if he had been able to do so.

Based on the information that Respondent Margolis provided to him, I find that Respondent Pohl had a sufficient legal basis to conduct no more than a Level II inquiry of those men that Respondent Margolis had provided specific descriptions of. Respondent Margolis only told Respondent Pohl that he had seen these men leaving the building just as he was entering the building. Since Respondent Margolis did not tell Respondent Pohl that he had seen the men in or at the custodian's closet where he found the gun, Respondent Pohl had an insufficient basis to believe that any of the men had placed the

gun in the closet or that any of the men were in possession of a weapon at the time he confronted them. Thus, he possessed insufficient legal authority to forcibly stop and frisk any of the men.

Moreover, even if I credited Respondent Pohl's testimony that the men were reaching into their pockets and that gunshots had been fired in the vicinity [REDACTED] [REDACTED] earlier that day, these factors were insufficient to provide Respondent Pohl with a legal basis to conduct more than a Level I request for information. Despite this, Respondent Pohl admitted that he attempted to forcibly stop all of the men by ordering all of them to stand up against a fence and he admitted that he would have frisked all of the men if he had been physically able to do so.

Finally, Respondent Pohl further admitted that he withdrew his firearm and the cell phone video depicts Respondent Pohl with both hands on his firearm with his arms extended pointing his firearm at the men. Patrol Guide Procedure No. 203-12, Deadly Physical Force, states that: "The most serious act in which a police officer can engage is the use of deadly force. The power to carry and use firearms in the course of public service is an awesome responsibility. Respect for human life requires that, in all cases, firearms be used as a last resort, and then only to protect life." Under the circumstances presented here, Respondent Pohl was not authorized to try to force the group of men to comply with his order to get up against the fence by pointing his firearm at them.

Therefore, Respondent Pohl is found Guilty of Specification Nos. 1, 2 and 4.

Specification No. 3

Respondent Pohl testified at this trial that when one of the men called him a “pussy,” he said this word back to the man “in a questioning tone, in a shocked tone.” (Tr. 100) Although Respondent Pohl is charged with having been “discourteous to Person A, Person B, Person C, Person D” and other “unidentified individuals” by uttering the word “pussy,” the CCRB prosecutor conceded that Respondent Pohl was not directly addressing any of the four men whose names are contained in this charge. Nonetheless, the CCRB prosecutor argued that Respondent Pohl was discourteous to all four of the named men because they were within earshot when he used the word “pussy” in addressing an unidentified man. Also, although the CCRB prosecutor admitted that when Respondent Pohl uttered the word “pussy” he was “specifically” addressing the man who had called him a “pussy,” the CCRB prosecutor argued that when Respondent Pohl echoed this man’s comment “he was also generally speaking to the group as well” and that this was discourteous to the entire group. I cannot subscribe to the CCRB prosecutor’s position that Respondent Pohl was “generally speaking” to the entire group or that he was discourteous to everyone who heard his voice.

Finally, the CCRB prosecutor conceded that Respondent Pohl used the word “pussy” in addressing the unidentified man only after this individual had first called Respondent Pohl a “pussy.” Thus, it is not disputed that Respondent Pohl uttered this profane word only in response to the unidentified man’s action of directing this profanity at him. Based on these facts, it is recommended that Specification No. 3 be dismissed.

Disciplinary Case No. 2013-9850

Respondent Chow stands charged with stopping Person A, Person B, Person C, Person D and other unidentified individuals without sufficient legal authority. Respondent Chow agreed that he is depicted in the video placing his hand on an individual. However, the video does not depict Respondent Chow engaging in any other physical actions and in her closing argument the CCRB prosecutor agreed that the video depicts Respondent Chow standing "in the back" where he is seen "dealing with an angry male" who is "screaming about his hat." (Tr. 120) Thus, the video corroborates Respondent Chow's testimony that he did no more than attempt to back up his partner to try to protect his partner and insure his partner's safety as Respondent Pohl ran ahead to get in front of the group of men and then, on his own volition, engaged in the misconduct he has been found guilty of committing. Respondent Chow is found Not Guilty.

Disciplinary Case No. 2013-9851

Respondent Margolis is charged with "causing a stop" without sufficient legal authority. The only evidence in the record regarding what Respondent Margolis told Respondent Pohl and Respondent Chow is their own testimony regarding their recollection of their conversation. Respondent Margolis testified that because he suspected that the men who had exited the building as he and Lai were entering it might have placed the gun in the closet, he told Respondent Pohl that he had just found a handgun; that a group of men had exited the building just as he was entering it; that they were congregating outside; and that he gave Respondent Pohl "a brief description of what some of them were wearing." The CCRB prosecutor offered no independent evidence to prove that any of this testimony was inaccurate. Although Respondent Margolis

14
POLICE OFFICER JEREMY POHL
POLICE OFFICER VINCENT CHOW
POLICE OFFICER YALE MARGOLIS

conceded that he "probably" told Respondent Pohl to stop these men, he was not present when Respondent Pohl confronted the men. Thus, Respondent Margolis cannot be held accountable for the manner in which Respondent Pohl attempted to stop the men. Therefore, Respondent Margolis is found Not Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent Pohl's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Pohl was appointed to the Department on Sept. 8, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

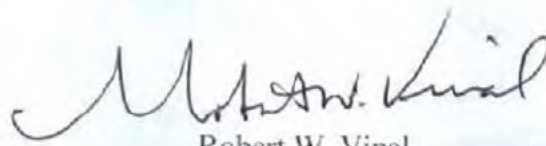
The CCRB prosecutor offered no penalty recommendation at this trial. However, on the Disciplinary Cover Sheet prepared by the CCRB prosecutor, it is recommended that Respondent Pohl forfeit ten vacation days as a penalty.

Since Respondent Pohl has no prior disciplinary record, his misconduct here appears to be an aberration from his normal manner of performing street encounters of civilians.

Therefore, it is recommended that Respondent Pohl forfeit ten vacation days.

Respectfully submitted,





Robert W. Vinal
Assistant Deputy Commissioner - Trials