



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

October 14, 2021

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Christopher Arena**
Tax Registry No. 954498
PBMN Specialized Units
Disciplinary Case No. 2019-20346

Police Officer Mark Ruppert
Tax Registry No. 954305
33rd Precinct
Disciplinary Case No. 2019-20348

The above named members of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan remotely on March 5, 2021, charged with the following:

DISCIPLINARY CASE NO. 2019-20346

1. Police Officer Christopher Arena, on or about October 10, 2017, at approximately 2245, while assigned to Patrol Borough Manhattan North Specialized Units, and on duty, in the vicinity [REDACTED], wrongfully used force, in that he used physical force, namely struck Enso Quezada without police necessity.

P.G. 221-02, Page 1, Prohibition 11

USE OF FORCE

2. Police Officer Christopher Arena, on or about October 10, 2017, at approximately 2245, while assigned to Patrol Borough Manhattan North Specialized Units, and on duty, in the vicinity of the 26 Precinct station house, abused his authority as a member of the New York City Police Department, in that he failed to secure medical treatment for Enso Quezada from the place of arrest without sufficient legal authority.

P.G. 210-04, Page 1, Paragraph 1

**PRISONERS REQUIRING
MEDICAL PSYCHIATRIC
TREATMENT**

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2019-20348

1. Police Officer Mark Ruppert, on or about October 10, 2017, at approximately 2245, while assigned to the 033 Precinct, and on duty, in the vicinity [REDACTED], wrongfully used force, in that he pointed his gun at Enso Quezada without police necessity

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

FORCE GUIDELINES

2. Police Officer Mark Ruppert, on or about October 10, 2017, at approximately 2245, while assigned to the 033 Precinct, and on duty, in the vicinity [REDACTED], wrongfully used force, in that he used physical force, namely struck, Enso Quezada without police necessity

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

FORCE GUIDELINES

3. Police Officer Mark Ruppert, on or about October 10, 2017, at approximately 2245, while assigned to the 033 Precinct, and on duty, in the vicinity of the 26 Precinct station house, abused his authority as a member of the New York City Police Department, in that he failed to secure medical treatment for Enso Quezada from the place of arrest without sufficient legal authority.

P.G. 210-04, Page 1, Paragraph 1

**PRISONERS REQUIRING
MEDICAL PSYCHIATRIC
TREATMENT**

P.G. 203-09, Page 1, Paragraph 1

**PUBLIC CONTACT –
GENERAL**

In a Memorandum dated April 21, 2021, Assistant Deputy Commissioner Nancy R. Ryan found Police Officer Christopher Arena Not Guilty of all Specifications and Police Officer Mark Ruppert Guilty of Specification No. 1 and Not Guilty of Specification Nos. 2 and 3, in Disciplinary Case Nos. 2019-20346 and 2019-20348, respectively.

Having read the Memorandum and analyzed the facts of this matter, I approve the Not Guilty findings for Police Officer Arena, and approve the Not Guilty finding of Police Officer Ruppert for Specification Nos. 2 and 3, but disapprove the Guilty finding of Police Officer Ruppert for Specification No. 1.


I have determined that based on the totality of the circumstances, a finding of Not Guilty is warranted. The situation in which Officer Ruppert found himself, along with his fellow officers, when he attempted to arrest an individual who had refused to stop his vehicle and fled, and who ultimately jumped out of his still-moving vehicle and ran into a dark wooded area in order to evade arrest was extremely dangerous.

This situation provided overwhelming potential for serious physical injury to Officer Ruppert and the other officers present, as they had no way to know what weapons or intentions the fleeing individual might have at that moment.

I considered Officer Ruppert's testimony that he was in fear for his safety and that he was concerned that he could not see the individual's hands when the individual had run into the wooded area and gone onto the ground. I found it clear that Officer Ruppert's choice to cover the individual with his firearm, but not to actually use deadly force in discharging his firearm, was both appropriate and prudent, as well as authorized, under these circumstances.

Thus, Police Officer Ruppert's decision to momentarily point his firearm until the individual was under control and the danger had abated falls squarely within the permitted use of force as expressed in Patrol Guide Procedure 221-01 "Force Guidelines."

Therefore, I have determined that Mark Ruppert is Not Guilty of Specification No. 1 and will receive no disciplinary action in Disciplinary Case No. 2019-20348.


Dermot Shea
Police Commissioner



POLICE DÉPARTMENT

April 21, 2021

-----X
In the Matter of the Charges and Specifications

- against -

Police Officer Christopher Arena
Tax Registry No. 954498
PBMN Specialized Units

Case No.
2019-20346

Police Officer Mark Ruppert
Tax Registry No. 954305
33rd Precinct

Case No.
2019 20348

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

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Simone Manigo, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For Respondents:

Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2019-20346

1. Police Officer Christopher Arena, on or about October 10, 2017, at approximately 2245, while assigned to Patrol Borough Manhattan North Specialized Units, and on duty, in the vicinity [REDACTED], wrongfully used force, in that he used physical force, namely struck Enso Quezada without police necessity.
 P.G. 221-02, Page 1, Prohibition 11 USE OF FORCE

2. Police Officer Christopher Arena, on or about October 10, 2017, at approximately 2245, while assigned to Patrol Borough Manhattan North Specialized Units, and on duty, in the vicinity of the 26 Precinct stationhouse, abused his authority as a member of the New York City Police Department, in that he failed to secure medical treatment for Enso Quezada from the place of arrest without sufficient legal authority.
 P.G. 210-04, Page 1, Paragraph 1 ABUSE OF AUTHORITY –
 FAILURE TO PROVIDE
 MEDICAL TREATMENT
 P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT –
 PROHIBITED CONDUCT

Disciplinary Case No. 2019-20348

1. Police Officer Mark Ruppert, on or about October 10, 2017, at approximately 2245, while assigned to the 033 Precinct, and on duty, in the vicinity [REDACTED], wrongfully used force, in that he pointed his gun at Enso Quezada without police necessity.
 P.G. 221-02, Page 2, Prohibition 11 FORCE GUIDELINES

2. Police Officer Mark Ruppert, on or about October 10, 2017, at approximately 2245, while assigned to the 033 Precinct, and on duty, in the vicinity [REDACTED], wrongfully used force, in that he used physical force, namely struck Enso Quezada without police necessity.
 P.G. 221-02, Page 2, Prohibition 11 FORCE GUIDELINES

3. Police Officer Mark Ruppert, on or about October 10, 2017, at approximately 2245, while assigned to the 033 Precinct, and on duty, in the vicinity of the 26 Precinct stationhouse, abused his authority as a member of the New York City Police Department, in that he failed to secure medical treatment for Enso Quezada from the place of arrest without sufficient legal authority.
 P.G. 210-04, Page 1, Paragraph 1 ABUSE OF AUTHORITY –
 FAILURE TO PROVIDE
 MEDICAL TREATMENT
 P.G. 203-09, Page 1, Paragraph 1 PUBLIC CONTACT – GENERAL

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me remotely on March 5, 2021. Respondents, through their respective counsel, both entered pleas of Not Guilty to the subject charges. The Civilian Complaint Review Board (“CCRB”) called Mr. Enso Quezada as its witness. Respondents testified on their own behalves. 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, I find Respondent Arena Not Guilty of Specifications 1 and 2 in Disciplinary Case No. 2019-20346. I further find Respondent Ruppert Not Guilty of Specifications 2 and 3 and Guilty of Specification 1 in Disciplinary Case No. 2019-20348, and recommend a penalty of the loss of ten vacation days.

ANALYSIS

It is undisputed that on October 10, 2017, at approximately 2245 hours, Respondents Arena and Ruppert were on duty, in plain clothes, patrolling in an unmarked van. Two other members of service, who are no longer employed by the Department, Police Officer Raimone and Detective Sepulveda, were also in the van. In the vicinity of the Harlem River Drive and 155th Street, the officers began to follow a vehicle driven by Enso Quezada. The officers pursued this vehicle across the George Washington Bridge to the vicinity [REDACTED]

[REDACTED].

When Mr. Quezada reached [REDACTED], he exited his vehicle. Respondents exited their van and apprehended Mr. Quezada. At one point, Respondent Ruppert unholstered his gun. Mr. Quezada sustained an injury to his ear. He was placed under arrest. No medical treatment for

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

Mr. Quezada was obtained at the scene. After he was transported to the 26 precinct, Mr.

Quezada was taken to the hospital where he received sutures in his ear.

The issues in this case are whether both Respondents wrongfully used force to strike Mr. Quezada and failed to secure medical treatment for him at the scene of his arrest. Also at issue is whether Respondent Ruppert wrongfully used force in pointing his gun at Mr. Quezada.

Mr. Quezada testified that on the evening in question he drove from his home in New Jersey to his mother's house in Manhattan to pick up some rent money. At some point in the day, prior to driving to Manhattan, he had used heroin and marijuana. He stated that he used heroin to avoid withdrawal symptoms rather than to get high. He denied being under the influence of marijuana and stated that he was fully aware of his surroundings at the time he was driving in Manhattan. (Tr. 24-26, 28)

After Mr. Quezada left his mother's house, he drove on the Harlem River Drive to return to New Jersey. He testified that his vehicle's lights were on and he was driving within the speed limit. The traffic on the George Washington Bridge was bumper to bumper. He did not remember at that time that he had two bags of heroin in his phone case. He saw flashing lights on a car behind him, but the lights were turned off at some point on, or near, the bridge. Mr. Quezada did not hear any siren and did not think the lights were for him. He thought he was possibly being followed by someone trying to rob him. He did not use his phone to call 911 because he was scared and nervous, and never thought about grabbing his phone. He knew he was driving near a police station in Englewood, but he decided to drive to his girlfriend's parents' house [REDACTED] because, "there are always people there." (Tr. 34-40, 54, 91-92)

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

Upon arriving [REDACTED], Mr. Quezada accidentally put the car into reverse and exited the vehicle. He saw another car with lights on and realized for the first time that it was police that had been following him. He testified that he walked¹ to the sidewalk and laid down in an area with grass and little sticks. While on the ground, his arms were outstretched and his head was turned to the side with his left ear exposed. He testified that the police had their guns drawn and were saying “freeze” when they exited their vehicle. (Tr. 41-46)

When the three police officers reached him, they started punching and kicking Mr. Quezada everywhere. He was struck in the head and back. His face was “kicked and punched” for what felt like a “hundred times” and he felt “pain.” He testified that there was blood “gushing” from his nose and ear. He saw blood all over himself. He also felt a knee on his neck and back. Mr. Quezada further testified that while he may have been jumping and “flinching,” he was never resisting arrest. He got the officers to stop hitting him by telling them he had AIDS and was going to bite them. He was placed in handcuffs while he was still on the ground and then was stood up. Three officers walked him to the police vehicle. (Tr. 46-49, 52, 107)

Mr. Quezada testified that he requested medical assistance at the scene and asked the police to take him to the hospital as soon as he was placed in the police vehicle. He told the police he was bleeding and also would be going through withdrawal soon. He was transported to the 26 Precinct where he had to wait in a cell for two to five hours before he was taken to the hospital. He had pain in his nose and his ear was “hanging off.” When he got to the hospital he was in pain and asked for methadone and Tylenol, which he was given. He was told that he had fractures to his skull and his nose. A cloth was stitched to his ear to hold it together. Mr.

¹ He testified that due to his weight of approximately 270 pounds and his asthma condition he could only barely run. (Tr. 18-19, 30-31, 102)

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

Quezada testified that he has long term injuries to his back and neck and reduced hearing resulting from this incident. He went to physical therapy for three to six months. (Tr. 52-53, 55-57, 59-62)

Mr. Quezada was questioned at trial about photos of his face that were admitted into evidence. He admitted that there were no visible injuries, other than to his ear, on either the photos taken the same day or the photo taken about a week later, because he doesn't bruise. (Tr. 108-09)

Mr. Quezada testified that criminal charges against him arising from his arrest were dismissed. He currently has a civil case pending regarding this incident. (Tr. 54-55, 61)

Mr. Quezada testified that he has several prior felony and misdemeanor convictions including an assault conviction for breaking an officer's arm in 1999 and a RICO conviction in 2009. He also admitted he believed 95 percent of police officers were "dirty." (Tr. 22-23, 100, 110-11, 113-115)

Respondents Arena and Ruppert testified in a similar manner about the vehicle pursuit which took place. While they were driving on 155th Street in Manhattan, they saw Mr. Quezada's vehicle, which had no lights on, pass their van. The driver of their van turned the turret lights on in an attempt to stop Mr. Quezada's vehicle. While they were about one car length behind Mr. Quezada, his car took off at a high rate of speed. While Mr. Quezada was driving on the George Washington Bridge, Respondents saw a black bag thrown out of the driver's side window. They never lost sight of Mr. Quezada's car. (Tr. 126-128, 173-74)

Respondent Arena testified that once he reached [REDACTED] he saw Mr. Quezada jump out of his car while it began to roll backwards. Respondent Arena was the first officer out of the van. He chased Mr. Quezada, who ran away from his car towards a wooded area near the end of

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

the street. The lighting was very dark. Respondent Arena testified that as Mr. Quezada ran into the woods, Mr. Quezada fell face first into the ground and was laying on his stomach. When Respondent Arena reached Mr. Quezada he tried to grab his hands to handcuff him, but he tucked his hands beneath himself. Respondent Arena gave Mr. Quezada multiple commands to show his hands and to stop resisting. Respondent Arena tried to hold Mr. Quezada's arm to stop it from going further under his body. Police Officer Raimone and Respondent Ruppert then arrived and they all attempted to handcuff Mr. Quezada. Respondent Arena testified that while they struggled before eventually handcuffing him, no one punched him or struck him. The ground where they were attempting to handcuff Mr. Quezada was strewn with rocks, broken glass and sticks. (Tr. 130-34)

Respondent Ruppert testified that he was the third officer to exit the van. He followed Mr. Quezada and saw him dive head first into the wooded area. He further testified that his gun was drawn as he approached the wood-line. Mr. Quezada was already on the ground when he pulled out his firearm. He couldn't see Mr. Quezada's hands and he didn't feel safe. He holstered his gun when he saw his two partners approach Mr. Quezada. He and Respondent Arena and Officer Raimone all wrestled with Mr. Quezada, who was flailing his arms and legs before they could secure him in handcuffs. (Tr. 191-92)

Respondent Arena testified that he did not call for medical assistance at the scene because when asked, Mr. Quezada denied needing any medical attention. Respondent Ruppert testified that Mr. Quezada never requested any medical attention at the scene. He never saw any injuries to Mr. Quezada as he walked him to the police vehicle. Respondent Ruppert injured his own hand during the incident. He testified that while he was originally told at the hospital that his hand was fractured, a specialist later indicated it was not fractured. The TRI report prepared by a

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

Captain, but not signed by Respondent Ruppert, indicated he fractured his right hand. (Tr. 137, 178-79, 198)

Video evidence from a camera [REDACTED] was admitted into evidence. The video does not capture any physical interaction among Mr. Quezada and the officers. It captures Mr. Quezada's car arriving [REDACTED] and shows it rolling backwards. The car appears to have its lights on. The Respondents' vehicle arrives seconds behind Mr. Quezada's car. Respondents can be seen running out of their vehicle. Another vehicle, which appears to be a police vehicle, arrives on the block. (CCRB Ex. 1A at 00:30-55; CCRB 1B at 00:30-01:08)

Mr. Quezada's medical records indicate that on October 11, 2017, at 0235 hours, he arrived at Mount Sinai West. It was noted that he walked in under arrest and requested detox for heroin, which he had last used about eight hours prior. A physician described the patient as "a 36-year-old male who presents with a chief complaint of Substance abuse, other uncomplicated." He further stated that the patient reported he injured his ear while being arrested. Mr. Quezada also reported some nausea but denied any headache, loss of consciousness or any chest or abdominal pain. The primary diagnosis was, "laceration without foreign body of left ear." (CCRB Ex. 5A)

At 0240 hours, Mr. Quezada's pain was listed as 8/10. At 0354, 0412, and 0732, his pain was listed as 0/10. At 0431, he was given a tetanus shot; at 0432, he was given Zofran (an anti-nausea drug); at 0432 he was given Ibuprofen 800 mg; at 0635 he was given Cipro (an antibiotic). At 0805, Mr. Quezada's pain was listed at 9/10. By 0827, he was described as lying/sleeping comfortably. (*Id.*)

CT Scans of Mr. Quezada's head and facial bones were done. The head CT showed no evidence of acute infarcts, intracranial hemorrhages or lesions. The facial CT showed no acute

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

facial bone fracture but the physician noted, “Minimal flattened configuration of the midline nasal bridge may represent chronic sequelae from a remote injury versus physiologic variation.” Also visible was a comminuted traumatic fracture of the right mastoid styloid process. (*Id.*)

Mr. Quezada received sutures for his ear and was discharged from the hospital to jail at 0933 hours. He was given prescriptions for Cipro, acetaminophen (a pain reliever) 325 mg and an Abuterol Inhaler. He was directed to follow up in seven days with a plastic surgeon for suture removal. (*Id.*)

Also in evidence are Mr. Quezada’s medical records dated March 13, 2018 from Central Park Physical Medicine and Rehabilitation and dated June 11, 2018 from City Med. In both sets of records, Mr. Quezada reported that he was assaulted by the police who hit him and kicked him causing him to sustain injuries to his neck, back, head and face. The Doctor at Central Park noted her initial impressions to include cervical spine/whiplash syndrome; muscle spasms, lumbar sprain, head injury/status post nose and facial fractures, “by history,” and left ear laceration with decreased hearing. The plan for Mr. Quezada included physical therapy, home exercise, an MRI and EMG. Mr. Quezada was prescribed Naproxen and Flexeril. The diagnosis from the City Med doctor was headache post-concussion, cervical and lumbar spine pain, left ear soft tissue injury and a healed nasal fracture. The plan of care included physical therapy and pain medicine. He was referred to a neurologist and either a primary care physician or a plastic surgeon. (CCRB Exs. 5B-C)

In Specification 2 of Disciplinary Case No. 2019-20348, and Specification 1 of Disciplinary Case 2019-20346, Respondents Ruppert and Arena respectively were charged with the wrongful use of force for striking Mr. Quezada. While Mr. Quezada never identified either

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

officer, each of them admitted that they were involved in a struggle with Mr. Quezada during the course of his arrest on October 10, 2017, in the vicinity [REDACTED].

Both officers testified credibly at trial. They answered all questions on both direct and cross-examination in a forthright manner. Their testimony did differ somewhat on whether Mr. Quezada fell or dove into the woods, but this tribunal considers that a minor difference. In light of the incident's location in a very dark area, it is not a significant inconsistency for one officer to perceive that Mr. Quezada tripped and fell forward while another officer perceived that Mr. Quezada dove forward into the woods.

Both Respondents separately described the difficulty they had in attempting to handcuff Mr. Quezada. They acknowledged wrestling with Mr. Quezada, who was resisting arrest. The force they described using in grabbing Mr. Quezada's arms was reasonable in a situation where he refused to uncover his hands to be handcuffed. They also both described the area where they struggled with Mr. Quezada as being covered in trash and potentially sharp objects. A tear to the ear area, in this tribunal's opinion, could very possibly be caused by the scraping of the ear area on a sharp object located on the ground during the struggle and wrestling which took place.

In contrast to Respondents' testimony, the tribunal finds Mr. Quezada's testimony concerning the force used by the officers to be incredible. In addition to the potential bias inherent in Mr. Quezada's testimony due to having a financial interest in proving the Officers injured him, he also articulated a bias against police in general with his statement that 95 percent of police are corrupt. Mr. Quezada's version of what happened is also called into question due to his acknowledgement that he used drugs on the day of the incident and was experiencing withdrawal shortly after the time of the incident about which he testified.

The most significant factor leading the court to deem Mr. Quezada's recount of events incredible comes from the photographic evidence in the case. There are no visible bruises on pictures taken of Mr. Quezada's face within hours of the incident or within a week of the incident. Mr. Quezada testified that the Respondents hit him with a "hundred blows" which inflicted pain. If Mr. Quezada had indeed been struck with this many blows it would be expected that bruises or cuts or swelling would be visible at least at one of the two time points when the pictures were taken. Mr. Quezada's explanation that he simply doesn't bruise does not credibly explain why there are no visible facial lacerations, except to his ear, nor why there is no facial swelling. Having no visible signs of injury to his face after allegedly enduring the vicious beating he described is simply not believable. The photos also belie Mr. Quezada's testimony that he was "gushing" blood. The only signs of what may possibly be blood on Mr. Quezada's clothing are a few spots on his shirt and shorts. These spots, even if they are blood, do not support his testimony of blood "gushing" out of his nose and ear.

The medical records also do not clearly provided support for Mr. Quezada's version of events. The CT scan indicates there was no acute facial bone fracture. The minimally flattened configuration of the midline nasal bridge is described as possibly representing a remote injury or simply a physiologic variation. All other findings show the sinuses to be intact. There was no intracranial hemorrhage. These findings are not consistent with the type of beating described by Mr. Quezada.

With regard to the "comminuted traumatic fracture of the right mastoid styloid process," no medical evidence was introduced to explain exactly what this finding means but it appears to the tribunal that it was not likely a severe injury consistent with a vicious beating. The hospital

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

released Mr. Quezada with simply suturing his ear and prescribing an antibiotic, acetaminophen and an inhaler and referring him for suture removal.

As I am crediting the Respondents' testimony regarding the force used to arrest Mr. Quezada to be credible and Mr. Quezada's testimony to be incredible, I find the Respondents Not Guilty of the two Specifications cited above.

Each Respondent was also charged with failing to secure medical treatment for Mr. Quezada at the scene. Under Patrol Guide Section 210-04, when a prisoner in custody requires medical or psychiatric treatment, Members of Service must request an ambulance and remove a prisoner to a hospital directly from the place of arrest. Both Respondents testified that Mr. Quezada did not request medical attention at the scene. I credit this testimony over that of Mr. Quezada's for the reasons discussed above. However, it is still incumbent upon the officers to determine if the prisoner needs medical attention even if no request has been made. I do not find that the officers had any reason to request an ambulance to the scene for Mr. Quezada based on their observations of him. It was extremely dark at the scene. The small spots of possible blood on Mr. Quezada's clothing would first of all have been difficult to see and secondly were of such small size that they would not indicate a need for an ambulance or immediate medical attention to a reasonable person.

Respondent Ruppert is charged with wrongfully using force in pointing his gun at Mr. Quezada. He admitted he unholstered his gun because he was in fear for his safety, since he could not see Mr. Quezada's hands when Mr. Quezada was faced down towards the ground. He also stated that he did not know if Mr. Quezada had contraband on him or in his car since he threw something out of his car window. Respondent Ruppert put the gun away because when his fellow officers approached Mr. Quezada, he "didn't want to cover them or flag them" with his

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

weapon. As Respondent Ruppert did not want to accidentally shoot his fellow officers as they were approaching Mr. Quezada it is more likely than not that his weapon was pointed in the direction of Mr. Quezada and the officers who had chased him.

After concluding that Respondent Ruppert did point his firearm at Mr. Quezada the question becomes whether it was a reasonable use of force to do so. Patrol Guide Section 221-01 states, “The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. When a uniformed member of the service determines that the potential for serious physical injury is no longer present, the uniformed member of the service will holster the firearm as soon as practicable.” Under NY Penal Law Section 10.00 (10), serious physical injury is defined as, “physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

Respondent Ruppert did not articulate a reasonable belief that the potential for serious physical injury was present in the situation in this case. He did not observe Mr. Quezada with any weapon or any bulges, which could have conceivably been a weapon. He did not describe any movement Mr. Quezada was making which would have put Mr. Quezada in a position where he was threatening anyone with serious physical injury. Mr. Quezada was laying with his body facing down to the ground with two fellow officers approaching him at the time Respondent Ruppert had his weapon aimed in their general direction. I find Respondent Ruppert Guilty of this specification.

PENALTY

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

Respondent Ruppert, who was appointed to the Department on January 9, 2013, has been found guilty of wrongfully using force by pointing his gun at Mr. Quezada. Although he has been found Not Guilty of two other specifications, CCRB argued that, “page 22 of the disciplinary matrix dictates that termination is the presumptive penalty as to this specification.” (Tr. 259)

Having reviewed the cited section of the Disciplinary Guidelines, the Tribunal disagrees. The Guidelines do provide that termination is the presumptive penalty for any misconduct involving deadly physical force, even where there is no injury. The key distinction in this matter is that while a firearm is undoubtedly a deadly weapon as defined by the Guidelines, the characterization of Respondent’s briefly pointing his firearm as a “use of deadly [p]hysical force” that warrants termination is neither fair nor accurate. Indeed, the Guidelines define deadly physical force as “[p]hysical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury” and specifically reference the “discharge of a firearm” as the sole example of such force. The definition contemplates a level

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

of force markedly different and far graver than what transpired here. Accordingly, a lesser penalty is warranted.

There is no clear presumptive penalty in the Guidelines for the pointing of a firearm during an on-duty encounter. Recent precedent involving the brandishing of a firearm, both on and off duty, tends to address situations that were longer in duration and had additional specifications or other aggravating factors. *See Disciplinary Case No. 2018-19320* (Dec. 10, 2020), (17-year detective forfeited 30 vacation days and was placed on one-year dismissal probation for wrongfully using force while off-duty when he pointed his gun at and unlawfully arrested five high school students that he believed were responsible for a prior assault on his elderly father); *Disciplinary Case No. 2017-17535* (June 13, 2019) (nineteen-year detective with prior discipline forfeited 30 vacation days and was placed on one-year dismissal probation for pointing his firearm at a civilian without police necessity and striking that civilian with the firearm); *Disciplinary Case No. 2016-16850* (Mar. 28, 2018) (seven-year police officer with no disciplinary record negotiated a penalty of the loss of 15 vacation days for improperly pointing her firearm at a PAA inside a precinct); *Disciplinary Case No. 2015-13036* (June 2, 2016) (fourteen-year captain negotiated a penalty of the loss of 30 vacation days for wrongfully pointing his gun at two individuals and wrongfully stopping the individuals and being discourteous).

It is noteworthy that the Disciplinary Guidelines do provide a presumptive penalty of 15 penalty days for displaying a weapon while off-duty without police necessity. While not fully analogous to these facts, it is a more reasonable penalty range under the relevant circumstances and given the nature of the misconduct here. Because of the mitigating factors of the extremely brief duration that Respondent's gun was drawn, and the heightened security concerns

POLICE OFFICER CHRISTOPHER ARENA
POLICE OFFICER MARK RUPPERT

surrounding a lawful vehicle stop that followed an interstate vehicle pursuit on a dark evening, I recommend a penalty of ten (10) vacation days. Respondent did not serve any pre-trial suspension days in this case.

Respectfully submitted,


Nancy R. Ryan





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MARK RUPPERT
TAX REGISTRY NO. 954305
DISCIPLINARY CASE NO. 2019-20348

Respondent was appointed to the Department on January 9, 2013. On his last three performance evaluations, Respondent twice received 4.5 overall ratings of “Extremely Competent/Highly Competent” for 2015 and 2016 and received a 4.0 overall rating of “Highly Competent” in 2014. He has been awarded nine medals for Excellent Police Duty, five medals for Meritorious Police Duty and one Commendation.

Respondent has no disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials