



POLICE DEPARTMENT

May 28, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-25079
Police Officer Caner Sezer	:	
Tax Registry No. 951236	:	
67 Precinct	:	

-----X

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB: Kenneth Crouch, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Michael Martinez, Esq.
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To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Caner Sezer, on or about March 9, 2020, at approximately 0030 hours, while assigned to 67 Precinct and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force, in that he pointed his gun at Complainant without police necessity.

P.G. 221-02, Page 2, Prohibitions 11, 12

USE OF FORCE

2. Police Officer Caner Sezer, on or about March 9, 2020, at approximately 0030, while assigned to 67 Precinct and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he threatened Complainant with the use of force by stating, in sum and substance, "You fucking move, you're gonna get hurt, you understand?" without police necessity.

P.G. 203-10, Page 1, Paragraph 5
now encompassed by A.G. 304-06

PUBLIC CONTACT -
PROHIBITED CONDUCT

3. Police Officer Caner Sezer, on or about March 9, 2020, at approximately 0030, while assigned to 67 Precinct and on duty, in the vicinity of [REDACTED] Kings County, was discourteous to Complainant in that he stated, in sum and substance, "I don't give a shit." "Don't fucking move," without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2
now encompassed by A.G. 304-06

PUBLIC CONTACT -
PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION AND
VALUES OF THE NYPD

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 19, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The CCRB presented a hearsay case, and introduced Respondent's body-worn camera footage into evidence. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Not Guilty of all specifications.

ANALYSIS

This case arises from a car stop Respondent conducted of [Complainant]'s vehicle in the early morning hours of March 9, 2020. CCRB alleges that Respondent wrongfully pointed his firearm at [Complainant] wrongfully threatened him with the use of force, and used discourteous language against him. Respondent does not deny the facts underlying the allegations, but argues that his actions during the incident were justified by the circumstances surrounding the stop.

[Redacted] (Complainant), did not appear before the Tribunal. He was interviewed remotely by CCRB investigators on May 15, 2020, just over two months after the incident. The audio recording and transcript were entered into evidence as CCRB Exhibits 1 and 1A. Complainant recounted that he was driving to work in his Infinity G25X around midnight and that he was running late. He explained that while the intersection of Utica Avenue between Avenue D and Farragut is generally busy, there were few cars on the road when he saw "cops pull to the side" of his vehicle. Complainant contended that only after he pulled over did the blue and white police vehicle activate its lights and sirens. (CCRB Ex. 1A -1 at 4, 7-10) He stated that prior to being stopped, he had been driving the speed limit, which was 25 miles per hours. (CCRB Ex. 1A-2 at 3)

According to Complainant, the officer, later determined to be Respondent, "just comes...he didn't ask for my license or nothing. He just pulls his gun out and put it to my face and asked me 'what's wrong with [you], what's wrong with you.'" (CCRB Ex. 1A-1 at 4-5) He estimated that Respondent was standing ten inches outside his car because he could see the barrel of the Glock 40 firearm "in my face" and asserted that the gun was "probably" extended into the vehicle. (CCRB Ex. 1A-2 at 13-15) Complainant demanded to know why Respondent had his gun out and asked, "[a]re you going to shoot me for speeding?" He recalled that Respondent then

asked “to go in my pocket. I told him no.” (CCRB Ex. 1A-1 at 5) Complainant suggested that Respondent “was trying to see he could find something real quick because he knew it was probably wrong to pull his gun out on an innocent bystander.” (CCRB Ex. 1A-2 at 8) Complainant further detailed that his hands were up as Respondent, with his gun still drawn, asked for license, “and I told him my license was up there [on the dashboard] and I made him reach to grab my license and then...he was so close, his hand was on the trigger and his partner told him to chill out...put the gun away.” When asked by the investigator what else happened, Complainant stated, “I can’t really remember, but I remember him pulling his gun out and threatening to shoot me for speeding.” (CCRB Ex. 1A-1 at 5) He characterized the interaction as him “begging” for his life until Respondent’s partner cautioned, “Hey, he’s good. He’s good, don’t do that.” (*Id.* at 17) Complainant told the investigators that Respondent “took a few minutes,” but did put the gun away after his partner’s comment. (CCRB Ex. 1A-2 at 17)

Later in the interview, after a break due to connectivity issues, when specifically asked what the first thing Respondent said to him was, Complainant responded, “I remember him saying ‘do you want me to shoot you? Why are you speeding?’ And just making derogatory terms and abusing his power.” In contrast to his earlier statement that he asked Respondent if he was going to shoot him for speeding, Complainant offered that he could not respond because he was “scared for my life, I couldn’t respond with that gun to my face. I couldn’t respond.” Complainant offered that he put his hands up, though he was not told to do so, “out of the courtesy that this guy might shoot me.” He estimated that Respondent had the gun pointed at him for three to five minutes. (CCRB Ex. 1A-2 at 5)

The interaction ended, he recalled with Respondent going back to the police vehicle and writing him three tickets “for no reason.” One summons was for speeding and Complainant

could not remember the reason for the other two tickets, although he asserted that the tints on his car windows are within the legal limit. (CCRB Ex. 1A-1 at 5-7) He also stated there was nothing wrong with the condition of his vehicle such as a broken headlight or taillight. (CCRB 1A-2 at 4) The encounter ended with the officers leaving the scene and Complainant continuing to work approximately 30 minutes after being stopped. (*Id.* at 11-12)

CCRB also entered Respondent's body-worn camera footage, which captures the interaction with Complainant, into evidence. The relevant portion of the video is as follows:

CCRB Ex. 2

00:00-00:30:	[Buffer period, no audio] Respondent is operating the vehicle, view is mostly obscured by his arm. Respondent exits RMP quickly and activates camera.
00:30 – 01:00:	Respondent approaches Complainant's car and draws his firearm and points it at Complainant while saying, "Turn off the car . . . turn the car off . . . gun's out." Simultaneously, Respondent's partner, Officer Bell, can be heard ordering, "Give me the keys." Officer Bell then says, "Put it away," to which Respondent replies, "No." Complainant also responds simultaneously, "It's off, it's off." Respondent then asks, "Where's the keys?" Complainant answers, "it's in my pocket . . . I can't, I can't . . . I'm a postal worker." Respondent replies, "I don't give a shit." Complainant then offers, "I'm on my way to work, I'm late," Respondent replies, "Don't fucking move." Respondent then asks, "Where's your license?" Complainant responds, "It's right here, look." Respondent then warns, "You fucking move, you're going to get hurt, you understand?" Respondent then holsters his firearm.
01:08 – 01:35	Respondent asks, "Where's the key fob?" Complainant responds, "It's in my pocket." Complainant hands Respondent the keys. Respondent asks, "What the hell you taking off for?" Complainant answers, "I was driving, I'm late to work." Respondent asks, "What do you mean driving? . . . bro who you playing with?" Complainant responds simultaneously, ". . . I was doing 40 . . . I was doing 40 . . . how much was I doing?" Respondent asks, "40, huh? . . . Is there any guns in the car?"
01:40 – 02:09	Complainant asks, "First of all, am I being detained?" Respondent retorts, "Yeah, right now you are detained, I'm thinking about taking you to jail right now." Complainant responds, "For what?" Respondent replies,

“Evading the police.” Complainant continues, “I didn’t even see you . . . you didn’t even siren, I just see lights.” Complainant then questions, “You pulled out a gun for me for speeding?” Respondent replies, “Of course.”

02:20 – 02:41 Complainant reiterates, “You pull a gun out on me for speeding;” Respondent answers, “For not stopping.” Complainant then says, “you didn’t put nothing . . . just lights . . . I didn’t even see you.” Complainant repeats, “You pulled a gun out on me for speeding.” Respondent again tells him, “For not stopping.”

Respondent appeared before the Tribunal and testified that on the date in question he was a highway safety officer in the 67 precinct. He recalled that he and his partner were conducting speeding enforcement stops at the intersection of Utica Avenue and Farragut. Respondent observed Complainant’s vehicle traveling at a high rate of speed and utilized a light detection and ranging (LIDAR) device to determine the speed of Complainant’s vehicle. He recalled that Complainant’s vehicle was estimated to be traveling at 40 miles per hour, 15 miles per hour over the posted 25 miles per hour limit. (Tr. 30-32) Respondent was driving a marked police vehicle equipped with emergency lights that are on the front windshield, in the grill, and on the side and back of the vehicle. Respondent testified that when he was approximately three car lengths away from Complainant’s car, he activated the lights and siren in order to initiate a car stop.

However, at that moment, Complainant’s vehicle suddenly accelerated. Respondent recounted that, “the water from the exhaust pipes came on the windshield.” Respondent explained further, “when a vehicle presses on the gas and goes faster, you’ll have water or moisture out of the exhaust pipes.” (Tr. 32-33) He estimated that Complainant’s vehicle reached an approximate speed between 65 to 70 miles per hour. He continued, “And now I’m trying to pull this individual over, lights and sirens blaring, and he’s not pulling over. And now we’re going, approximately, two and a half blocks north away, and that’s when I have to drive on the opposite side of the road and position to try to cut him off and angle my car in front of him to

pull him over.” Respondent recalled thinking, “Why is he not stopping? What’s going on? Is the car stolen? Is he wanted?” Respondent could not tell how many people were in the car because it was dark out and the “rear back window was tinted.” (Tr. 34-35)

Respondent testified that after Complainant’s Infiniti was stopped, Respondent “hopped” out of his RMP and ran towards Complainant’s car. He noted that because of the tinted windows he could not see who was inside of the vehicle or what was happening within, prompting him to draw his firearm. (Tr. 36-37) Respondent testified that he loudly yelled, “Gun’s out” to alert his partner and whoever was in the vehicle so that, “. . . hopefully they can hear my commands” before positioning himself by the “middle pillar” between the front and rear driver’s side. (Tr. 37-38) Respondent stated that he opened the driver’s door, and was then able to see Complainant. (Tr. 39) Respondent acknowledged that he instructed Complainant, “Don’t fucking move or else you’ll get hurt,” as his partner demanded to know the location of the car keys. He also conceded that he retorted, “I don’t give a shit” when Complainant told him he is a postal worker. (Tr. 41) Respondent explained that once he had “control” of the situation, after approximately twenty seconds, he holstered his gun. (Tr. 42, 53) Respondent asserted that he pulled his gun on Complainant because Complainant had evaded him and Respondent wasn’t sure why Complainant would do that. (Tr. 43, 46)

Respondent recalled that he wrote Complainant three summonses-- one for speeding, another for failure to comply with law enforcement, and the third for imprudent speed. (Tr. 45) On cross-examination, Respondent reiterated that he stopped Complainant’s vehicle because it was speeding. Respondent also reiterated that he drew his firearm because Complainant was evading the police. (Tr. 50, 54)

Specification 1: Wrongfully Pointing Firearm

Respondent stands charged with pointing his gun at Complainant, without police necessity, in violation of Patrol Guide section 221-01. Respondent does not dispute pointing his firearm at Complainant and thus the issue before the Tribunal is whether Respondent's conduct was justified by the circumstances surrounding this use of force. For the reasons set forth below, I find that it was.

Note 2 of Patrol Guide section 221-01 provides officers with the following guidance with regard to the brandishing of their gun: "Drawing a firearm prematurely or unnecessarily limits a uniformed member of the service's options in controlling a situation and may result in an unwarranted or accidental discharge of the firearm. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. Members of the service, when feasible, should issue an appropriate verbal warning, consistent with personal safety, to the intended subject and other members of the service present prior to discharging a firearm. 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." This note provides the framework for analyzing Respondent's actions.

At the outset, it is important to note that car stops are inherently dangerous and pose a significant risk to officer safety. This concern is heightened when the stop occurs in the dark. The potential for danger increases when the vehicle has tinted windows, making it difficult for the officer to see inside the vehicle. "In determining whether the use of force was reasonable, the trier of fact must allow for police officers' frequent need to make 'split-second' judgments about how much force is necessary 'in circumstances that are tense, uncertain, and rapidly evolving.'"

Pacheco v. City of New York, 104 A.D.3d 548 (1st Dept. 2013), quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989).

During his interview with CCRB, Complainant professed that he was driving the speed limit, twenty-five miles per hour, when Respondent pulled him over for simply “driving.” (CCRB 1A-2 at 3) Indeed during the course of their interaction, Complainant repeatedly accused Respondent of “pulling a gun on [him]” for speeding. (CCRB Ex. 2 at 01:40-02:41) I find each of these statements to be self-serving, and indeed, contradicted by body-worn camera footage. In that recording, Complainant admitted to Respondent that he was late for work and, “was doing forty.” (CCRB Ex. 2 at 01:30-01:35) Unfortunately, no video footage was submitted to the Tribunal which showed Respondent’s pursuit of Complainant’s car, which is the most critical evidence with regard to determining whether Respondent’s use of force was authorized.

Current NYPD body-camera policy requires officers to begin recording, “prior to commencing any self-initiated police action.” (P.G. 212-123, paragraph 6) However, the policy in effect at the time of this incident was more permissive, allowing officer to “begin recording prior to or immediately upon arrival at incident location.” (Patrol Guide 212-123, paragraph 6, dated Oct. 7, 2019, *emphasis added*) This leaves the Tribunal in the challenging position of piecing together the events based upon testimony and other available evidence.

I credit Respondent’s testimony that Complainant, who was already speeding, suddenly accelerated his vehicle upon seeing the turret lights from Respondent’s RMP. On the stand, Respondent described seeing Complainant’s car speed up, which caused condensation from the exhaust pipes to spray the windshield of Respondent’s patrol car. This testimony was corroborated by body-worn camera footage of Respondent speaking to his partner, after having returned to their vehicle to write summonses. In that portion of the video Respondent’s partner

states, “he was absolutely taking off.” (CCRB Ex. 2 at 03:25-31) A few moments later, Respondent can be heard excitedly saying, “Did you see the shit that came out when he hit the gas;” his partner replies, “yeah” and Respondent continues, “oh shit, turbo power.” (CCRB Ex. 2 at 04:00-06) Additionally during this exchange, Respondent and his partner discuss the speed required to catch up to Complainant, “I punched it to 70 miles per hour.” (CCRB Ex. 2 at 05:09-13) These exclamations made shortly after the incident happened, while speaking to his peer, with no time for collaboration or fabrication, have the ring of truth.

In addition, Respondent contended that Complainant failed to pull over his vehicle when Respondent initially activated the lights and sirens. Complainant appeared to acknowledge this failure when he challenged Respondent, “I didn’t even see you . . . you didn’t even siren, I just see lights.” (CCRB Ex. 2 at 01:48-01:55, Tr. 32-34) This failure to pull over, combined with the acceleration of his vehicle, led Respondent to take the extreme measures of pulling beside and then angling his car in front of Complainant’s in order to effectuate the stop.¹ The position of Respondent’s RMP shown in the body-worn camera video footage in front of and at an angle to Complainant’s confirms Respondent’s recitation of events. (CCRB Ex. 2 at 03:12)

After exiting his vehicle and approaching Complainant’s car, Respondent observed the tinted windows of Complainant’s car which prevented him from determining who was in the vehicle and what they were doing. At this time of night these visibility issues were compounded by the darkness. Contrary to Complainant’s statement that Respondent was pointing his gun at Complainant’s face for several minutes, the body-worn camera footage revealed that Respondent holstered his weapon after a little more than twenty seconds. (CCRB Ex. 1A-2 at 13-17, CCRB

¹ Although not strictly prohibited on the date of the incident, in 2022, Patrol Guide 221-15 (Vehicle Pursuits) was updated and now sets forth: “The following tactics are generally prohibited and should not be used in an attempt to stop a vehicle...b. placing moving Department vehicle in a position to be struck by the pursued vehicle c. Driving alongside the pursued vehicle...”

Ex. 2 at 00:57-60) Respondent testified that as soon as he “had control of the situation and the hands are up...my gun holsters right away.” (Tr. 42)

Each of these factors– acceleration, evasion, visibility issues– on their own may not have been enough to justify Respondent pointing his firearm at Complainant. However, when taken together, they presented a tense, risky, unpredictable and dangerous situation. This provided a basis for Respondent’s belief that there was a potential for serious physical injury. In particular, the acceleration and apparent refusal to pull over are the key pieces of evidence which support Respondent’s statements that he suspected Complainant was engaged in some type of conduct more serious and dangerous than simply speeding. Therefore, it was reasonable to believe that Complainant was attempting to evade the officers in order to avoid serious consequences, prompting Respondent to draw and point his gun. For the foregoing reasons, I find Respondent Not Guilty of Specification 1.

Specifications 2 and 3: Wrongfully Threatening the Use of Force and Discourteous Language

Respondent is charged with wrongfully threatening the use of force against Complainant by stating in sum and substance, “You fucking move, you’re gonna get hurt, you understand?” in violation of Patrol Guide section 203-10, and with using discourteous language when he told Complainant in sum and substance, “I don’t give a shit” and “Don’t fucking move,” in violation of Patrol Guide section 203-09. It is undisputed that, as charged, Respondent did make those statements to Complainant. Respondent has admitted to making them and the body-worn camera recordings captured the comments.

Having found Respondent not guilty of wrongfully using force without police necessity as charged in Specification 1, the question for the Tribunal with regard to Specification 2 is

whether the comment in question constitutes a wrongful threat of force against Complainant, in violation of Department guidelines. Respondent has admitted he made the statement and I credit his testimony that far from being a threat, he intended for the words to serve as a warning to Complainant that, for his safety, he should remain still until Respondent had assessed the situation. Respondent explained, "Again, if he moves on that right-hand side, I don't know what he's reaching for, what he is doing, it could be a knife, it could be a gun, it could be a liquid, it could be anything. It could be a million things." (Tr. 41) I found Respondent's reasoning, that he was trying to ensure the safety of himself, his partner, and indeed Complainant to be sincere. Indeed, soon after Respondent made the comment, he holstered his weapon and issued Complainant his summonses without further incident. Based on the foregoing, I find that CCRB has failed to prove by a preponderance of the credible evidence that Respondent's statements constituted a wrongful threat of force against Complainant. I therefore find Respondent Not Guilty of Specification 2.

With regard to Specification 3, which alleges the use of discourteous language, telling a member of the public, "I don't give a shit" and "Don't fucking move," is rude and discourteous on its face. In general, this is certainly not the kind of language that the Department tolerates from officers in the course of regular conversations with members of the public. This Tribunal has found that under certain circumstances the use of harsh language does not rise to the level of sanctionable misconduct but has cautioned, "the extension of an exception to a rule should be circumscribed. Otherwise, the exception will swallow the rule." *Disciplinary Case No. 2015-14171* (March 27, 2017) With this in mind, the Tribunal will analyze each statement made by Respondent separately.

The first statement made by Respondent – “I don’t give a shit,” was made shortly after Respondent pursued Complainant at high speed and engaged in a dangerous maneuver to stop his car. He then approached with his gun drawn and made this statement in the immediate aftermath, before he felt the situation was under control and holstered his weapon. Indeed, Respondent and his partner were giving commands to Complainant simultaneously. The exchange begins with Respondent asking, “Where’s the keys?” Complainant answered “it’s in my pocket . . . I can’t, I can’t . . . I’m a postal worker, look.” Respondent replied, “I don’t give a shit.” (CCRB Ex. 2 at 00:36-00:44) On the stand, Respondent detailed why he chose those words, “Because at that time, I didn’t care what profession it is, it wasn’t going to change the situation. You could be anybody, it’s still, you know -- we don’t know what’s going on, and we need to have control of the situation. Once we have control, then we could go further and we’ll see what we have.” (Tr. 48) I credit Respondent’s explanation. Although it would have been preferable if Respondent told Complainant that his occupation or place of employment was not germane to the car stop instead of abrasively responding, “I don’t give a shit,” Respondent was, at the time he made the statement, trying to make a quick safety assessment and gain control of the vehicle, while ensuring that Complainant was not armed. I believe that, far from trying to belittle or demean Complainant, Respondent was simply, albeit inartfully, stating that Complainant’s employment was not relevant at that moment. In light of the stressful circumstances surrounding it, the Tribunal finds this statement does not rise to the level of misconduct.

The second charged statement– “Don’t fucking move,” while separate from the statement discussed in Specification 2, is substantially similar and made in the same sequence of events. As with the previous statement, this constituted a warning to Complainant to stay still until Respondent had assessed the situation. Complainant complied with the warning and shortly

thereafter Respondent was able to holster his firearm, without further incident. To be sure, Respondent could have conveyed his warning in a more professional, even-handed manner, without resorting to vulgarity. However, the statement must be analyzed in the context of the circumstances in which it was made. Respondent was faced with an individual, who after committing a traffic infraction, sped up to dangerous speeds when confronted by police, had to be forced off the road, and who could not initially be seen by officers because of the tint of the windows. While attempting to gain control over the situation and simultaneously assessing the potential for danger, Respondent used profanity.

The circumstances here are similar to those in *Disciplinary Case No. 2022-27455* (Oct. 10, 2023), in which a police officer was found not guilty of speaking discourteously in response to a motorist rolling up the windows of his car as the officer was attempting to issue a summons. The respondent in that case reacted by stating, “Don’t do that shit in my face.” The Tribunal found that while the language was unbecoming, and should not be part of a police officer’s normal vernacular, the objective of the words was to communicate a directive and that the circumstances presented at that moment absolved Respondent from discipline for using it. The same reasoning applies in the instant matter. I find that this statement, like the first, does not constitute misconduct.

Accordingly, the Tribunal finds Respondent Not Guilty of Specifications 2 and 3.

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials

APPROVED

JUN 24 2024

EDWARD A. CABAN
POLICE COMMISSIONER