



POLICE DEPARTMENT

July 30, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-28215
Police Officer Peter Kim	:	
Tax Registry No. 964092	:	
61 Precinct	:	

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

Before: Honorable Anne E. Stone
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB:

Deanna Everett-Johnson, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

John Tynan, Esq.
Worth, London & Martinez, LLP
111 John Street, Suite 640
New York, NY 10038

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

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CHARGES AND SPECIFICATIONS

1. Police Officer Peter Kim, on or about December 26, 2021, at approximately 0119 hours, while assigned to the 61 Precinct and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force in that, [Police Officer Kim] pointed [Police Officer Kim's] gun at J.B. [REDACTED] without police necessity.

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

USE OF FORCE

A.G. 304-06, Page 1, Paragraph 1

PUBLIC CONTACT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

2. Police Officer Peter Kim, on or about December 26, 2021, at approximately 0119 hours, while assigned to the 61 Precinct and on duty, in the vicinity of [REDACTED] Kings County, wrongfully used force in that, [Police Officer Kim] pointed [Police Officer Kim's] gun at E.R. [REDACTED] without police necessity.

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

USE OF FORCE

A.G. 304-06, Page 1, Paragraph 1

PUBLIC CONTACT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

3. Police Officer Peter Kim, on or about December 26, 2021, at approximately 0119 hours, while assigned to the 61 Precinct and on duty, in the vicinity of [REDACTED] Kings County, abused [Police Officer Kim's] authority as a member of the New York City Police Department, in that, [Police Officer Kim] failed to provide E.R. [REDACTED] with a business card without sufficient legal authority.

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

USE OF FORCE

A.G. 304-06, Page 1, Paragraph 1

PUBLIC CONTACT

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 May 31, 2024.

Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The

Civilian Complaint Review Board presented a hearsay case, introducing body-worn camera footage of Respondent and Police Officer [REDACTED] as well as the CCRB interviews of both complainants. 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 Specifications 1 and 2, and Guilty of Specification 3, and recommend the forfeiture of one (1) vacation day.

ANALYSIS

This case arises from Respondent's stop of the All-Terrain Vehicle ("ATV") that the two minor complainants were riding on. Complainants [REDACTED] ("J.B.") and [REDACTED] ("E.R.")¹, the operator and passenger respectively, alleged that Respondent pointed his firearm at them during a vehicle stop, which occurred in the early morning hours of December 26, 2021. Respondent does not deny pointing his firearm at Complainants, but contends that he was justified in doing so because of the danger presented by their reckless operation of the ATV, which nearly struck his partner.

Neither complainant appeared before the Tribunal to testify. In the course of the investigation, each of them was interviewed over the telephone by the CCRB. The audio recording and transcript of the interviews were admitted into evidence as CCRB Exhibits 3, 3A, 4 and 4A. The body-worn camera footage, CCRB Exhibits 1 and 2, does not capture the vehicle pursuit, or Respondent drawing his weapon. It begins after the ATV has been stopped, while Respondent is explaining to Complainants that he will be vouchering the vehicle and issuing summonses.

¹ J.B. was fifteen years old and E.R. was thirteen years old at the time of the incident.

CCRB Exhibits 3 and 3A: Interview of J.B.

J.B. was interviewed by the CCRB on January 14, 2022, approximately three weeks after the incident. He recalled that on the date of the incident around 2100 hours, he went to sleep over at the home of his friend E.R., who had received a “four-wheeler” as a Christmas gift. J.B. recounted that in spite of a lack of headlights, he and E.R. took the ATV for a ride, with J.B. driving. At some point during the ride, J.B. saw the lights on Respondent’s marked RMP come on and was scared because E.R. had told him the vehicle was not registered. J.B. described “panicking” while driving down a road and observing the police car driving “really fast behind me, like really fast.” (CCRB Ex. 3A at 8) J.B. acknowledged that he “kept going and going” down a one-way street and recalled saying, “That’s it, I’m done. I’m sorry, I’m done.” J.B. recalled that Respondent positioned his RMP “in front of me because I went to the sidewalk.” (*Id.* at 29)

J.B. described turning off the ATV when Respondent’s car stopped in front of him. J.B. alleged that, “the cop opens his door, and he just comes out with his gun out on me and my 13-year-old friend.” (*Id.* at 8) J.B. contended first that Respondent had his gun drawn, “as soon as he got out of the car.” He then stated that Respondent told him to get on the ground at approximately the same time he drew his firearm from his holster. (*Id.* at 24-25) J.B. estimated that Respondent pointed his firearm at him for “. . . like 30 seconds, maybe, maybe like a minute,” before patting him down and issuing tickets. (*Id.* at 9, 31)

CCRB Exhibits 4 and 4A: Interview of E.R.

E.R. was interviewed remotely on April 7, 2022, approximately four months after the incident. E.R. remembered J.B. coming to his house and the two of them driving the ATV to J.B.’s house to pick something up. While riding the ATV back to his house, E.R. recounted

seeing the police car across the street and “he turned his lights on and then said something in the microphone.” E.R. recalled that he and J.B. were scared. E.R. described J.B. steering the A.T.V. down different streets, driving on the wrong side of the street, as well as going through a red light and stop signs to get away from Respondent. He estimated that the pursuit lasted approximately six or seven minutes. After a few blocks, E.R. recounted they saw Respondent’s RMP coming towards them. E.R. stated J.B. drove onto the sidewalk to try and evade Respondent. E.R. detailed that Respondent “hopped” out of his car, drew his firearm, and screamed, “Get the fuck off the bike.” (CCRB Ex. 4A at 6, 7, 10-11, 12-13, 19, 44, 46, 49-50) E.R. continued, “. . . Like [Respondent], he straight up like opened the door and just straight up pulled [the gun] out right away” from his left side. Later in the interview he described Respondent “hopping out of the car and, I see that he reaches for the gun.” (*Id.* at 51) E.R. contended that Respondent pointed his firearm at them from a distance of about 10 feet. (*Id.* at 18, 22-24) E.R. averred that he and J.B. complied with Respondent’s order, and once they were on the ground Respondent re-holstered his firearm and patted them down. (*Id.* at 7, 15, 17) E.R. observed Respondent being surprised and making an “Oh Shit” face when E.R. removed his face mask and J.B. removed his helmet, revealing their young ages. (*Id.* at 32-33) E.R. explained that J.B. confronted Respondent about the pointing of his firearm. Respondent replied that their actions were “. . . unacceptable, reckless.” (*Id.* at 39, 42)

Respondent took the stand and acknowledged that he drew his gun and pointed it at Complainants. He asserted that he did so to protect his partner and himself. Respondent testified that he was driving a marked RMP on the date of the incident when he noticed an ATV with two people on it at the intersection of [REDACTED]. (Tr. 16) Respondent

recounted that he had been instructed by his supervisor regarding ATV's because they were being used as getaway vehicles in crimes that were occurring in his patrol sector. (Tr. 26)

Respondent observed the ATV proceed through a steady red light at that intersection without stopping and noted that there was no front license plate. Respondent activated the RMP's lights and sirens and attempted to stop the vehicle. When the driver of the ATV failed to pull over, his partner, Officer [REDACTED] ordered him to stop, using the loudspeaker. The driver continued to flee, running another red light at the intersection of [REDACTED] [REDACTED] (Tr. 17-18)

Respondent described following the ATV, which did not slow down or stop. He recalled that Officer [REDACTED] issued further commands, to no avail. Respondent noted that the operation of the ATV became more dangerous and erratic. Specifically, the ATV made a right turn on a northbound one-way street and proceeded to drive down that road against traffic, almost colliding with an oncoming car. Due to the safety concerns presented, Respondent stopped pursuing the vehicle and resumed patrol. Respondent testified that he saw the ATV again approximately one minute later, driving the wrong way on, a one-way street. Respondent again activated his lights and sirens and attempted to pull the ATV over. The driver then maneuvered the ATV off of the street, driving on the sidewalk. Respondent pulled in front, and positioned the RMP on the sidewalk blocking the path of the ATV. (Tr. 19-20)

Respondent remembered exiting his RMP and ordering the operator, J.B., to turn off the vehicle and not to move. He denied removing anything from his gun belt when he first exited the police vehicle. Respondent testified that he repeatedly instructed J.B. to turn off the ATV. In spite of that Respondent observed the ATV "moving and coming towards – me and my partner, and then I drew my firearm out." (Tr. 20-21) While pointing his firearm, Respondent gave J.B.

additional commands to stop the ATV. He then ordered both J.B. and E.R. off the ATV. They eventually complied, but Respondent recalled giving commands, “More than four times. Numerous times.” (Tr. 22) Respondent estimated that he had his gun drawn for “less than thirty seconds. (Tr. 36) He recalled that both J.B. and E.R. were frisked, but he did not search either one of them. (Tr. 34)

Respondent professed that, in part because of the darkness, he was unable to determine the ages of J.B. and E.R. prior to J.B. stating that he was 16. Respondent informed J.B. that he could not operate an ATV without registration or insurance and that the ATV would be taken and vouchered. Respondent issued three summonses to J.B., and admitted that although he had NYPD business cards with him, he did not provide one to E.R. (Tr. 25, 35)

Specification 1 and 2: Wrongfully Pointing Firearm

Respondent stands charged with pointing his gun at J.B. and E.R., without police necessity, in violation of Patrol Guide section 221-01. Respondent admits to drawing and pointing his firearm at the Complainants. The issue before the Tribunal is whether CCRB has proven, by a preponderance of the credible evidence, that no police necessity existed to justify Respondent’s use of force. For the reasons set forth below, I find that they have not.

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.

The standards set forth in this Patrol Guide note applies to vehicle, as well as, pedestrian stops. Vehicle stops are inherently dangerous and this concern is heightened when, as here, the driver attempts to evade the police by engaging in reckless driving maneuvers, such as speeding and driving in the wrong direction, actions which endanger officers, other motorists, and pedestrians.

Respondent's testimony regarding his attempts to pull over the ATV was detailed and logical. Indeed, Respondent's description of the sequence of events leading up to his drawing of his firearm was similar to the statements made by J.B. and E.R. All three recalled Respondent's activation of lights and sirens. Respondent and E.R. both described Officer [REDACTED] utilizing the loudspeaker to alert J.B. to pull over. Despite these efforts, both Complainants admitted that they continued their attempts to get away from Respondent by speeding up and proceeding down one-way streets, eventually driving on a sidewalk. When asked by CCRB about the incident, J.B. conceded that he panicked when he saw RMP's lights ". . . and went down a road and the [cop] started going really fast." (CCRB Ex. 3A at 8)

This Tribunal acknowledges that the ATV was being driven recklessly in a residential area. Traffic safety is a vital function of the Department, particularly when motorists intentionally flout the rules of the road and seek to avoid accountability. Respondent had an obligation to stop the ATV because of the safety risk it posed. At issue in this case, however, is whether, given these specific circumstances, Respondent reasonably drew his firearm "based on an articulable belief that the potential for serious physical injury [was] present."

Two factual issues that are critical to this determination are in dispute: whether the ATV continued to move forward toward Respondent and his partner after they had exited the RMP;

and at what point Respondent unholstered and pointed his firearm. Inasmuch as these events were not captured on body-worn camera footage, resolution of these factual questions relies on a credibility assessment.

During Complainants' interviews with CCRB, it was implied that the ATV was completely stopped when Respondent exited his car. The Complainants, however, did not appear to testify, and were not subjected to cross-examination on this point. Their interviews with CCRB occurred several months before Respondent's interview and they were not asked specifically about it. In sum, Complainants' accounts constitute unsupported hearsay evidence that lacks probative weight. In contrast, Respondent's measured description of the ATV continuing to move forward after he and his partner exited the RMP was credible and given under oath before this Tribunal. Respondent conceded that, the ATV continued to move, albeit slowly, towards himself and his partner. The acknowledgment that the ATV moved slowly enhanced Respondent's credibility. Accordingly, I find that the ATV continued to move towards the officers after they had gotten out of the RMP, and this reasonably increased their concern that either they themselves, or any pedestrians in the area might be struck by it.

Also in dispute is the timing of the drawing of the firearm. Neither Complainant was a particularly reliable storyteller regarding this point. J.B., in particular, made conflicting statements. He first stated that Respondent had his gun out as he exited the vehicle. J.B. then stated that Respondent unholstered it as he told Complainants to get on the ground. (CCRB Ex. 3A at 24-25, 31) Similarly, E.R. first described Respondent stepping out of the car with the gun already in his hand. Later on he said that he watched Respondent get out of the car and draw the firearm after he exited. (CCRB Ex. 4A at 18, 51) Respondent, on the other hand alleges that he drew his firearm and pointed it in the direction of J.B. and E.R. only after he was out of the RMP

and had given multiple orders to stop the ATV. He avers that only after he drew and pointed his firearm did J.B. stop the ATV, turn it off, and the two boys dismounted. Once he had the situation under control, and J.B. and E.R. were on the ground, Respondent states that he re-holstered his weapon. I observed Respondent on the stand and found his testimony to be thoughtful and deliberate, and I credit his account.

These two factors, when considered alongside the reckless driving that preceded them, provided a reasonable basis for Respondent to believe that there was a potential for serious physical injury to himself, his partner, or any passersby. Respondent's actions in drawing and pointing his firearm at Complainants, at that moment, was justified. For the foregoing reasons, I find Respondent Not Guilty of Specifications 1 and 2.

Specification 3: Failure to Provide a Business Card

Respondent stands charged with failing to provide E.R. with a business card at the end of the vehicle stop. Respondent did not deny, nor did he offer an explanation for, his failure to provide a business card. Although there is no evidence that E.R. requested either a business card or Respondent's name, the question for the Tribunal is whether, under the circumstances, Respondent was required to offer his business card to E.R.; I find that he was.

Administrative Guide Procedure 304-11 states in relevant part, "For the purpose of the procedure, a business card is to be *offered* for a law enforcement activity, except in cases when a summons is issued or an arrest is made, as follows: . . . c. *Frisk (Level 3 Encounter)*." (*emphasis added*)

Here, the plain reading of this procedure places an affirmative duty upon the uniformed member of service to offer a business card to members of the public under the appropriate

circumstances. The purpose behind this requirement is to increase transparency and accountability with the public.

Respondent acknowledged frisking E.R. after he disembarked from the ATV. It is undisputed that E.R. was neither arrested, nor was he issued a summons. Respondent conceded that he had business cards in his possession at the time of the incident, but did not offer an explanation as to why he failed to offer one to E.R. Respondent's failure to offer E.R. a business card, after frisking him, violates the clear language of the Administrative Guide.

Accordingly, I find Respondent Guilty of Specification 3.

PENALTY

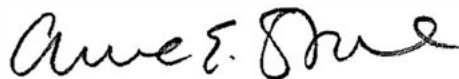
In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined.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

Respondent, who was appointed to the Department on July 5, 2017, has been found Guilty of Specification 3, for failing to offer E.R. a business card. The Disciplinary Matrix provides for a presumptive penalty of three (3) vacation days and a mitigated penalty of training for failure to offer a business card. The CCRB recommends that Respondent receive the presumptive penalty. In determining an appropriate penalty, all of the surrounding circumstances must be taken into consideration. I do not find that Respondent acted in bad faith; I believe it was simply an oversight. He has worked for the Department for seven years, with no formal

disciplinary history, and has received "Exceeds Expectations" on his last five formal performance evaluations.

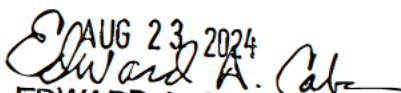
It is the hope of the Tribunal that this will serve as a reminder to Respondent of the obligation to offer a business card at the conclusion of encounters like this one. I believe that a penalty of forfeiture of one (1) vacation day strikes the correct balance between Respondent's failure to provide a business card, as required, and his otherwise unblemished service record.

Respectfully submitted,



Anne E. Stone
Assistant Deputy Commissioner Trials

APPROVED

AUG 23 2024

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER PETER KIM
TAX REGISTRY NO. 964092
DISCIPLINARY CASE NO. 2023-28215

Respondent was appointed to the Department on July 5, 2017. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2021, 2022, and 2023. Respondent has been awarded four medals for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Anne E. Stone
Assistant Deputy Commissioner Trials