



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

April 7, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer John Manzo**
Tax Registry No. 960864
40 Precinct
Disciplinary Case No. 2019-21450

Police Officer Mariano Bulfamante
Tax Registry No. 953708
Building Maintenance Section
Disciplinary Case No. 2019-21451

Police Officer Benito Cruz
Tax Registry No. 956557
PBBX Public Safety Teams
Disciplinary Case No. 2019-21452

The above named members of the service appeared before Assistant Deputy Commissioner Josh Kleiman on October 27, 2021, charged with the following:

DISCIPLINARY CASE NO. 2019-21450

1. Police Officer John Manzo, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on duty, in the vicinity of 224 Willis Avenue, Bronx County, wrongfully used force, in that he used a Taser against Person A without police necessity.

P.G. 221-08

**USE OF CONDUCTED
ELECTRICAL WEAPONS
(CEW)**

DISCIPLINARY CASE NO. 2019-21451

1. Police Officer Mariano Bulfamante, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on duty, in the vicinity of 224 Willis Avenue, Bronx County, was discourteous, in that he used profanities saying, in sum and substance, "you fucking pussy" to Person A without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT –
GENERAL**

POLICE OFFICER JOHN MANZO
POLICE OFFICER MARIANO BULFAMANTE
POLICE OFFICER BENITO CRUZ

DISCIPLINARY CASE NO. 2019-21450
DISCIPLINARY CASE NO. 2019-21451
DISCIPLINARY CASE NO. 2019-21452

2. Police Officer Mariano Bulfamante, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on duty, in the vicinity of 224 Willis Avenue, Bronx County, made remarks to Person A based upon gender calling him, in sum and substance, "you fucking pussy."

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2019-21452

1. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on duty, in the vicinity of 224 Willis Avenue, Bronx County, wrongfully used force, in that he pushed Person A's head into the ground without police necessity.

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

USE OF FORCE

2. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on duty, in the vicinity of 224 Willis Avenue, Bronx County, was discourteous, in that he used profanities saying, in sum and substance, "you talking shit right now you pussy ass nigger" to Person A without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT –
GENERAL**

3. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on duty, in the vicinity of 224 Willis Avenue, Bronx County, made remarks to Person A based upon gender saying, in sum and substance, "you talking shit right now you pussy ass nigger."

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

4. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on duty, in the vicinity of 224 Willis Avenue, Bronx County, made remarks to Person A based upon race saying, in sum and substance, "you talking shit right now you pussy ass nigger."

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

POLICE OFFICER JOHN MANZO
POLICE OFFICER MARIANO BULFAMANTE
POLICE OFFICER BENITO CRUZ

DISCIPLINARY CASE NO. 2019-21450
DISCIPLINARY CASE NO. 2019-21451
DISCIPLINARY CASE NO. 2019-21452

In a Memorandum dated December 9, 2021, Assistant Deputy Commissioner Josh Kleiman found Police Officer John Manzo not guilty of the sole Specification, Police Officer Mariano Bulfamante guilty of all Specifications, and Police Officer Benito Cruz guilty of all Specifications in Disciplinary Case Nos. 2019-21450, 2019-21451, and 2019-21452, respectively.

I have reviewed and considered the entire record in this matter, and approve of Assistant Deputy Commissioner Kleiman's findings and penalties for Police Officer Manzo and Police Officer Bulfamante, however, while I approve the findings for Police Officer Cruz, I disapprove of the penalty. I have determined that based on the totality of the circumstances, separation from the Department is not warranted.

Police Officer Cruz's remark to the complainant in this matter was both vulgar and inappropriate. I make no attempt to defend his remark, but recognize that the statement was made during an otherwise chaotic encounter with a large group of individuals. I find that Police Officer Cruz's statement was made in a moment of time likely without forethought and that he allowed his judgement to fail him as there is no evidence of past racial or gender animus on the part of Police Officer Cruz.

Police Officer Cruz has no disciplinary history and has received excellent reviews throughout his tenure with the Department, a fact that I considered alongside the facts of the underlying incident. Police Officer Cruz's otherwise stellar history and the brief duration of the underlying incident provide mitigating factors when considering the penalty to be imposed. Thus, I determined that a penalty lower than the aggravated penalty, but higher than the presumptive penalty under the Disciplinary System Penalty Guidelines is appropriate. I further believe that the imposition of a period of dismissal probation with required monitoring should be imposed and will serve to ensure that Police Officer Cruz's future performance is sufficiently scrutinized.

Therefore, I direct that Police Officer Benito Cruz forfeit thirty (30) suspension days without pay (already served), forfeit forty-five (45) vacation days, and be placed on one (1) year dismissal probation.



Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

December 9, 2021

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

Police Officer John Manzo :
Tax Registry No. 960864 :
40 Precinct :

Case No.
2019-21450

Police Officer Mariano Bulfamante :
Tax Registry No. 953708 :
Building Maintenance Section :

Case No.
2019-21451

Police Officer Benito Cruz :
Tax Registry No. 956557 :
PBBX Public Safety Teams :

Case No.
2019-21452

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

Before: Honorable Josh Kleiman
Deputy Commissioner Trials

APPEARANCES:

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

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POLICE OFFICER JOHN MANZO
POLICE OFFICER MARIANO BULFAMANTE
POLICE OFFICER BENITO CRUZ

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2019-21450

1. Police Officer John Manzo, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on-duty, in the vicinity of 224 Willis Avenue, Bronx County, wrongfully used force, in that he used a Taser against **Person A** without police necessity.

P.G. 221-08

USE OF CONDUCTED ELECTRICAL
WEAPONS (CEW)

Disciplinary Case No. 2019-21451

1. Police Officer Mariano Bulfamante, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on-duty, in the vicinity of 224 Willis Avenue, Bronx County, was discourteous, in that he used profanities saying, in sum and substance, “you fucking pussy” to **Person A** without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT – GENERAL

2. Police Officer Mariano Bulfamante, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on-duty, in the vicinity of 224 Willis Avenue, Bronx County, made remarks to **Person A** based upon gender calling him, in sum and substance, “you fucking pussy.”

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

PUBLIC CONTACT – PROHIBITED
CONDUCT

Disciplinary Case No. 2019-21452

1. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on-duty, in the vicinity of 224 Willis Avenue, Bronx County, wrongfully used force, in that he pushed **Person A**’s head into the ground without police necessity.

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

USE OF FORCE

2. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on-duty, in the vicinity of 224 Willis Avenue, Bronx County, was discourteous, in that he used profanities saying, in sum and substance, “you talking shit right now you pussy ass nigger” to **Person A** without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2

PUBLIC CONTACT – GENERAL

POLICE OFFICER JOHN MANZO
POLICE OFFICER MARIANO BULFAMANTE
POLICE OFFICER BENITO CRUZ

3. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on-duty, in the vicinity of 224 Willis Avenue, Bronx County, made remarks to **Person A** based upon gender saying, in sum and substance, “you talking shit right now you pussy ass nigger.”
P.G. 203-10, Page 1, Paragraph 1 PUBLIC CONTACT – PROHIBITED CONDUCT

4. Police Officer Benito Cruz, on or about July 29, 2018, at approximately 0230, while assigned to 040 PCT and on-duty, in the vicinity of 224 Willis Avenue, Bronx County, made remarks to **Person A** based upon race saying, in sum and substance, “you talking shit right now you pussy ass nigger.”
P.G. 203-10, Page 1, Paragraph 1 PUBLIC CONTACT – PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 27, 2021. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. CCRB presented no witnesses and rested on the stipulated documentary evidence entered into the record. Each 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 reviewed all of the evidence in this matter, I find as follows:

Respondent Manzo:

Specification 1 (force): Not Guilty

Respondent Bulfamante:

Specification 1 (discourtesy – profanity): Guilty

Specification 2 (offensive language – gender remarks): Guilty

Recommended Penalty: Forfeiture of 25 vacation days.

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Respondent Cruz:

Specification 1 (force): Guilty

Specification 2 (discourtesy – profanity): Guilty

Specification 3 (offensive language – gender remarks): Guilty

Specification 4 (offensive language – racial remarks): Guilty

Recommended Penalty: Termination.

ANALYSIS

It is uncontested that on July 29, 2018, at approximately 2:00 a.m., an anonymous 911 caller reported that an individual outside a location in the confines of the 40th Precinct, wearing an orange shirt and orange bandana, was observed with a firearm. Minutes later, Respondents Bulfamante and Cruz responded. Respondent Bulfamante immediately identified a suspect matching the description. He frisked the individual and found no evidence of a firearm, releasing the individual from the temporary detention. (CCRB Exs. 2, 4A-4C; Tr. 34-35, 47)

Simultaneously, at the same location, a number of police officers were engaged in efforts to disperse a group of persons standing in the vicinity of a bodega. Respondent Manzo arrived in response to a call for additional officers to assist in these efforts. Respondents Bulfamante and Cruz stayed to assist as well. (Tr. 38, 95, 182-83)

The crowd constituted the reminiscence of a community event, Family Day at the Mitchell Houses, which was held from 8:00 a.m. to 8:00 p.m. Immediately after the event, at 8:00 p.m., officers sought to urge everyone to leave the area. By the time Respondents arrived, shortly after 2:00 a.m., approximately 10 to 30 persons remained. (CCRB Exs. 1A at 3; 2; Tr. 35, 97, 183)

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One individual in the group that remained, **Person A** refused to leave, positioning himself in front of the officers. Sergeant William Miller announced his intention to arrest **Person A**. According to **Person A** when Sergeant Miller attempted to grab his wrists, **Person A** “pulled away” and ran. According to Respondent Manzo who was standing close to Sergeant Miller, **Person A** smacked Sergeant Miller’s hands and pushed off of Sergeant Miller, causing Sergeant Miller to stumble back. **Person A** then took flight, running into an active roadway. (CCRB Exs. 1A at 46-47; 2; Tr. 104, 108-09, 184, 186, 208-12)

Respondents took chase. Respondent Bulfamante twice shouted, “You fucking pussy.” Respondent Manzo removed and discharged his Taser, causing **Person A** to drop to the ground. Three officers sought to place **Person A** in handcuffs. Respondents Manzo and Bulfamante assisted with crowd control in the vicinity of **Person A**. According to Respondent Cruz, he positioned himself at the top of **Person A**’s body and placed his hand on **Person A**’s head in order to control it. While doing so, Respondent Cruz stated to **Person A** “Yeah, yeah, you talking shit right now you pussy ass nigger.” (CCRB Ex. 2: PO Bulfamante 1 of 2 BWC at 2:10:58-2:11:01; PO Manzo 1 of 4 BWC at 2:11:01, 2:11:10-2:11:44; PO Cruz 1 of 2 BWC at 2:10:08-2:10:11; Tr. 51, 53, 104-06, 187)

Person A was transported to a local hospital to have the Taser probes removed. Although he also suffered abrasions to his hands and face, **Person A** refused further medical treatment. Later that day, he pled guilty to Aggravated Harassment in connection with his actions toward the officers. (CCRB Ex. 1A at 6-10; CCRB Ex. 5; Tr. 115, 238)

At trial, CCRB called no witnesses, instead entering, on stipulation, the following documentary evidence: the transcript and audio of an interview CCRB conducted of Mr. **Person A**

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██████ on August 22, 2018 (CCRB Exs. 1A-1B), nine Body-Worn Camera videos and two cellphone videos (CCRB Ex. 2), four still photographs captured from Respondent Bulfamante's Body-Worn Camera (CCRB Exs. 3A-3D), a recording and transcript of the aforementioned anonymous 911 call (CCRB Ex. 4), medical records from Lincoln Medical and Mental Health Services (CCRB Ex. 5), and three photographs taken on August 22, 2018, depicting injuries to Person A's wrists (CCRB Exs. 6A-6C).

Disciplinary Case No. 2019-21450

Respondent Manzo is charged with wrongfully discharging his Taser in contravention of Department policy. Patrol Guide Section 221-08 governs the use of conducted electrical weapons (CEW), advising:

A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. It will often reduce the potential for injuries to members and suspects that may result from physical restraint and should be regarded as a possible alternative to such force and restraint, where practical. It is prohibited to use a CEW in situations that do not require the use of physical force.

“Active resisting” is defined under P.G. 221-08 as “physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.”

Person A provided the following statement at his CCRB interview:

So, they did begin to tell us to move from the corners and get out the way, you guys are blocking on pedestrian walkway. And I begin to talk to the officers and ask them what was the problem because I usually talk to officers and we usually – I usually don't have problem with officers. So again, I talk to them to see what the problem was. See if I can get them to like diffuse the situation. Try to get the people from the residents from the neighborhood to like,

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move and move them along. But officers, begin to be aggressive and they started to push people, and they tried to grab people as well. As they started doing that, one of the officers tried to grab me. I, I moved my hand and I went to go put my hand up. Like, what are you doing officer? Why are you trying to grab me? He went to go grab me again. I tried to run because he tried to arrest me. And he was being really aggressive with me. I didn't understand why, but as I went to go run, I had got by a couple feet away from him and then he shot me with a taser in my back and then I went down to the ground.

(CCRB Ex. 1A at 5-6). **Person A** denied pushing or shoving or “put[ting] [his] hands on” an officer (CCRB Ex. 1B at 01:04:25).

Respondent Manzo testified that he arrived at the bodega in order to assist other officers disperse a crowd. He was greeted by a “disorderly group” of approximately 20-30 individuals that were refusing to disperse. Respondent Manzo identified one individual in particular, **Person A** who was confrontational and appeared to be leading the group. Respondent Manzo stated that **Person A** would “[g]ive the crowd orders to disobey the command [to disperse] because [] officers can’t tell them what to do if our hands are up, don’t listen, fuck them.” After Sergeant Miller attempted to grab **Person A**’s hands, Respondent Manzo observed **Person A** push away from Sergeant Miller and slap Sergeant Miller’s hands away from him. This caused Sergeant Miller to stumble back and hit Respondent Manzo’s shoulder. **Person A** then fled, causing Respondent Manzo to pursue. (Tr. 183-85, 200, 203, 206-08, 211-12)

Respondent Manzo explained that based on his distance from **Person A** approximately 15 to 18 feet, he was not able to use his hands or expandable baton to bring **Person A** into custody. Based on his assessment that **Person A** was actively resisting arrest, he drew his Taser from its holster. Observing that he had a clear shot that he believed would be a safer alternative than other uses of force, he discharged his Taser (Tr. 189, 191-93, 197-98).

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Based upon the evidence presented to the Tribunal, CCRB has failed to prove by a preponderance of the evidence that Respondent Manzo discharged his Taser outside Department guidelines. Despite the submission of 11 videos to the Tribunal, none depicted the interaction between **Person A** and Sergeant Miller. The Tribunal found Respondent Manzo's testimony to be more credible and consistent with the balance of the record evidence than that of **Person A**

Several of **Person A**'s hearsay statements were not supported by the Body-Worn Camera footage (CCRB Ex. 2) in evidence. For instance, **Person A**'s assertion that he was trying to "diffuse the situation" and assist police with urging people to leave the area was directly contradicted by the Body-Worn Camera footage presented to the Tribunal. The footage depicts **Person A** as highly confrontational and aggressive. He is depicted for several minutes positioning himself in front of the officers, using his body to attempt to push past the officers, pushing past other civilians in an aggressive manner to position himself closer to police, including forcibly moving civilians standing near or in front of him, and directing accusations and profanities at police (CCRB Ex 2: PO Bulfamante 1 of 2 BWC at 02:09:00, 02:10:43, 02:10:50; PO Barry BWC at 02:09:25).

While the deployment of a Taser is highly fact dependent and may be inappropriate in other circumstances in which a suspect is resisting arrest, CCRB has failed to prove, here, that the Taser deployment was a clear violation of Department policy. The Tribunal credits Respondent Manzo's testimony that he made an observation that, due in part to **Person A**'s behavior, a group of combative civilians had disobeyed orders to disperse and remained at the location. After a decision was made to arrest **Person A** the Tribunal further credits Respondent Manzo's testimony that he observed **Person A** push and slap away the hands of an officer

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attempting to arrest him, causing the officer to stumble back. **Person A** then ran into an active roadway.

Under these circumstances, it was not unreasonable for Respondent Manzo to consider the use of a Taser as a use of force more likely to safely resolve the danger posed by **Person A**'s actions than chasing **Person A** on foot, through traffic, and using physical force to break his flight, all while his fellow officers continued to face possible dangers posed by the disorderly group that remained.

Accordingly, Respondent Manzo is found Not Guilty of the sole specification with which he is charged.

Disciplinary Case No. 2019-21451

Respondent Bulfamante is charged with using discourteous language and making offensive remarks to **Person A** based upon gender. At trial, Respondent Bulfamante admitted to uttering the words "you fucking pussy" as he was running in the direction of **Person A**. He claims, however, he does not remember who he directed these words to and what context he used the words in. While he initially stated that he used the word "pussy" to mean "coward," he later stated that he could not be sure what he meant in using the word (Tr. 54, 78).

Whether Respondent Bulfamante truly failed to recollect the context of his comments or was being purposely evasive before the court to gain a perceived advantage, the Tribunal finds that under the totality of the circumstances it is not reasonably in doubt that Respondent Bulfamante was directing the words to **Person A** in a disparaging manner.

There is no question that the words "you fucking pussy," when spoken in a disparaging tone by an on-duty police officer to a member of the public in the midst of an enforcement

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action, is discourteous. Accordingly, the Tribunal finds Respondent Bulfamante Guilty of Specification 1.

As to Specification 2, CCRB argued that the word “pussy” is “intimately tied to gender” and cannot be disconnected from it. The Tribunal takes judicial notice that the Oxford English Dictionary (“OED”) supports this argument. According to the OED, the word generally means something different if applied to a woman, rather than a man. In connection with describing a woman, the OED notes that the predominant definition is:

n. Chiefly *colloquial*. A girl or woman exhibiting characteristics associated with a cat, esp. sweetness or amiability. Frequently used as a pet name or as a term of endearment.¹

Whereas, if describing a man, the predominant definition is:

n. *slang* (chiefly North American). A sweet or effeminate male; (in later use chiefly) a weakling, a coward, a sissy. Also: a homosexual man.²

Under the totality of the circumstances, it is clear he employed the words in a derogatory manner. Therefore, it is likely he sought to evoke the meaning of the predominant definition set forth in the OED when the word “pussy” is used to describe a man.

Accordingly, the Tribunal finds Respondent Bulfamante Guilty of Specification 2.

Disciplinary Case No. 2019-21452

Respondent Cruz is charged with wrongfully pushing Person A’s head into the ground and making discourteous and disparaging remarks based on race and gender in stating “you talking shit right now you pussy ass nigger” to Person A. Respondent Cruz is heard speaking these words on his Body-Worn Camera footage as he presses his hand on the rear left side of Mr.

¹ “pussy, n. and adj.2”. OED Online. September 2021. Oxford University Press. <https://www.oed.com/view/Entry/155161?result=1&rskey=Blr6in&> (accessed November 19, 2021)

² *Id.*

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█'s head while the right side of Person A's face rests on the pavement. After placing his hand on Person A's head, the video evidence depicts the back of Person A's head moving up and down as Respondent Cruz speaks. Respondent Cruz denies pushing Person A's head into the ground, claiming that he only placed his hand on Person A's head to control it to assist his fellow officers in efforts to handcuff Person A (CCRB Ex. 2: PO Cruz 1 of 2 BWC at 02:10:09-02:10:11; Tr. 110)

During his CCRB interview, Person A does not make any allegations or statements regarding a hand being placed on his head or concerning any discourteous words being uttered by Respondent Cruz. Rather, he explains that after being tased he lost consciousness for a time. The only injuries identified by Person A at his interview were abrasions to his wrists and a "busted lip." (CCRB Exs. 1A at 62, 73-74; 6A-6C)

Person A's hospital records in evidence (CCRB Ex. 5) note "25 y/o M brought in by police custody requesting taser prong removal. Pt reporting mild pain in the lower back where prongs are located. Pt has swollen face and pain to face however refusing treatment or evaluation from physician." (CCRB Ex. 5 at 10)

Respondent Cruz testified that upon arriving at the scene in connection with a radio transmission describing a man with a gun, Respondent Cruz observed a disorderly crowd of approximately 15 to 20 persons. Members of the crowd shouted profanities at the officers, including the words "pussy" and "bitch." Respondent Cruz remembered that Person A in particular, called him a "pussy" and told him that he's "not built like that," which he took to

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mean that he “wasn’t tough.”³ He formed the opinion that Person A was leading the group.

Respondent Cruz estimated that Person A was “6’2”, 6’3”, 250 pounds.” (Tr. 95-100)

Respondent Cruz testified that Sergeant Miller approached Person A who was at the forefront of the disorderly group. He observed, from a distance of approximately 10 to 12 feet, Person A “push[] off” of Sergeant Miller and run. Respondent then gave chase. He observed Person A laying on his stomach and saw that he had been tased. Respondent Cruz believed Person A continued to resist arrest as he had his hands were under his stomach. Respondent Cruz then placed one of his hands on Person A’s head, using an open palm, and another on his back. He explained that:

At this point, there was already officers trying to get control of his hands to place behind his back, so he can be handcuffed. So, I placed my hand in those positions to gain control of the body and make sure he didn’t move while these officers were trying to get his hands...where the head goes, the body goes.

Respondent Cruz stated that he used “[v]ery mild” force with his palm that did not prevent Person A from moving his head. He estimated that he kept his hands on Person A for approximately 30 seconds. (Tr. 102-06, 108, 111, 176)

After Person A’s arrest, Respondent Cruz remembered that Person A was “very apologetic about [] his actions [] that night.” He was later present at the hospital with Person A for approximately two to three hours. He remembered that Person A agreed only to the removal of the Taser probes, not to any further treatment. Respondent Cruz did not recall observing any other injuries suffered by Person A (Tr. 113-15, 160)

³ Person A can be heard saying, “Yo Cruz, yo Cruz, yo Cruz, you was the aggressor, you was definitely the aggressor, excuse me, excuse me, excuse me, you was the aggressor, you pushed him” (CCRB Ex. 2: PO Barry BWC at 02:09:16-02:09:33).

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On cross examination, Respondent Cruz admitted that his Body-Worn Camera “went off,” seconds after uttering the discourteous words with which he is charged. At first, Respondent Cruz stated that his camera was lost and later retrieved by a member of the 48th Precinct. On cross-examination, however, it was revealed that Respondent told CCRB investigators: “It fell. It fell off. So I had to pick it up again, turn it on again.” It was later established by Respondent Cruz’s attorney that there is only a “one second” gap in the footage from Respondent Cruz’s Body-Worn Camera. (Tr. 134-36, 145, 175)

Respondent further explained on cross-examination that he used the word “pussy” to mean coward. He could not explain why he used the word “pussy” other than stating that he uses “pussy” when he characterizes someone as a “coward.” No testimony was elicited concerning Respondent’s reasons for using the word “nigger.” (Tr. 158-59)

Specification 1 - Wrongful Use of Force

CCRB has proven by a preponderance of the credible evidence that Respondent Cruz wrongfully used force when he placed his hand on Person A’s head and applied pressure without police necessity. Respondent Cruz’s Body-Worn Camera footage depicts this use of force as coinciding with Respondent Cruz’s vitriolic statement “yeah, yeah, you talking shit right now you pussy ass nigger.” Person A’s head, while Respondent Cruz’s hand is upon it, appears to move up and down more than once, in parallel with Respondent’s hand. Furthermore, Mr. Person A’s statement that he was unconscious (or immobile) at this time is corroborated by the Body-Worn Camera footage. Accordingly, the Tribunal finds that under the totality of the circumstances, it is likely that Respondent Cruz pushed Person A’s face into the ground.

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Other than Respondent Cruz's self-serving testimony, there is no evidence to support his narrative that he placed his hand on **Person A**'s head in order to assist his fellow Members of the Service handcuff an arrestee who, as he stated, was resisting arrest. To the contrary, the Body-Worn Camera footage depicts Respondent Cruz pressing on **Person A**'s head for approximately two seconds (CCRB Ex. 2: PO Cruz 1 of 2 BWC at 02:10:10-02:10:12) as he is delivering his acrimonious remark, and further depicts, only seconds later, before **Person A** is handcuffed, Respondent Cruz no longer touching **Person A**'s head and standing up and moving away from **Person A** (CCRB Ex. 2:, PO Cruz 2 of 2 BWC at 02:10:20-02:10:36; PO Manzo 1 of 4 BWC at 02:11:26-02:11:45; PO Chan 1 of 2 BWC at 2:11:44).⁴

Just before Respondent Cruz's first Body-Worn Camera recording ends (CCRB Ex. 2: PO Cruz 1 of 2 BWC at 02:10:16), a right hand is depicted crossing over the face of his Body-Worn Camera (*Id.* at 02:10:14). While the Tribunal was not presented with a charge against Respondent Cruz in this disciplinary matter of intentionally manipulating Body-Worn Camera footage,⁵ the Tribunal finds, for credibility purposes, that Respondent's testimony that his Body-Worn Camera was "lost" or "fell," is highly suspect. It is doubtful that if it "fell" or was "lost" that the fall or the loss would not have been depicted on the camera footage and would only have resulted in a one second gap.

The Tribunal further rejects Respondent Cruz's testimony that **Person A** was resisting arrest after being tased. To the contrary, during the time Mr. Cruz is depicted as next to Mr.

⁴ The timestamp contained in the body worn camera footage of Respondent Cruz records a time approximately one-minute and eight seconds earlier than the timestamps contained in the remainder of the body worn cameras in evidence depicting the same events.

⁵ As the Department, rather than CCRB, handles charges stemming from the manipulation of Body-Worn Camera footage, a Departmental charge against Respondent Cruz is pending in another disciplinary matter, which alleges that Respondent Cruz turned off his Body-Worn Camera footage (*see* Disciplinary Case No. 2019-21478).

██████, the Body-Worn Camera footage reveals Person A to be limp-bodied with his eyes closed (CCRB Ex. 2: PO Chan BWC at 02:12:02), supporting Person A's statement that he was unconscious. There further appears to be blood both under and next to his head (*Id.* at 02:12:09; CCRB Ex. 2: Video#1 provided by Person A). After being tased, Person A is not depicted in any of the Body-Worn Camera footage to be actively resisting. To the contrary, after being tased, he is depicted as docile and cooperative (CCRB Ex. 2 *passim*).

Accordingly, the Tribunal finds Respondent Guilty of Specification 1.

Specification 2 – Discourteous Remarks

Respondent Cruz's use of the phrase "you talking shit right now you pussy ass nigger," while on-duty and directed in a derogatory manner at the target of an enforcement action, is undoubtedly discourteous. Respondent Cruz does not deny speaking these words, which were captured on Respondent Cruz's Body-Worn Camera.

Accordingly, the Tribunal finds Respondent Cruz Guilty of Specification 2.

Specification 3 – Offensive Remarks Based on Gender

The Tribunal finds that for the same reasons set forth in its findings concerning Respondent Bulfamante's use of the word "pussy," Respondent Cruz is Guilty of using the same word in an offensive manner based on gender. While Respondent Cruz testified that he only meant to connote that Person A was a coward by using the word "pussy," the Tribunal cannot ignore that the word "pussy" is regarded as more offensive than the word "coward" because of its disparaging gender based underpinnings. Furthermore, Respondent used the word in a context that would not support a finding that he sought a non-offensive meaning.

Accordingly, Respondent Cruz is found Guilty of Specification 3.

Specification 4 – Offensive Remarks Based on Race

It is undisputed that Respondent Cruz used the word “nigger” as captured by his Body-Worn Camera. Respondent Cruz provided no testimony as to his reasons for using the word “nigger.”⁶ As Respondent Cruz directs this word at **Person A** he is engaged in the wrongful use of force found in connection with Specification 1.

The Tribunal finds that Respondent’s use of the word “nigger,” spoken in a derogatory manner during an enforcement action involving an individual who is African-American, is, on its face, offensive and based on race. The word “nigger” is unique and unparalleled in American English. In the United States, where a history of slavery and its malignant residuum continue to plague American life, there are few words that when spoken in a derogatory manner are as painful, incendiary, and inextricably tied to racism. As the Oxford English Dictionary notes at the beginning of its entry for this word: “This word is one of the most controversial in English, and is liable to be considered offensive or taboo in almost all contexts (even when used as a self-description).”⁷ The Tribunal takes judicial notice of the history and etymology of the word and the generally accepted understanding that it is to be strictly avoided in professional contexts because of its overtly racist history and meaning.

Accordingly, the Tribunal finds that Respondent’s use of the charged language was based on race and finds Respondent Guilty of Specification 4.

⁶ His attorney suggested in his opening statement that Respondent Cruz used the word “nigger” as a “greet[ing]” for “someone who is from the African-American community” (Tr. 24). In his closing statement he further noted that the word has a “double-meaning,” also meaning “[s]omebody who is parsimonious or very unwilling to give up their time” (Tr. 263-64). As to the alternative meaning, the Tribunal notes that the word Respondent’s attorney was referring to is “niggard” or “niggardly,” a different word with a different meaning. In any case, the Tribunal rejects both arguments made by Respondent’s attorney as unsupported in the record evidence.

⁷ “nigger, n. and adj.,” OED Online, Oxford University Press (September 2021), *available at* <https://www.oed.com/view/Entry/126934?rskey=zKZFRj&result=1>.

PENALTIES

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 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 Bulfamante

Respondent Bulfamante, who was appointed to the Department on January 9, 2013, and has no prior disciplinary history, has been found guilty of wrongfully speaking in a discourteous manner to **Person A** when he twice uttered the words "you fucking pussy." CCRB recommends a penalty of 25 vacation days in connection with Specifications 1 and 2, in accordance with the presumptive penalties under the Disciplinary Guidelines for discourtesy (5 penalty days) and offensive language (20 penalty days). The Tribunal agrees.

While the duration of Respondent Bulfamante's remarks were brief and the impact to **Person A** was likely low, especially since **Person A** had directed similar language at the officers only minutes earlier, Respondent Bulfamante delivered the remarks in the presence of a disorderly crowd, which Respondent Bulfamante described as "aggressive." By doing so, he risked escalating the response of an already rowdy group and posing further risks to his fellow officers.

The Department trains all of its officers in the methods and attendant benefits of de-escalation. Language control is an essential component of de-escalation. As the Department

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trains its officers, “an officer should strive to use language and tone that will de-escalate a situation, which includes using language that is appropriate and non-inflammatory (avoid pejorative statements, profanity, cursing, sarcasm, and statements that may be viewed as disrespectful or likely to humiliate a member of the public).”⁸ Respondent chose, instead, to use language that would only serve to escalate an encounter.

Accordingly, under the totality of the circumstances, and in accordance with the Disciplinary Guidelines, the Tribunal finds that Respondent Bulfamante should forfeit twenty-five (25) vacation days.

Respondent Cruz

Respondent Cruz, who was appointed to the Department on July 9, 2014, and has no prior formal disciplinary history, has been found guilty of a wrongful use of force and using language that was both discourteous and based on gender and race. The Department has recommended that Respondent Cruz be dismissed from the New York City Police Department. The presumptive penalty under the Disciplinary Guidelines for a non-deadly use of excessive force resulting in no injury is ten (10) penalty days, with an additional ten (10) suspension days if injuries resulted. The aggravated penalty in either category is Termination. The presumptive penalty under the Disciplinary Guidelines for offensive language is twenty (20) penalty days, with an aggravated penalty of Termination. The Tribunal finds that the aggravated penalty of Termination should be imposed.

Respondent Cruz’s use of the charged language in this disciplinary matter is a paradigmatic example of the most vile variety of discourteous and offensive language: hate

⁸ NYPD Field Training Program Guide (2018).

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speech. As he mouthed the words “yeah, yeah, you talking shit right now you pussy ass nigger,” in an undeniably hateful tone, he placed his hand on the head of **Person A** who was at that time immobilized, and used excessive force by pressing **Person A**’s head into the asphalt of a public roadway. The actions accompanying Respondent’s words reveal an unmistakable intent to “intimidate [or] attack” **Person A** in a manner that shocks the conscience, sullies the credibility of the Department, and impedes its ability to serve and protect its diverse constituency.⁹

There exist certain acts taken by public officers which so irreparably taint the officer’s integrity that they are no longer capable of fulfilling their duties in a manner that would prevent further damage to the reputation and mission of the agency they serve. Respondent Cruz has cast a shadow upon his work product and the agency he serves. As noted by the court in *Steward v.*

Leary, 57 Misc. 2d 792, 793, 293 N.Y.S.2d 573, 574 [Sup. Ct. 1968]:

A police officer plays a unique role in society. He is the guardian of the public safety and is set up as a model to be emulated. He must at all times be free to exercise his judgment in performing his duties and can never act in a manner which would tend to destroy the public’s confidence in his integrity. Not only his official conduct, but the manner in which he conducts himself while not on duty reflects upon his integrity and upon his ability to perform his duties.

Respondent Cruz has engaged in conduct that would “tend to destroy the public’s confidence in his integrity.” Accordingly, it is the determination of this Tribunal that Respondent’s continued employment would adversely impact the Department and its relationship with the public it serves.

Under the specific circumstances presented in this disciplinary matter, in which a Member of the Service used highly reprehensible language based on race while engaged in the

⁹ See “Definition of Hate Speech,” New York City Department Disciplinary System Penalty Guidelines, at 47 (Jan. 15, 2021).

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wrongful use of force, the Tribunal recommends that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Josh Kleiman
Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER MARIANO BULFAMANTE
TAX REGISTRY NO. 953708
DISCIPLINARY CASE NO. 2019-21451

Respondent Bulfamante was appointed to the Department on January 9, 2013. On his three most recent annual performance evaluations, he received a 4.0 overall rating of “Highly Competent” for 2015, a 4.5 overall rating of “Highly Competent/Extremely Competent” for 2016, and an overall rating of “Exceptional” for 2017. Respondent Bulfamante has been awarded four medals for Excellent Police Duty and five medals for Meritorious Police Duty.

Respondent Bulfamante has no disciplinary record.

For your consideration.

Josh Kleiman
Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER BENITO CRUZ
TAX REGISTRY NO. 956557
DISCIPLINARY CASE NO. 2019-21452

Respondent Cruz was appointed as a Police Officer on July 9, 2014. On his three most recent annual performance evaluations, he received an overall rating of “Exceeds Expectations” for 2018, and twice received overall ratings of “Exceptional” for 2019 and 2020. Respondent Cruz has been awarded nine medals for Excellent Police Duty and 16 medals for Meritorious Police Duty.

Respondent Cruz has no disciplinary record. He was placed on Level 1 Discipline Monitoring on March 3, 2020; that monitoring remains ongoing.

For your consideration.

Josh Kleiman
Deputy Commissioner Trials