



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

June 24, 2022

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Dornezia Agard**
Tax Registry No. 953619
Manhattan Court Section
Disciplinary Case No. 2018-18747

Police Officer Gesly Jean
Tax Registry No. 954003
Bronx Court Section
Disciplinary Case No. 2018-18748

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on March 16, 2022, and was charged with the following:

DISCIPLINARY CASE NO. 2018-18747

1. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer told a Kings County Assistant District Attorney that she had been present during and observed an incident leading to the recovery of a firearm earlier that day when she, in fact, had not.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

2. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer signed a Criminal Court complaint as the deponent, indicating that she had been present during and observed an incident leading to the recovery of a firearm earlier that day when she, in fact, had not.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

3. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, wrongfully failed to make required entries in her Activity Log.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS

4. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 18, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer testified under oath before a Kings County grand jury that she had been present during and observed an incident leading to the recovery of a firearm on October 9, 2016 when she, in fact, had not.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT

DISCIPLINARY CASE NO. 2018-18748

1. Said Police Officer Gesley Jean, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, wrongfully failed to make required entries in his Activity Log.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS

2. Said Police Officer Gesley Jean, while assigned to the 73rd Precinct, on or about October 19, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer testified under oath before a Kings County grand jury that another Member of the Service, Police Officer Dornezia Agard, had been present during an incident leading to the recovery of a firearm on October 9, 2016 when she, in fact, had not.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT

In a Memorandum dated April 27, 2022, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Dornezia Agard guilty of all Specifications, after she pled guilty to Specification Nos. 1 through 4 in Disciplinary Case No. 2018-18747. Police Officer Gesly Jean was found guilty of all Specifications, after he pled guilty to Specification Nos. 1 and 2 in Disciplinary Case No. 2018-18748. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty for both officers.

After reviewing the facts and circumstances of this matter, I have determined that separation from the Department is not appropriate.

At the time of the underlying incident, Police Officers Agard and Jean had just three years of service in the rank of police officer. I took into consideration, that despite their short tenure, the officers had been otherwise model officers and received letters of commendation and various awards. Police Officer Jean received a medal for integrity and Police Officer Agard received community awards as both a police officer and as a school safety agent, exemplifying her commitment to the community. It was noted that both officers continued to perform commendably after they were placed on modified assignment and were awaiting their disciplinary fate.

I further considered that both officers fully accepted responsibility and were contrite, wholly acknowledging their misconduct. In his decision, Assistant Deputy Commissioner Adler noted that the officers were genuine in valuing this Department and in their desire to continue working for the Department. It is my belief that these officers can continue to be productive members of this Department and will continue to serve the community in an exemplary manner.

While their length of service, their otherwise excellent career history, and their acceptance of responsibility does not excuse their misconduct, it can be utilized to mitigate their penalty. As part of the mitigated penalty, I will impose a period of dismissal probation in addition to penalty days to ensure that the officers can be properly monitored and evaluated.

It should be noted that the cited misconduct in this matter occurred in 2016. Since then, the Department has recognized deficiencies in testimony preparation and has instituted new training to properly prepare officers when documenting arrests and testifying at trial.

Therefore, Police Officer Agard and Police Officer Jean shall forfeit thirty (30) vacation days and be placed on one (1) year dismissal probation, as a disciplinary penalty.


Keechant L. Sewell
Police Commissioner



POLICE DEPARTMENT

April 27, 2022

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In the Matter of the Charges and Specifications

- against -

Police Officer Dornezia Agard
Tax Registry No. 953619
Manhattan Court Section

Case No.
2018-18747

Police Officer Gesly Jean
Tax Registry No. 954003
Bronx Court Section

Case No.
2018-18748

-----X
At:

Police Headquarters
One Police Plaza
New York, NY 10038

Before:

Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondent Agard:

Roger Blank, Esq.
136 Madison Avenue, 6th Floor
New York, NY 10016

For Respondent Jean:

Michael F. Dailey, Esq.
One Riverdale Avenue, Suite One
Bronx, NY 10466

To:
HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-18747

1. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer told a Kings County Assistant District Attorney that she had been present during and observed an incident leading to the recovery of a firearm earlier that day when she, in fact, had not.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer signed a Criminal Court complaint as the deponent, indicating that she had been present during and observed an incident leading to the recovery of a firearm earlier that day when she, in fact, had not.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

3. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, wrongfully failed to make required entries in her Activity Log.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS
COMMAND OPERATIONS

4. Said Police Officer Dornezia Agard, while assigned to the 73rd Precinct, on or about October 18, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer testified under oath before a Kings County grand jury that she had been present during and observed an incident leading to the recovery of a firearm on October 9, 2016 when she, in fact, had not.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

Disciplinary Case No. 2018-18748

1. Said Police Officer Gesly Jean, while assigned to the 73rd Precinct, on or about October 9, 2016, while on duty, wrongfully failed to make required entries in his Activity Log.

P.G. 212-08, Page 1, Paragraph 1

ACTIVITY LOGS
 COMMAND OPERATIONS

2. Said Police Officer Gesly Jean, while assigned to the 73rd Precinct, on or about October 19, 2016, while on duty, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Police Officer testified under oath before a Kings County grand jury that another Member of the Service, Police Officer Dornezia Agard, had been present during an incident leading to the recovery of a firearm on October 9, 2016 when she, in fact, had not.

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

PUBLIC CONTACT –
 PROHIBITED CONDUCT
 GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on March 16, 2022. Respondents, through their respective counsel, both entered pleas of Guilty to the subject charges and testified in mitigation of the penalty. 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 no mitigation is warranted and recommend that Respondents be Dismissed from employment with the New York City Police Department.

SUMMARY OF EVIDENCE IN MITIGATION

Shortly after midnight on October 9, 2016, members of the Anti-Crime team arrested an individual ("the arrestee") within the confines of the 73 Precinct in Kings County. Specifically, Respondent Jean, who was in an unmarked car with three colleagues (Officers Sanchez,

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

Dawkins, and Duroc), observed the arrestee nervously drop a cup he was holding. Jean exited his vehicle and further witnessed the arrestee toss something under a van, which Jean subsequently observed to be a firearm. The officers secured the scene until a supervisor arrived a few minutes later in a separate vehicle; inside that vehicle were Sergeant Cahill, Officer Castro, and Respondent Agard. The arrestee was placed in handcuffs, and the firearm was recovered. (Tr. 53-57, 145-47)

Back at the stationhouse, the supervisor assigned the arrest to Agard. That same day, Agard met with an Assistant District Attorney (“ADA”) to help prepare the charges in the case. Even though she had not yet arrived at the location when the arrestee tossed the firearm under the van, Agard informed the ADA that she had been present and observed the arrestee do so. A criminal court complaint was prepared reflecting the incorrect information provided by Agard, which Agard signed (Dept. Ex. 3). The complaint states that Agard, the deponent, “observed defendant drop a cup onto the ground and continue to walk,” and that she also “observed the defendant in possession of a loaded .22 caliber Rohm revolver, place the revolver onto the ground, and observed Police Officer Gesly Jean...recover said revolver from the ground where defendant placed the revolver.” Agard also provided the ADA with witness contact information, and a sheet was prepared which listed her as the arresting officer, Jean as the recovering officer, and three other officers as first on the scene (Resp. Ex. F). Agard’s activity log did not specify the roles of each of the officers during the incident (Dept. Ex. 5).

Nine days later, on October 18, 2016, Agard testified before the grand jury regarding the incident. When asked what she had observed, Agard testified, in pertinent part, as follows:

Q. And at that place and time, what did you see?

A. I observed two males walking on the public sidewalk.

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

Q. After you observed the two males walking on the public sidewalk, what did you see?

A. I seen one male with a white hoodie drinking from a plastic solo cup, and thereafter, dropped it to the ground, which is known as littering.

Q. After you observed the defendant drop the solo cup to the ground, what did you do?

A. I went to approach him. As I approached him, I observed him crouch down by a van that was parked, and as I approached him I then seen him remove a dark object from his waistband and threw it on the ground.

Q. And when you observed the defendant remove the dark object from his waistband and throw it to the ground, what did you hear?

A. It was like a hard metal object that hit the ground.

Q. After you observed that, what did you do?

A. I stopped the defendant, asked him for identification, which he didn't have, and Officer Jean canvassed the area where we observed him crouch down and remove the dark object from.

Q. And what did you observe Officer Jean recover?

A. A gun.

(Dept. Ex. 4 at 6-8)

On October 19, 2016, a day after Agard's testimony, Jean also appeared before the grand jury. He testified, in pertinent part, as follows:

Q. After you observed the defendant throw the plastic cup, what did you do?

A. Me and my partner, Officer Agard, we got out of the car and we noticed that the defendant was crouched down, and at that point, he removed a black object from his waistband and he threw it under a white van that was parked on the street.

Q. And when you observed the defendant remove the object from his waistband, what did you do?

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

A. I got onto my belly in order to look under the van; in which, I saw a gun under the van.

Q. Before you saw the revolver under the van and after you saw the defendant remove a dark object from his waistband, what did you hear?

A. I heard – it was a thump sound, like something hitting the ground, thump.

(Dept. Ex. 2 at 7-8)

When it came to light that the testimony provided by each Respondent did not reflect what had actually occurred, the charges against the arrestee were dismissed.

At trial, each Respondent admitted to their misconduct. They offered explanations as to why they provided grand jury testimony that did not reflect what had actually occurred. As will be discussed below, I do not find the explanations offered by either Respondent to be credible.

Agard testified that she was assigned to Anti-Crime in September of 2016, the month before this incident. When she and the sergeant arrived at the location, other members of the team, including Jean, were dealing with the arrestee. Agard assisted in handcuffing the arrestee, and she also handed Jean a plastic bag in which he placed the recovered firearm. Agard acknowledged that she was not present on the scene during the initial encounter, and did not, herself, witness the arrestee toss the firearm under the van. (Tr. 142-47)

When the team returned to the stationhouse, Agard was assigned the arrest. This was her first assigned arrest, an assignment she did not want since she was new to the unit and still learning, but her supervisor told her that this was the way their team operated, and that she was next up in the rotation. Agard testified that the members of the team were excited as they discussed the facts and circumstances of the gun arrest; they all participated in a conversation

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

where they reviewed the details of what had transpired, including the roles of each of the officers involved. (Tr. 149-53, 176, 198-99)

When Agard spoke with the ADA later that day, she stated that she was present when the firearm was tossed by the arrestee, which was not true. Agard testified that this was a “mistake” on her part, and she was similarly mistaken when she signed the criminal court complaint and provided grand jury testimony about the incident. According to Agard, when she used the word “I” in her statement to the ADA and in her grand jury testimony, she was thinking she was speaking on behalf of the team. Agard acknowledged that while she was testifying, she remembered the incident clearly, and nobody had instructed her to answer the questions the way she did. She claimed she did not consult with Jean before or after her grand jury testimony. (Tr. 153-61, 169-70, 186-88, 192-97, 200)

Agard expressed that she is sorry for the mistake she made, and takes full responsibility for what happened. She has learned from those mistakes, and wishes to remain with the Department, where she hopes to become a sergeant who can serve as a role model for others. (Tr. 169, 174)

Jean testified that when he observed that the item tossed by the arrestee was a firearm, a sergeant was called to the location to verify the arrest. The sergeant arrived on the scene along with Agard; Jean confirmed that Agard was not present during Jean’s initial observations. Jean asked for a bag, which Agard provided, and Jean placed the firearm inside the bag. They drove back to the stationhouse, where the team members were excited as they all discussed the details of the gun arrest. Agard, who was designated the arresting officer, was present for this discussion. (Tr. 61-65, 112)

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

When he appeared at the grand jury ten days later, Jean reviewed the police reports to refresh his memory regarding the details of the arrest. Jean testified that when he saw that the on-line booking sheet and complaint report were prepared by Agard as the arresting officer, he mistakenly believed that she was there with him for his initial observations; accordingly, he incorrectly testified before the grand jury that Agard was his partner that day, and that she was with him when he made his initial observations involving the firearm. Agard conceded that his activity log (Dept. Ex. 1) listed Officer Dawkins, not Agard, as his partner that day, though he was not sure if he reviewed the log before testifying at the grand jury. (Tr. 49, 67-71, 95-99, 103)

Jean testified that this was an “honest mistake,” and that he hopes that one day he can press the “resume button” and continue his career. He would like to put this mistake behind him, and grow from the experience. His goal is to one day be a detective. (Tr. 92)

To their credit, both Respondents acknowledged that they provided incorrect information regarding the incident. However, they each claimed that the incorrect statements and testimony they provided were merely mistakes, and not deliberate. After carefully considering the testimony of the Respondents, in conjunction with the exhibits in evidence, I am not persuaded by the explanations offered by either of them.

First, I reject the suggestion that the inaccuracies in their accounts, where they both claimed that Agard was present from the outset and observed the firearm being tossed, were the result of confusion or faulty memory. This was not a situation where there was a long passage of time between the incident and the incorrect statements. Agard met with the ADA the same day as the incident, and testified before the grand jury just nine days later. Jean testified the day after Agard, just 10 days after the incident. Moreover, both Respondents testified at trial that when the team reconvened at the stationhouse following the incident, they were all excited as they

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

discussed the details of the gun arrest, including everybody's role in what had occurred; by their own accounts, this was not an arrest whose details were likely to quickly fade from their minds. Also, since Jean was well aware that arrests by the team were sometimes re-assigned to a particular officer based on a rotation, he would have known that merely because Agard filled out the police reports as the "arresting officer" did not mean she was actually present with him as his partner when he made his initial observations; indeed, Jean correctly listed another officer as his partner in his activity log. Under these circumstances, I find it more likely than not that Agard had a clear memory of the incident at the time she met with the ADA, as well as when she testified before the grand jury nine days later, as did Jean when he testified before the grand jury the following day.

Similarly, I reject the suggestion by Agard that her mistake was merely one of semantics, that when she used the word "I" in her testimony she really meant "we," since she was speaking on behalf of the team. Agard repeatedly gave answers in the grand jury where she quite clearly stated, in detail, that *she* observed the males walking, and approached when she saw one of them drop a cup to the ground. She then described seeing the arrestee remove the firearm from his waistband and throw it to the ground; she even described hearing the sound the firearm made when hitting the ground. There was no ambiguity in Agard's account, no indication that she was merely relaying information that her team members had provided to her. Rather, she testified with great precision as to her own observations, observations which subsequently were revealed not to have been made by Agard. Likewise, Jean, in his grand jury testimony, specifically stated that he and his partner, Agard, were together when they made their initial observations of the firearm being tossed; there was no ambiguity in his account either.

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

As such, even though the specifications do not specifically describe Respondents' statements as knowingly false, that is the only reasonable conclusion to be drawn based on the credible evidence presented. With that in mind, we turn to the penalty section.

PENALTY

In order to determine appropriate penalties, 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. Respondents' employment histories also were examined. *See* 38 RCNY § 15-07. Information from Respondents' personnel records that was considered in making these penalty recommendations is contained in attached memoranda.

Respondents Agard and Jean, each of whom was appointed to the Department on January 9, 2013, have both pleaded guilty to all of the charges against them. The Department Advocate asks that their employment with the Department be terminated, while counsel for Respondents argue for a lesser penalty.

On the one hand, neither Respondent has any formal disciplinary history, and they both have strong records with the Department. Both Respondents have been awarded multiple medals, and have received consistently strong performance evaluations. Jean submitted several documents on his behalf (Resp. Exs. A-D), including verification that he earned his Bachelor's Degree in Criminal Justice, a letter speaking to his hard work as an intern with the Juvenile Drug Court, and a letter from a Deputy Chief with the Department who attested to Jean's competence, intelligence, dedication, and integrity. Agard also submitted a package (Resp. Ex. G), including several job citations, a similar letter from the Deputy Chief that praises her competence,

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

intelligence, dedication, and integrity, and letters from two captains and a lieutenant emphasizing how she has been an asset to the Department. On the witness stand, each Respondent came across as genuine in describing how much they value working for the Department, and their earnest desire to continue doing so.

To be sure, it is unfortunate to see two promising careers cut short. Nevertheless, the misconduct of each Respondent in this case is deeply troubling, in a way that does damage to the reputation and integrity of the Department. Agard gave a false account of what she observed to the ADA, and then signed a criminal court complaint attesting to that false narrative. She repeated her false account, under oath, when she testified before the grand jury. Similarly, Jean provided false testimony, under oath, to the grand jury, when he also claimed that Agard was with him when he arrived on the scene and made his initial observations. As discussed above, I reject the claim of each Respondent that they were merely mistaken in the testimony they provided; the accounts they provided were knowingly false.

Even if the grand jury account provided by Jean was accurate as to the arrestee's actions, for both Respondents to bolster that account by falsely claiming that Agard also witnessed the incident is completely unacceptable. Truth in testimony is a cornerstone of our justice system, and our officers must be uncompromisingly truthful and accurate with the information they provide. With their egregious conduct and exceedingly poor judgment, the Respondents not only undermined their credibility for this particular arrest, but they also compromised their ability to testify under oath in future cases. Additionally, their actions here had public safety implications, as an individual allegedly in possession of a firearm had his charges dismissed.

The presumptive penalty for intentionally making a false official statement is termination from the Department. Under the circumstances presented here, that penalty is warranted with

POLICE OFFICER DORNEZIA AGARD
POLICE OFFICER GESLY JEAN

respect to each Respondent. The Department expects the highest levels of integrity and truthfulness from its members. When a member of the service deliberately provides false testimony, it not only has consequences for the individual case, as it did here, but it also undermines the public's trust in its police. Taking into account the totality of the facts and issues in these matters, I recommend that Respondents Agard and Jean both be DISMISSED from the New York City Police Department.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DORNEZIA AGARD
TAX REGISTRY NO. 953619
DISCIPLINARY CASE NO. 2018-18747

Respondent was appointed to the Department on January 9, 2013. On her three most recent annual performance evaluations, Respondent received overall ratings of “Exceeds Expectations” for 2019, 2020, and was rated “Exceptional” for 2021. She has been awarded one medal for Excellent Police Duty and four medals for Meritorious Police Duty.

Respondent has no disciplinary history. In connection with the instant matter, she was placed on Level 2 Discipline Monitoring in August 2018; that monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK
POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GESLY JEAN
TAX REGISTRY NO. 954003
DISCIPLINARY CASE NO. 2018-18748

Respondent was appointed to the Department on January 9, 2013. On his three most recent annual performance evaluations, Respondent twice received overall ratings of “Exceeds Expectations” for 2019 and 2020 and was rated as “Exceptional” for 2021. He has been awarded one medal for Meritorious Police Duty-Integrity and five medals for Meritorious Police Duty.

Respondent has no disciplinary history. In connection with the instant matter, he was placed on Level 2 Discipline Monitoring in May 2018; that monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials