



POLICE DEPARTMENT

July 29, 2014

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Brian Caltabiano
Tax Registry No. 934566
114 Precinct
Disciplinary Case No. 2013-9054

The above-named member of the Department appeared before me on April 1, 2014, charged with the following:

1. Sergeant Brian Caltabiano, on or about December 12, 2011, while on-duty as the 114 Precinct's Patrol Supervisor, improperly classified a seized vehicle as a "Rotation Tow" due to the vehicle being abandoned, double parked and obstructing another vehicle, when said vehicle should have been classified as "For Forfeiture".

P.G. 208-26 – FORFEITURE PROCEEDINGS FOR SEIZED PROPERTY

2. Sergeant Brian Caltabiano, on or about December 12, 2011, while on-duty as the 114 Precinct's Patrol Supervisor, failed to make notifications and prepare a 61 complaint report for an individual who fled the scene of a traffic stop and was driving with a suspended drivers license.

P.G. 202-17, Page 1, Paragraph 9 PATROL SUPERVISOR

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Sergeant Brian Caltabiano, on or about December 12, 2011, while on-duty as the 114 Precinct's Patrol Supervisor, improperly directed that a parking violation summons be issued to a vehicle that was pulled over pursuant to a traffic stop.

P.G. 209-07 – PARKING SUMMONSES

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

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by John D'Alessandro, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent testified in his own behalf. Respondent is a ten-year-member of the Department currently assigned to the 114 Precinct. Prior to joining the Department, Respondent was in the United States Navy. On December 12, 2011, Respondent testified that he had occasion to make a traffic stop. Respondent testified that he and his driver observed a vehicle commit a traffic infraction. They pulled the vehicle over and positioned their Department vehicle a little toward the driver's side as they had been trained. Respondent approached the passenger's side of the vehicle and his driver approached the driver's side of the vehicle. The driver of the vehicle presented Respondent's driver with an ID card which appeared to be a type of vendor ID. Respondent and his driver proceed back to the Department vehicle to conduct an inquiry of the driver's history.

While conducting the inquiry, a civilian comes up to the police vehicle window knocks on the window and informs Respondent that the driver just fled out of the

passenger's side of his vehicle. Respondent explained that he could not see the driver flee out the passenger's side because of the way their car was parked. He further explained that the vehicle was a commercial van and that they could not see the passenger's side from their vehicle. Upon receiving this information, Respondent and his driver exited their vehicle, checked the vehicle and realized that no one was inside and that the vehicle was locked. Respondent and his driver then walked around for about five minutes trying to locate the driver to no avail.

Respondent stated that he still had the paperwork for the driver when he abandoned his vehicle. He noted that the vehicle was in the traffic lane and the driver ran away; so in his opinion, this was an abandoned vehicle. Respondent further opined that since the vehicle was left in a double-parked position in the traffic lane, that this was a rotation tow situation and so he decided to write a summons on the vehicle. Respondent decided to bring the paperwork back to the precinct and that he would invoice the paperwork for safe-keeping at the stationhouse. Respondent said they returned to the vehicle and realized that the driver, or at least the name on the ID card in their possession had felony level suspensions.

Respondent acknowledged that he was pleading Guilty to the Charges and Specifications pending against him and that he realized that the Department wanted him to handle the situation differently. He explained that he did not handle the vehicle as a forfeiture because in his command, which is the busiest precinct in Queens, he had a responsibility to get out there on the street and handle the radio. He further explained that on that day, his command had minimum manning. He thought to himself that the

best way to handle the situation was to do a quick rotation tow of the car, invoice the documents for safekeeping and get back on the street and answer the radio.

Respondent stated that when he is at minimum manning in his precinct as a supervisor, he is essentially another sector. He also explained that he would never be able to admit for certain in a court of law that the person on the ID card was the same person who was driving the vehicle that night. Therefore he felt it would be useless for him to submit a complaint report to the detective squad who is overburdened with cases knowing that he would be creating one that would never be able to be solved.

Respondent stated his efficient action as a patrol supervisor was to take the action as previously noted to safeguard the vehicle and for him and his driver to return to patrol.

Respondent explained that to invoice the vehicle for forfeiture, he would have to invoice every content of the vehicle for safekeeping and that would take hours. He noticed that the van was packed and filled with garbage bags of vendor-type materials. He felt that he would be off the radio for the rest of the night. Respondent directed that a double-park summons be issued to the vehicle. He explained that once a person stops their vehicle and decides to get out and run from the vehicle, if it is left double-parked in a traffic lane the vehicle is in fact considered double-parked. Respondent said he drew this conclusion particularly from the fact that there were no occupants left in the vehicle and it was parked in the traffic lane. Respondent said at no point was he ever directed by Investigations to rescind the summons.

During cross-examination, Respondent was asked the following question: If he were pursuing a robbery suspect in a vehicle and he effected a traffic stop, but that person decided to flee, would that vehicle be evidence of a crime, or would that vehicle be

considered abandoned? Respondent replied that if it was a robbery suspect and the guy gets out of the car he would invoice the vehicle for forfeiture if the vehicle was used in the robbery possibly. But if he was just some person he saw driving a car and he was wanted for a robbery and was pulled over and as he pulled over he ran out of the vehicle, he would consider that the vehicle was abandoned because the vehicle had nothing to do with the robbery in that scenario. Respondent acknowledged that the person in this matter, Person A, was a felony 511 case. He believed that part of the felony 511 was that the vehicle was operated and that is the basis for the forfeiture law.

Respondent acknowledged that the mobile digital terminal is used to pull up a person's name and it gives all the DMV information including an address. He admitted that the information could have been transmitted to the Detective Bureau who could decide what to do with it regarding the vehicle occupant. He also acknowledged that a certified letter was prepared by Police Officer Bang and was sent to Person A notifying him that his car was vouchered for safekeeping. The letter also noted that the vehicle was held as a Rotation Tow and Respondent admitted that a person did come into the precinct and retrieved this vehicle as far as he knew. Respondent acknowledged even in this incident with the Rotation Tow, Bang had to fill out 28 property vouchers detailing everything that was inside of the vehicle. Respondent stated that it took about 17 hours or 2 days to voucher the property.

During redirect examination, Respondent was posed with the continuation of the hypothetical. Respondent was asked if the detectives found the person from Respondent's complaint report and then brought the person for Respondent to identify, would Respondent be able to identify him as the person who was driving the car.

Respondent stated that he could not do a line up, a photo array, or any other means to identify him. With respect to the felony 511, Respondent acknowledged that using a vehicle under that statute would require that the vehicle belong to the person operating it. Respondent stated that he did have ID that was handed to him by the person, but he could not state that the ID card was in fact the same person that he had the stop with on the incident date. With respect to Bang, Respondent noted that they had a discussion and Bang informed him that at his official Department interview he was asked if he could identify the man and he also stated, "No."

During questioning by the Court, Respondent indicated that had the vehicle been seized pursuant to felony 511, he would have to do the same vouchering process which took 17 hours the only difference was that it would have been classified as a forfeiture and that the 17 hours would have been spent invoicing the car on the incident date taking him and his driver off of the radio. With respect to the arrest processing, Respondent explained that an investigation would have had to be conducted by the Detective Squad and that also would have used more manpower.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to improperly classifying a seized vehicle as a "rotation tow" due to the vehicle being abandoned, double parked and obstructing another vehicle, when said vehicle should have been classified as "for forfeiture." Respondent testified that he stopped a vehicle for a traffic infraction. Respondent then proceeded to the Department vehicle to use the mobile digital terminal to run the paperwork received from the driver. The driver then took off on foot and Respondent was alerted to the fact by a member of the public. Respondent testified that in his judgment, the proper action for a driver, who, locked his vehicle, left it double parked in the middle of a lane and took off on foot, was to implement a "rotation tow." Respondent explained that he was short staffed at the command and for him and his driver to do a "forfeiture," would have required them to voucher at that moment all of the contents in the vendor van which would have taken several hours and prevented them from immediately returning to patrol.

Respondent also pleaded guilty to failing to make notifications and preparing a 61 complaint report for an individual who fled the scene of a traffic stop and was driving with a suspended driver's license. Respondent testified in mitigation to the penalty that he approached the stopped vehicle on the passenger side. He said any visual of the driver was for a brief moment, in the dark and he could not state with any degree of certainty that the driver of the van was, in fact, the person depicted in the photo ID in his possession that he received from the driver of the van when he made the stop. For this reason he did not prepare a complaint report which would have been investigated by the Detective Bureau.

Respondent had a duty to prepare the 61 Complaint Report for the person who fled the scene with a suspended driver's license. Respondent had a vendor ID and an insurance card, which was enough information to prepare the report and forward it to the Detective Bureau. How the investigation turned out by the Detective Bureau was not Respondent's call. If they had too much work and this matter would overburden them again this was not Respondent's call. The Detective Bureau would have handled the matter, investigated the complaint as they saw fit.

Respondent also pleaded Guilty to improperly directing that a parking violation summons be issued to a vehicle that was pulled over pursuant to a vehicle stop. Respondent testified that despite the fact that he ordered the vehicle to pull over, the driver abandoned the vehicle by getting out, locking the doors, leaving the scene unbeknownst to him and leaving the vehicle double parked in a lane that obstructed traffic. Respondent said in his opinion, the vehicle was abandoned and should have been ticketed. He further noted that his command had minimum manning concerns and seizing the vehicle would have meant that he and his partner would have been off of the radio for several hours as they vouchered the contents of the vendor van. He stated that issuing the summons to the vehicle and ordering a tow meant that he was able to quickly return to patrol. Respondent further noted that at no time was he instructed to void the summons that he issued to the vehicle.

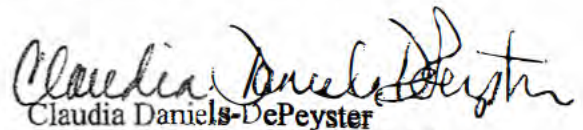
In each of the three instances on the incident date, Respondent explained his interpretation of what had transpired. He made judgment calls, albeit mistaken; taking into consideration what he thought would be in the best interests of the Department to have coverage. It ends up that vouchering the property in the van took several hours, 28

vouchers to be completed and Respondent and his partner would have been off of the radio for several hours if not the rest of the night on the incident date when his command had minimum manning concerns.¹

The Assistant Department Advocate asked for a penalty of the forfeiture of 20 vacation days. The Court finds this penalty recommendation to be excessive given the account made by Respondent. He had legitimate explanations as to the action he took on the date in question, taking into consideration the needs of his command for coverage. At all times, Respondent was engaged in police work. This Court has routinely held that where a member acts in good faith, albeit mistaken, such action should be a mitigating factor on the issue of penalty.

Accordingly, it is recommended that Respondent forfeit ten vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED

NOV 06 2019

WILLIAM J. BRATTON
POLICE COMMISSIONER

¹ The vouchers in this case were prepared days later pursuant to the row tow. Respondent, who was a sergeant at the time, was actually working patrol with a partner.

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT BRIAN CALTABIANO
TAX REGISTRY NO. 934566
DISCIPLINARY CASE NO. 2013-9054

In 2011 and 2012, Respondent received an overall rating of 4.0 “Highly Competent” on his annual performance evaluations. In 2013, Respondent received a rating of 4.5 “Extremely Competent/Highly Competent.” Respondent has received one Excellent Police Duty medal in his career to date.

[REDACTED]

[REDACTED]

Respondent has no prior formal disciplinary record.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials