



POLICE DEPARTMENT

March 20, 2008

MEMORANDUM FOR: Police Commissioner

Re : Police Officer Wayne Lowe  
Tax Registry No. 932926  
30 Precinct  
Disciplinary Case No. 82746/07  
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The above-named member of the service appeared before me on September 19 and October 9, 2007, charged with the following:

1. Said Police Officer Wayne Lowe, assigned to the Bronx Narcotics Division, while off-duty, on or about September 9, 2006, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said officer was wrongfully involved in a physical altercation with another person (female), known to this Department, in that said officer did slap and/or shove said person (female) known to this Department.

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

2. Said Police Officer Wayne Lowe, assigned to the Bronx Narcotics Division, while off-duty, on or about September 9, 2006, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said officer was wrongfully involved in an altercation with another person (male), known to this Department, in that said officer did wrongfully attempt to engage said person (male) known to this department in a physical altercation, in that said officer did jump at said person known to the Department and/or did attempt to smack said person known to the Department and/or did state to such person known to the Department that he would, "fuck him up."

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

3. Said Police Officer Wayne Lowe, assigned to the Bronx Narcotics Division, while off-duty, on or about September 9, 2006, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said officer did fail to immediately identify himself as a Member of Service, when being addressed by Officers Jose Torres and/or Yolanda Stokes Jason Stefano and/or Eric Rodriguez, as said officers were responding to a dispute between said officer and a person known to this Department (female).

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

4. Said Police Officer Wayne Lowe, while assigned to the Bronx Narcotics Division, while off duty, on or about September 9, 2006, in Bronx County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said officer was discourteous to New York City Police Officers Jose Torres and/or Yolanda Stokes and/or Jason Stefano and/or Eric Rodriguez, in that said officer, when approached by said officers, who were responding to a dispute between said officer and a person known to this Department, was argumentative and/or belligerent to said officers, and/or did state to said officers, "Fuck you," and/or, "get the fuck away from me," and/or, "don't put your hands on me," and/or "don't touch me."

P.G. 203-09-Page 1, Paragraph 2 - PUBLIC CONTACT-GENERAL

The Department was represented by Lisa McFadden, Esq., Department Advocate's Office, and the Respondent was represented by John Tynan, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officers Elena Stojanovski, Ricky Smalls, Yolanda Stukes, Jose Torres and Sergeant Robert Olson as witnesses. The Department also offered into evidence a 43-page document, the certified transcript of the Official Department Interview of Police Officer Wayne Lowe (Department Exhibit (DX) 1) and an audiotape of Officer's Lowe's Official Department Interview (DX 2).

Police Officer Elena Stojanovski

Stojanovski, a member of the Department for one year and eight months is currently assigned to the 47 Precinct. She and Police Officer Ricky Smalls (Smalls) agreed at approximately 12:30 a.m. on September 9, 2006 to meet later in the morning. Stojanovski said she parked her car in front of Transit District No. 12 (District 12) and got into Smalls' vehicle. She said she did not notice that she parked in a bus stop. Stojanovski testified that she and Smalls then went to a restaurant in the Morris Park section of the Bronx near District 12 at approximately 3:30 a.m. Stojanovski stated she had one beer and she did not recall Smalls having any liquor. Stojanovski then testified that Smalls drove towards Tremont Avenue where Smalls parked his vehicle and both Smalls and Stojanovski began kissing one another. These activities resulted in hickeys on Stojanovski's neck.

Stojanovski stated that she fell asleep in the car and woke up at approximately 7:30 a.m. at which time she noticed that her cell phone, which was on vibrate, had approximately 12 missed calls and two messages. The missed calls and the messages were from the Respondent. Stojanovski indicated that she and the Respondent have known one another since childhood. She testified that she became involved in a relationship with him in September or October of 2002, and they lived together from November of 2005 to March of 2006. Stojanovski explained that their relationship was not working out and they broke up in March of 2006. Stojanovski stated that she and the Respondent still spoke with one another "around twice a month", "[some] months we would speak once a week, sometimes more than that." Stojanovski also stated that she and the Respondent maintained a physical relationship. Stojanovski said the physical activity occurred "sometimes once or twice a month, whenever we saw each other." She

acknowledged that according to her interview, she was intimate with the Respondent a week and a half before this incident on September 9, 2006.

Stojanovski testified that during a cell phone conversation with the Respondent, he told her that her car, a Saturn L 200 Series, had been stolen. Stojanovski's Saturn was registered to and insured by the Respondent. The Saturn's title was also in the Respondent's name. Stojanovski testified that she paid her half of the insurance as well as the car note. She indicated that the Respondent never drove the Saturn since their breakup and the vehicle was normally parked at her residence.

Stojanovski said that when Smalls drove back to District 12 she noticed that the Saturn was missing. She then realized the Saturn was across the street from where she originally parked it. When Smalls drove closer to the Saturn, she noticed someone in the driver's seat. She noted that the Saturn executed a U-turn and positioned itself in front of Smalls' car. Stojanovski testified that the Respondent exited the Saturn and began yelling at her because she was with someone else. She exited Smalls' car and the Respondent began calling her a "whore" after he noticed the hickeys on her neck. The Respondent began pushing her with both hands, and during the course of pushing her, the Respondent slapped her on the left cheek with the palm of his hand.

Stojanovski testified that the Respondent was talking with Smalls and Smalls made no attempt to either confront the Respondent or verbally threaten the Respondent. She never saw Smalls with a weapon nor did she ever witness Smalls threatening the Respondent with a weapon. She said that she never saw Smalls strike the Respondent. She stated that the Respondent never mentioned that he had been threatened by Smalls. At some point her back was to Smalls and she could not see what he was doing. She later entered the Saturn along with the

Respondent in an attempt to speak to him instead of talking on the street. Stojanovski said she told Smalls to leave and at some point he did leave, but she did not know exactly when.

Stojanovski testified that shortly thereafter, a patrol car arrived with approximately three police officers and someone she thought was a sergeant. She said that she recognized two of the officers from District 12 because her mother worked there before her retirement in 2005.

Stojanovski said she was not paying attention to the conversation the Respondent was having with the police officers because he had removed her items from the car and she was trying to retrieve them from the street.

During cross-examination, Stojanovski acknowledged that the Respondent had paid traffic tickets on the Saturn that she drove. She acknowledged that there had also been E-Z Pass tickets on the car, but she said that she paid those. She stated that she had been a police officer for approximately eight months when the incident occurred. She said that the Respondent had been a police officer for six more months than her. She admitted that she asked Smalls to leave the scene and he did leave before the police arrived. She acknowledged that a police officer is supposed to remain at the scene of an unusual occurrence. Stojanovski testified that she had not received any discipline from the Department in connection with this matter.

#### Police Officer Ricky Smalls

Smalls, a two-year member of the Department, currently assigned to Police Service Area No. 8 (PSA), testified that he initially met Stojanovski on the corner of Tremont and West Farms on September 9, 2006. He said that it was not safe for Stojanovski to park her vehicle at that location. He testified that Stojanovski instead parked her car near District 12. Smalls further testified that he ordered a non-alcoholic drink at a nearby restaurant while Stojanovski used the bathroom. Smalls stated that he met Stojanovski between 2:00 a.m. and 2:30 a.m. and left the

restaurant at approximately 4:00 a.m. Smalls further stated that he parked his vehicle at Tremont and 180<sup>th</sup> and they stayed there for around three hours. Smalls said that he and Stojanovski talked with, held and embraced one another. When asked if there were any marks on her after being intimate with her, he stated "she had a hickey on the right side of her neck." He said that they fell asleep in the car, and he was awakened by the vibrations on Stojanovski's cell phone. He told her that her mother may be calling because she stayed out all night, but she did not answer the cell phone.

Smalls testified that when he returned from using the restroom at a nearby gas station, Stojanovski was arguing with someone on the cell phone. He and Stojanovski returned to the vicinity of District 12 where he noticed someone inside her Saturn which was moved across the street from the original location where it was parked. Smalls said that the person in Stojanovski's Saturn then made a U-turn and parked alongside his vehicle. He testified that the male inside the Saturn began accusing him of "fucking his girlfriend" while referring to him as "Edwin." Smalls stated that the male (later identified as the Respondent) did return to the Saturn, drive down the block, stopped his car in front of Smalls' car, exited his car and approached the passenger side of Smalls' vehicle. Smalls then saw Stojanovski exit his vehicle. He then saw the Respondent push Stojanovski and then raise his hand to slap her. He explained that he heard but did not see the slap. He further explained that he saw Stojanovski's face move back after he heard the slap. Smalls exited his vehicle at this time and observed redness on Stojanovski's face.

Smalls stated that the Respondent began focusing his attention on him. The Respondent said to him, "You are fucking my girl" and "...I know that you are fucking my girl from the academy." The Respondent told Smalls that he was going to "fuck him up." Smalls testified

that the Respondent began pushing him. He stated that the Respondent repeatedly attempted to smack him in the face, but the Respondent never made contact with his face because he backed away from him.

Smalls said that his service weapon was secured in his locker at PSA 8 and that his off-duty weapon was secured in a safe at his residence. He explained that he would not have been able to gain entrance to the night club he had gone to earlier that night if he was armed. Smalls testified that he was in possession of a gray Razr cell phone on his right side and he was wearing a tee-shirt that fell just below the belt.

Smalls testified that sometime following the incident he was interviewed regarding the incident. He stated that he was instructed on the proper procedure of calling 911 when involved in an off-duty incident. He said that he was later disciplined and received the loss of one vacation day for failing to report the off-duty incident.

During cross-examination, Smalls acknowledged that he took some time to survey what was happening between Stojanovski and the Respondent before he exited his vehicle. He acknowledged that he did not arrest the Respondent or call 911 after he heard the Respondent slap Stojanovski. Smalls said that he tried to get Stojanovski to leave the area and get into his car, but she did not. He acknowledged that Stojanovski still would have had her car at that scene. Smalls admitted that he did not attempt to go to District 12 to get police assistance. He stated that he attempted to call his command to speak to a delegate about the situation.

Police Officer Jose Torres

Torres, a member of the Department for over 12 years, is currently assigned to Transit District No. 12. He testified that on September 9, 2006, while working in District 12, an

unidentified civilian informed him that a male and female were engaged in a dispute down the block from District 12. Torres stated that he and his partner, Police Officer Stukes, responded to the location of the dispute in their RMP. Two other police officers, Rodriguez and Stefano, also responded. Upon arriving they observed one male and one female in close proximity to one another and a third male approximately 15 feet away. Torres explained that his partner, Police Officer Stukes, recognized the female (later identified as Stojanovski) as a police officer whose mother was a retired sergeant from District 12. He said that the individual (later identified as the Respondent) was the male in close proximity to the female. Torres explained that Stojanovski was endeavoring to separate the two men who Torres said were yelling at each other. He stated that the male further away was attempting to leave. Torres testified that as he approached the Respondent, the Respondent yelled the following at him, "Don't put your hands on me." Torres advised him that he was trying to ascertain what was going on. Torres stated that he heard the Respondent refer to the female involved in the dispute, (Stojanovski) as a "whore" and a "bitch." Torres testified that the Respondent was also yelling at Police Officers Rodriguez, Stefano and Stukes. Torres stated that he was concerned that the Respondent may attempt to leave the scene in his car, so he repositioned the RMP to block him in. He said that he had no contact with Stojanovski.

Torres testified that the Respondent looked through his wallet for his registration in response to a request from Stefano, who then noticed the Respondent's New York City Police Department Identification Card in his wallet. Stefano asked the Respondent if he was a police officer and the Respondent replied that he was. Stefano then uttered, "This guy is a cop, he is on the job." Stefano then requested a supervisor to respond to the scene. Torres stated that he was surprised to learn that Respondent was a police officer. He explained that an off-duty member of



service should immediately identify himself to uniformed members of the service at the scene of an occurrence. Torres estimated that they had been at the scene approximately ten minutes before the Respondent was identified as a police officer. He could not recall the Respondent stating that someone threatened to shoot him or that someone pulled a weapon on him.

During cross-examination, Torres stated that Stojanovski did not identify herself as a police officer, but his partner Stukes recognized her as a member of the service when they arrived on the scene.

Police Officer Yolanda Dee Stukes

Stukes is a 14-year member of the Department currently assigned to Transit District No. 12. She testified that on September 9, 2006, while working at District 12, several unidentified civilians informed her and her partner Torres that something was going on around the corner involving a man and a woman. Stukes, Torres and two other police officers assisted and proceeded to the location at Morris Park and Van Buren. Stukes testified that upon arriving at the location she observed a male and female engaged in a verbal dispute on the sidewalk. She approached the male and requested that he calm down. The male, later identified as the Respondent, replied, "Get the fuck away from me, bitch." Stukes said that the Respondent directed that comment to her on more than one occasion. She stated that she did not know that the Respondent was a member of the service at that time nor did the Respondent immediately identify himself as a member of the service.

Stukes mentioned that she then turned her attention to the female involved in the dispute, (later identified as Stojanovski). Stukes noted that Stojanovski had two bruises on her neck which were hickeys, a disheveled appearance and was upset. Stukes said the Respondent was

taking Stojanovski's things out of the car while Stojanovski was trying to put them back in. Stukes also said that the Respondent was screaming, "If anyone puts one hand on me. Get the fuck away from me. Don't say shit to me," "Don't touch my shit, don't touch my car," at everyone while she was speaking with Stojanovski. Stukes indicated that Respondent mentioned that they would be in trouble with his "command" and then they realized he was a police officer. Stefano asked him if he was a police officer and he responded in the affirmative. Stukes stated that Stefano then called for a supervisor to come to the scene. Stukes said the Respondent informed them that he was a police officer after approximately ten minutes after she arrived at the scene of the dispute.

Transcript of the Official Department Interview of Police Officer Wayne Lowe

The Respondent was interviewed by Sergeant Robert Olsen of the Patrol Borough Bronx Investigations Unit on September 9, 2006. Present at the interview were Captains Timothy McKay, Bronx Duty Captain, Steven Brill, Organized Crime Control Bureau Duty Captain, and Sergeant Valdivia of the Patrol Borough Bronx Investigations Unit. The Respondent was represented by Police Officer McGlocklin of the Narcotics Borough Bronx Unit.

The Respondent said that he and Stojanovski were boyfriend and girlfriend for approximately three years. He stated that he and Stojanovski mutually agreed to terminate their relationship in March of 2006. He said that they had known one another since childhood. The Respondent stated that he and Stojanovski "have communicated" since their breakup. The Respondent, when asked if he was "romantically involved with her," replied "Yes, sir." He also stated that he left a message for Stojanovski reminding her that a car payment was due. He noted that both he and Stojanovski had been making payments on a car.

The Respondent stated that he received a phone call from a sergeant assigned to District 12 at 6:00 a.m. on September 9, 2006. The sergeant told the Respondent that he needed to move his car out of a bus stop. The Respondent said he did not understand what the sergeant was talking about because he owns a Toyota [REDACTED] and he could see the [REDACTED] from the window of his residence. The Respondent stated that the sergeant told him that the car was registered to him. The Respondent said that he then began to call Stojanovski's cell phone. He said that he called her between 12 and 13 times that morning. He explained that she had driven the car and since he was asleep, it would be easier for her to go and move the car.

The Respondent said that he informed Stojanovski, via voicemail to get in touch with him because they had a problem. The Respondent explained that he was unable to reach Stojanovski, so he decided to go and move the car himself to avoid getting ticketed, towed and a Command Discipline. Instead of moving the car with Stojanovski's possessions, the Respondent said he attempted to contact her again. Eventually he was able to get in touch with Stojanovski. He asked her where she was and where the car was located and Stojanovski replied that the car was with her. The Respondent told her that she was lying. The Respondent said Stojanovski denied lying to him. He informed Stojanovski that he was inside of the car.

The Respondent said that Stojanovski began yelling at him. The Respondent explained that he did not understand why the car was parked near Transit District 12 when it was supposed to be with Stojanovski's mother who, as a retired member of the service, had a parking plaque. He stated that he believed someone either stole the Saturn or borrowed it. The Respondent said that he did not understand why Stojanovski did not tell him that she parked the [REDACTED] Saturn near District 12. He also said that he told her he did not care who she was with he just wanted her to take care of the car, but she began to argue more.

The Respondent told Olson that he was retrieving the Saturn because he had paid summonses issued to the vehicle. The Respondent also said the loan company had called him regarding missed car payments on the Saturn. He explained that the summonses involved going through an E-Z Pass lane without any money being maintained in the E-Z Pass account. The Respondent explained that he had better credit than Stojanovski so he purchased the car for her when they were dating. He further explained that they both used to drive the car, but since the break up, Stojanovski drove the Saturn most of the time.

Stojanovski told him that she was looking for the car and the Respondent told her to look across the street. The Respondent reiterated his concern that he was going to receive a summons as well as a Command Discipline for the vehicle. He said that he learned of the two E-Z Pass summonses from the Department of Motor Vehicles and not Stojanovski. He said that he advised her that if she was not going to take care of the car, he would need the car back.

The Respondent stated that he pulled the Saturn around to speak with Stojanovski after she arrived near District 12. He thought Stojanovski was with Edwin which he stated was not a problem because he and Stojanovski were no longer a couple. The Respondent said that he was going to take the car back and Stojanovski could have her belongings. He stated that he told her he would take her things to her mother's house and as he pulled off, she jumped out of the vehicle she was in. The Respondent explained that he was not trying to hit her with the car so he pulled over. They both exited their vehicles and a verbal disagreement commenced.

The Respondent said that her male companion, (Smalls) exited his vehicle. The Respondent told Smalls that the matter was between himself and Stojanovski and that he should leave. Smalls asked the Respondent to calm down. The Respondent explained that he was upset over the situation with the Saturn and not the hickeys on Stojanovski's neck. The Respondent

admitted that he falsely believed things would work out between himself and Stojanovski because she told him that she loved him. He also admitted that he learned that she was seeing someone else that morning. He explained that he wished she just told him that she was with someone else that night and they could have resolved the car matter a different way. The respondent denied ever striking Stojanovski.

The Respondent stated that Smalls threatened to shoot him and he pushed Smalls' hand away as Smalls put his hand up. The Respondent said that Stojanovski got between the two of them and told Smalls to leave. Just as Smalls began to walk away, the uniformed officers responded. He informed the officers as they pulled up that he was involved in a verbal dispute. He acknowledged that he was afraid by the threat made by Smalls, but he did not initially inform any of the responding officers that Smalls threatened to shoot him. He described Smalls' action as reaching under his shirt to unsnap his gun from a holster. He said the holster appeared to be black and that the gun had to be an automatic because that is what the Department issues to police officers. The Respondent later stated that he was unable to see the whole gun. The Respondent admitted that he did not initially tell the four officers at the scene that Smalls menaced him with a gun. He also admitted that when the supervisor came to the scene, he did not tell him that Smalls threatened him with a gun. The Respondent said that he later approached the female officer who was speaking with Stojanovski and informed her that Smalls threatened him with a gun.

The Respondent initially denied saying in sum and substance to the responding officers, "Get your fucking hands off me. Don't touch me." He then said he may have made the above mentioned comment. He then acknowledged making that statement or words to that effect. The Respondent said that he did not immediately identify himself as a member of service

to the responding officers. He informed the responding officers that he worked at a command. He said that the male, Hispanic officer then asked him if he was "on the job" and he replied "Yes." He stated that the officer allowed him to retrieve his shield and Department identification card. He explained that he was working in an undercover capacity. The Respondent acknowledged that he was not purchasing narcotics at the time of the incident, but was, in fact, involved in an off-duty dispute. He was told that he had a duty to identify himself to the first responding officers. The Respondent acknowledged that he was taught in undercover school that if he was involved in a situation with another member of the service that as an undercover officer, he was to identify himself to the member of the service.

The Respondent denied that he ever struck the female officer. When asked whether he struck the other officer, the Respondent stated that he did by pushing his hands. He noted that the female officer was standing in between them at that time when they were arguing and Smalls threatened to shoot him.

Sergeant Robert Olson

Olson is a 15-year member of the Department currently assigned to the Patrol Borough Bronx Investigations Unit. Olson has been a sergeant for eight years. Olson testified that he received a call out on the morning of September 9, 2006. He stated that he conducted an interview of the Respondent on that date with respect to an off-duty dispute. He noted that a tape and transcript were made of the interview (DX 1 and 2). Olson testified that the portion of the Respondent's interview that was replayed in open court was accurate. He said that what was heard in court on October 9, 2007 was what actually happened during the Respondent's interview on the night of September 9, 2006. He stated that all of the questions asked by the

interviewers were reflected on the tape. He further stated that the questions asked, regarding the issue of the Respondent's discourtesy, referred to comments he made to the responding officers, not Stojanovski, and none of the responding officers were involved in the dispute. Olson testified that the tape was never turned off during that portion of the interview.

During cross-examination, Olson stated that he received the call out on the Respondent's case in the early morning hours of September 9, 2006. He admitted that the investigation took the entire day to be completed and that the Respondent was not interviewed in the matter until approximately 6:00 p.m. He acknowledged that the Respondent remained at the command for approximately 12 hours following the dispute on the street.

#### The Respondent's Case

The Respondent testified in his own behalf.

#### Police Officer Wayne Lowe

The Respondent, a member of the Department for over four years is currently assigned to the 28 Precinct. He testified that he has known Stojanovski for 17 years. He dated her for three years and lived with her for two of those three years. The Respondent stated that they stopped living together in March of 2006. The Respondent also stated that they purchased a car together while they were dating. The Respondent said that the car's title, registration and insurance were in his name. The car was a [REDACTED] The Respondent said that he and Stojanovski still see one another.

The Respondent testified that he received a phone call from a sergeant assigned to District 12 on the morning of September 9, 2006 at around 6:00 a.m. The Respondent stated that he was directed by the sergeant to move his vehicle. The sergeant said his vehicle was illegally

parked and the Respondent had five minutes to move the car. The sergeant, according to the Respondent's testimony, also said that the car would be summonsed and towed and that the Respondent would receive a Command Discipline. The Respondent said that he informed the sergeant that his vehicle was parked in front of his residence at Co-Op City. The Respondent said he initially thought the sergeant was referring to his Toyota [REDACTED]. The Respondent said he then realized the sergeant was referring to the Saturn. The Respondent testified that he informed the District 12 sergeant that he would get in touch with the person that operates the [REDACTED].

The Respondent testified that Stojanovski had not been keeping up on her car payments and that he received calls from the bank regarding the [REDACTED]. He took care of those payments so the loan would not be in default. The Respondent said that he tried numerous times to contact Stojanovski that night. The Respondent said he moved the [REDACTED] at around 6:50 a.m. The Respondent said the [REDACTED] had been summonsed. He explained that he had previously paid for summonses related to Stojanovski's use of the [REDACTED].

The Respondent said that Stojanovski called him back. He asked her where the car was. She asked why and he said the car was stolen. The Respondent testified that Stojanovski indicated that she was in the car. The Respondent said he told Stojanovski that she was lying and asked her why he received a phone call stating that his vehicle was "going to be summonsed and towed." He then informed her that he was inside of the car and asked how she wanted her things dropped off. The Respondent testified that she had a uniform in the back seat. The Respondent said she then hung up the cell phone.

The Respondent said that he parked the [REDACTED] parallel to Smalls' truck and began "yelling at her." The Respondent said that he informed Stojanovski that she was a liar, not paying tolls and that he would drop Stojanovski's belongings at her mother's house or the



precinct. The Respondent testified that Stojanovski then exited Smalls' truck and began walking toward the Respondent who was sitting in the driver's seat of the Saturn. The Respondent then asked Stojanovski if she wanted her belongings placed in her boyfriend's car. The Respondent then testified that he was not screaming although he naturally speaks loudly. The Respondent said Stojanovski then exited Smalls' truck and sat down in the front passenger seat of the Saturn, next to the Respondent. The Respondent said he wanted to retrieve the Saturn and return Stojanovski's belongings to her. The Respondent said Stojanovski had various items in the Saturn.

The Respondent said he then exited the Saturn, and walked over to Smalls' truck and loudly said, "....this had nothing to do with you. Go in the car. Take your whore and get her out of here." The Respondent stated that he called Stojanovski a "bitch." The Respondent testified that Stojanovski walked close to him and he pushed her hands away and put his hands up. He told Stojanovski not to put her "hands on him" and not to "touch him." The Respondent said that Smalls bent down in a crouch position and said to him "You need to calm the fuck down," "I am a fucking cop," "I will shoot you." The Respondent said he replied, "There you go again threatening me. You have one more time to threaten me; I am going to fuck you up."

During cross-examination, the Respondent said he feared being shot even though he never saw a weapon. He denied telling the police or any responding officers that someone threatened to shoot him. He also denied that he ever informed any of the responding officers that someone who threatened to shoot him was leaving the scene. The Respondent said he then asked Stojanovski, "....are you going to let someone threaten to kill me." He then said, "You have one more opportunity to hurt me and then I am going to fuck you up."

The Respondent said that Stojanovski asked to leave with him. The Respondent told Stojanovski that he did not want to leave with her. The Respondent said he was concerned about losing his position in a detail he had just been assigned to because Stojanovski failed to pay summonses issued to the Saturn. The Respondent said Stojanovski told Smalls to leave and that she would leave with the Respondent.

The Respondent said a police car then pulled up. The Respondent informed a male officer that "...if I am not under arrest, please nobody touch me," "I will go peacefully." The Respondent said he was not asked if he was a member of service and did not immediately inform any of the responding officers that he was a member of the service. The Respondent said, however, that he informed the male officer that he was at the location of the dispute because "your command called me and your sergeant told me to move my car." The Respondent also said that his reference to "your command" occurred around three to four minutes after they arrived. The Respondent testified that the male officer then asked him if he was a cop. The Respondent said he was a police officer. The Respondent denied directing any foul or profane language to the responding officers. The Respondent denied any physical confrontation with the responding officers. The Respondent acknowledged having directed foul language toward Stojanovski. He stated that once the supervisor arrived at the scene, he and Stojanovski were taken back to the command to answer questions.

The Respondent acknowledged that he informed the investigators during his Official Department Interview that he said, "take your fucking hands off me" to the responding officers. The Respondent, in response to questioning from the Court, said he was confused by the question during his interview asking who he directed the "take your fucking hands off me" comment. The Respondent said he was not sure if the investigators were referring to the transit

officers or Stojanovski. The Respondent stated that the transcript does not reflect his attempts to clarify the issue. The Respondent also said, that he understood the questions at his interview regarding whether or not he was belligerent to the officers, referred to the responding transit officers.

### FINDINGS AND ANALYSIS

#### Specification No. 1

The Respondent stands charged herein in that while off-duty on September 9, 2006, he engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he was involved in a physical altercation with Stojanovski and that he slapped and/or shoved her. The Respondent is found Guilty. Stojanovski testified that during the street encounter with her ex-boyfriend the Respondent, he called her a "whore" after he saw the hickeys on her neck and he began to push her with both hands. She said that during the course of pushing her, he slapped her on the cheek. She described an open palm striking her cheek. Smalls testified that during the street encounter, he heard what sounded like the Respondent slapping Stojanovski in the face and when he looked up, he saw her face turn to the side as if she were struck. I found the testimony of both Stojanovski and Smalls to be credible.

The Respondent admitted to calling Stojanovski a "bitch," pushing her hands away and then putting his hands up in the air, but he denied hitting her. The Respondent also denied that he was upset when he saw the hickeys on Stojanovski's neck. I found the testimony of the Respondent to be less than credible. For one the Respondent testified that even though he had broken off with Stojanovski, they were still intimate up to a week before the street encounter. She also told him that she still loved him and he thought there was a chance that they would be

together. He also noted that he was unaware that she was dating other people. I did not believe his testimony when he stated that he was not upset to see her at 7:30 in the morning with hickeys on her neck. Particularly, after he was awakened by a sergeant ordering him to move the car that she drives from a bus stop or face a Command Discipline along with a summons and tow.

Accordingly, I find the Respondent Guilty of Specification No. 1.

#### Specification No. 2

The Respondent stands charged in that while off-duty on September 9, 2006, he engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he was wrongfully involved in an altercation with Smalls by wrongfully attempting to engage Smalls in a physical altercation by jumping at him and/or attempting to smack him and/or stating that he would "fuck him up." I find the Respondent Guilty of this Specification. Evidence adduced at trial established that the Respondent engaged in a verbal and physical altercation with Stojanovski on the street. Stojanovski testified that after the Respondent called her a "whore," he struck her in the face. Smalls testified that it was after this strike that he approached the Respondent.

Smalls testified that when the Respondent initially drove up to his car, he accused him of "fucking his girl." The Respondent began to push him and attempted to slap him in the face, but he never made contact with him because he backed away. Smalls stated that the Respondent also stated that he would "fuck him up." Smalls said that eventually Stojanovski went into the Saturn with the Respondent and he decided to leave. He explained that Stojanovski would not explain who the Respondent was and he did not understand the situation he was in. I found the

testimony of Smalls to be credible. Stojanovski was never specifically asked if she observed the Respondent shove or attempt to strike Smalls.

The Respondent testified that Smalls told him he was a police officer and he threatened to shoot him. The Respondent said that he was afraid for his life, yet he told Smalls, "You have one more time to threaten me; I am going to fuck you up." The Respondent later stated that he did not actually see Smalls with a gun, but Smalls made motions as if he were removing his gun from his holster. The Respondent went so far as to say that Smalls had an automatic gun because that is the type of weapon issued by the Department. This is after he already stated that he did not actually see Smalls with a gun. Following the dispute with Stojanovski, four police officers and a sergeant responded to the scene and the Respondent testified that he did not immediately tell the responding officers that Smalls threatened to shoot him. He also admitted that he never told the supervisor on the scene about the gun threat. While I found the testimony of Stojanovski and Smalls to be credible, I found the testimony of the Respondent to be incredible and not worthy of belief.

Accordingly, I find the Respondent Guilty of Specification No. 2.

#### Specification Nos. 3 and 4

The Respondent stands charged herein that while off-duty on September 9, 2006, he engaged in conduct prejudicial to the good order, efficiency and discipline of the Department in that he failed to immediately identify himself as a member of the service to responding Police Officers Jose Torres, and/or Yolanda Stukes, and/or Jason Stefano and/or Eric Rodriguez. He was also argumentative and/or belligerent to these officers who were responding to a dispute by

stating, "fuck you," and/or "get the fuck away from me," and/or "don't put your hands on me," and/or "don't touch me." I find the Respondent Guilty as charged.

Evidence adduced at trial established that when Police Officers Stukes, Torres Stefano and Rodriguez drove up to the incident location in the RMP, they observed Stojanovski and the Respondent. Torres testified that his partner Stukes recognized Stojanovski as a member of the service and she approached her. He said he approached the Respondent who immediately yelled, "Don't put your hands on me." He told the Respondent that he was trying to ascertain what was going on. At no point did the Respondent volunteer the information that he was a member of the service. Torres said that as the Respondent looked through his wallet to produce his vehicle registration to Police Officer Stefano, Stefano saw the Respondent's Department identification card and then questioned him. Torres testified that a member of the service should immediately identify himself to uniformed members of the service at the scene of an occurrence. Stukes testified that after the Respondent told her to "Get the fuck away from me, bitch," and uttered, "If anyone puts one hand on me. Get the fuck away from me," she turned her attention to Stojanowski. She later explained that it was not until the Respondent made mention of "his command" that they realized he was a police officer and he affirmed that information to Stefano. She noted that they had been on the scene approximately ten minutes before they learned that the Respondent was a member of the service.

The Respondent acknowledged that he had not immediately identified himself as a member of the service. He argued that he was never asked. He argued that he was an undercover member of the service at the time. He also argued that he hinted that he worked at a command to the responding officers. However, the Respondent admitted in his Official Department Interview that he was trained that even as an undercover, if he was involved in a

situation with another member of the service that as an undercover officer, he was to identify himself to the member of the service. The notion that the Respondent could simply "hint" that he worked at a command to put police officers on notice that he is a member of the service is insufficient action on the Respondent's part.

The Respondent contended that when he admitted in his Official Department Interview that he said, "take your fucking hands off me" to the responding police officers that he was confused. He thought the investigator was asking him about Stojanowksi. I found this argument to be without merit. The exchange in the Official Department Interview (DX 1) was as follows:

SGT. Rodriguez: Do you recall when the officer came up to you and they were trying to get in the car and they came up and they attempted to put their hands on you, you made some sort of statements 'get your fucking hands off me. Don't touch me.' Anything to that effect?

U.C. #15266: No, sir.

SGT. Rodriguez: You don't recall saying that?

U.C. # 15266: No sir I didn't say that.

SGT. Rodriguez: Two officers came in and testified under GO # 15, that or should I say PG # 206-13...those two officers both came in here and testified that you were belligerent...

So then, I'll ask you the question again. Did you act belligerent with the officers?

U.C. # 15266: Yes, I did.

SGT. Olson: Okay. And did you tell them 'take your fucking hands off me' in sum and substance?

U.C. # 15266: I may, I may have sir.

SGT. Olson: Either you did or you didn't. This isn't three weeks ago.

U.C. # 15266: I understand.

SGT. Olson: This is this morning.

U.C. # 15266: I understand sir.

CAPT. Brill: You (inaudible) tell me.

U.C. # 15266: (inaudible) I said it sir.

It is clear from this exchange between the Respondent and the investigating officers that they are referring to comments the Respondent made to the responding officers, not to Stojanovski. The questioning continues on and the Respondent is asked why he made that statement to the responding officers. Even if the Respondent thought that initially the investigators were referring to Stojanovski and Smalls, it is clear that by the series of questions that immediately followed, the investigators were referring to his profanity to the responding officers; and that the Respondent admitted to this conduct during his interview which was the subject of the conduct charged in Specification No. 4. This retraction at trial is without merit. In any event, two of the responding police officers, Stukes and Torres, testified credibly that the Respondent's conduct toward them was profane and belligerent.

Accordingly, I find the Respondent Guilty of Specification Nos. 3 and 4.

### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Police Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of engaging in a physical altercation with Police Officer Stojanovski in that he shoved and slapped her. He also had an altercation with Police



Officer Smalls in which he attempted to smack him. The Respondent was also found Guilty of failing to immediately identify himself as a member of the service to the police officers who responded to the dispute, and during that exchange, he uttered profanity toward them which was conduct prejudicial to the good order, efficiency or discipline of the Department. The Respondent denied striking Stojanovski, yet both Stojanovski and Smalls testified that the Respondent smacked her. The Respondent acknowledged that he failed to initially identify himself to the police officers who responded to the scene of the altercation. During the Respondent's Official Department Interview, he initially denied that he used profanity toward the responding officers, but later he recanted and admitted that he may have used profanity toward them. At this trial, however, the Respondent again resumed his initial position and stated that he was confused in the interview as to whether the investigators were referring to his profanity toward Stojanovski or the responding officers. This is despite direct reference to the responding officers during the course of the questioning. This resulted in the calling of an additional, rebuttal witness to address this issue. The Respondent at no point accepted responsibility for his conduct toward fellow police officers on September 9, 2006.

The Assistant Department Advocate recommended a penalty of the forfeiture of 30 vacation days in this matter. Based on the totality of the circumstances, I concur.

It is recommended that the Respondent forfeit 30 vacation days in this matter.

APPROVED

SEP 23 2008  
RAYMOND W. KELLY  
POLICE COMMISSIONER

Respectfully submitted,

*Claudia Daniels-DePeyster*  
Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials