



POLICE DEPARTMENT

January 16, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-27078
Police Officer Julio Alcantara-Santiago	:	
Tax Registry No. 953625	:	
Transit District 11	:	

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

Before: Honorable Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Sophie Kravet & Lauren Silverstein, Esqs.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

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

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Julio Alcantara-Santiago, while off duty and assigned to the Transit Division District 11, on or about September 11, 2022, wrongfully consumed an intoxicant to the extent that he was unfit for duty.

A.G. 304-04, Page 1, Paragraphs 1 and 2

FITNESS FOR DUTY

2. Said Police Officer Julio Alcantara-Santiago, while off duty and assigned to the Transit Division District 11, on or about September 11, 2022, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Alcantara-Santiago possessed an unauthorized duplicate New York City Police Department Shield. (*As added*)

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

PROHIBITED CONDUCT

3. Said Police Officer Julio Alcantara-Santiago, while off duty and assigned to the Transit Division District 11, on or about September 11, 2022, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Police Officer Alcantara-Santiago failed to safeguard his New York City Police Department Shield #5366. (*As added*)

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

PROHIBITED CONDUCT

A.G. 305-12, Paragraph 2

UNIFORMS AND
EQUIPMENT

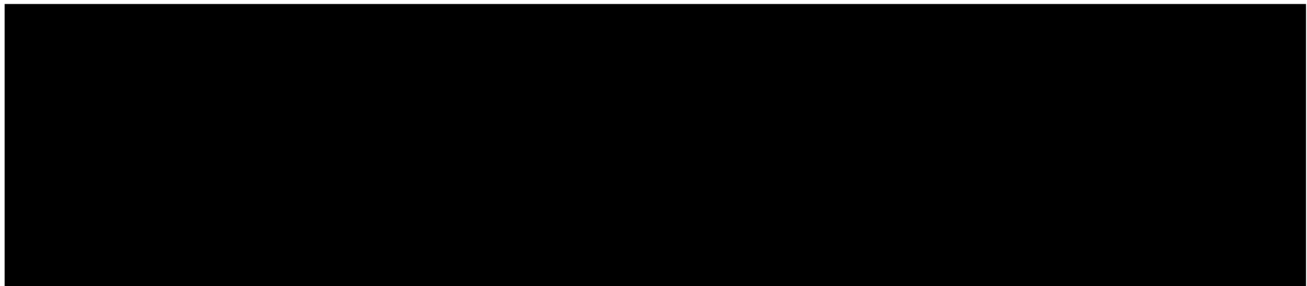
REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on August 29 and November 21, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the charged misconduct. The Department called Deputy Inspector (then Captain) Johnny Orellana, Lieutenant Daniel Delgado, Sergeant Thomas Reeder and Police Officer Dennison Durgadeen as witnesses. They also submitted video surveillance footage from inside the Hard Rock Café at Yankee Stadium where this incident occurred. Respondent testified on his own behalf and submitted Body-Worn Camera Footage as evidence in his case in chief. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the Tribunal finds Respondent Guilty

of Specifications 1, 2 and 3. I recommend that Respondent forfeit 30 suspension days, previously served. I further recommend that Respondent serve a one-year period of dismissal probation.

ANALYSIS

This case stems from an incident that occurred on September 11, 2022 at the Hard Rock Café located inside of Yankee Stadium. Respondent, while off-duty, attended a baseball game with his girlfriend, cousin, and aunt. The game was scheduled to start at approximately 1335 hours that day, but there was a rain delay. At approximately 1640 hours, video surveillance from inside the Hard Rock Café at Yankee Stadium captures Respondent and his family entering the establishment. Respondent admitted that, while inside the Hard Rock Café, he ordered an alcoholic beverage at the bar, but stated that he did not have the opportunity to consume it



A decision was made that Respondent [REDACTED] When Respondent was advised of this, he became upset and boisterous. He was then taken to the Yankee Stadium substation [REDACTED] Consistent with procedure, supervisors prepared Fitness for Duty Reports. Deputy Inspector Orellana and Lieutenant Delgado, in their reports, determined that Respondent was unfit for duty. A third report was prepared by Sergeant Michael Cohn, who observed Respondent approximately three hours later and did not make a determination on fitness, but did memorialize his observations as to Respondent's appearance and demeanor, which was different than that of the other two supervisors. Pursuant to an

ongoing investigation, it was later discovered that Respondent was in possession of a duplicate shield and that he had lost/misplaced his Department-issued shield. [REDACTED]

[REDACTED] The central contested issue in this case is Respondent's fitness for duty on the date of the incident.

Deputy Inspector Johnny Orellana testified that on September 11, 2022, while he was assigned as the Commanding Officer of the Yankee Stadium Detail, he was informed by an armed Yankee Stadium civilian security guard that there was an incident inside the Hard Rock Café involving an off-duty officer. Deputy Inspector Orellana responded to the scene and confirmed the identity of Respondent with a Yankee Stadium civilian security guard before speaking with him. Once he confirmed that Respondent was still on scene, he interviewed the complainant first. He then proceeded to speak with Respondent. According to Deputy Inspector Orellana's testimony, from the very beginning of their interaction, Respondent was very "combative." After he informed Respondent about the allegations being made, Respondent stated: "I just want to watch the game. I don't know what this is about. This is bullshit. This is wasting my time." According to Deputy Inspector Orellana, Respondent continued being argumentative and combative and using profane language in his communication with all the parties involved [REDACTED] (Tr. 15)

Upon arriving at the substation, Deputy Inspector Orellana placed Respondent in his office and contacted a PBA delegate while the investigation continued. [REDACTED]

[REDACTED]

Deputy Inspector Orellana then prepared a Fitness for Duty report (Dept. Ex. 1A). In this report, Deputy Inspector Orellana catalogued his observations of Respondent supporting his conclusion that Respondent was unfit for duty. Among those observations were that Respondent smelled of

alcohol, had watery/glassy eyes, was talkative, albeit slurred and repetitive in his speech, and that he was very combative. (Tr. 19) When asked on direct examination what caused him to believe Respondent was intoxicated, Deputy Inspector Orellana stated: "In this case, he was at the bar, I could smell alcohol, he was very combative, and disrespectful and I'm in full uniform. He knows who he's talking to. And he's saying the stuff he's saying. So to me, he's not in the right state of mind." (Tr. 21)

On cross-examination, Deputy Inspector Orellana acknowledged, that based upon his observation of Respondent that day, he checked off "steady" with regard to his balance/coordination on this same report because Respondent had no issues walking or standing. He also admitted that being "talkative" and verbally combative are not characteristics that are exclusively associated with a person who is intoxicated. Deputy Inspector Orellana also testified that he relied on his sense of smell and a conversation with a security guard, who informed him that Respondent regularly patronizes the Hard Rock Café and drinks alcohol, in concluding that Respondent had consumed alcohol that day. He further admitted that he did not take any additional steps to verify that Respondent had, in fact, consumed alcohol on that specific day (i.e. interview bartenders, employees or any patrons at the Hard Rock Café, or obtain a receipt for the purchase of alcoholic beverages). (Tr. 37)

Deputy Inspector Orellana testified that his main objective on that day was to investigate [REDACTED] allegations made against Respondent and so his primary focus was not the question of whether Respondent was unfit for duty, though that was ultimately his conclusion on that day. At the close of his testimony, he opined, "I'm not saying he was intoxicated. I'm saying he was unfit. He could've had one drink and been unfit. He could've had ten drinks...My assessment, I smelled alcohol. I don't know what caused his behavior." (Tr. 46)

Police Officer Durgadeen responded to the Hard Rock Café with Deputy Inspector Orellana. When he initially observed Respondent, he was standing approximately fifteen feet away from him and nothing unusual initially stood out about Respondent's demeanor. Officer Durgadeen recalled that it was when they escorted Respondent to the substation that he became "very irate," argumentative, and "verbally combative," and he urged him to calm down to no avail. He also remembered Respondent engaging in a verbal altercation with the Yankee Stadium civilian security guard while being escorted to the substation. Officer Durgadeen testified that he recalled Respondent shouting: "I'll fuck you up, he doesn't know who he's talking to!" Respondent later made a derogatory comment about Deputy Inspector Orellana. At the substation, Officer Durgadeen heard Respondent state: "I'll choke that Indian motherfucker out." (Tr. 54-55, 71)

When asked to describe Respondent's physical appearance, Officer Durgadeen testified, "It seemed like he was slurring with his words. He just looked like he wasn't totally there in the sense -- like I had to constantly say the same things over ten different ways. (sic) Just using an example. I said I don't know what's going on myself. It's an investigation just be patient. He kept being argumentative." (Tr. 56) Finally, he testified that he did not smell the odor of alcohol while he was in close proximity with Respondent in a small office at the substation; he had only smelled alcohol while they were at the Hard Rock Café about 15 to 20 minutes earlier. Officer Durgadeen estimated that he spent over an hour with Respondent from when he first arrived at the Hard Rock Café (at approximately 1645 hours) [REDACTED] (Tr. 61-65)

Deputy Inspector Orellana informed Lieutenant Daniel Delgado, the Executive Officer of the Yankee Stadium Detail, about the incident at the Hard Rock Café. He testified that he

observed Respondent enter the substation and as he walked past him, he could hear Respondent using profanities and that his speech was "slightly slurred." He added that Respondent was acting in a hostile manner and he looked upset. (Tr. 68-69)

On September 11, 2022, at approximately 1730 hours, Lieutenant Delgado filled out a Supervisor's Fitness for Duty Report, in which he documented that Respondent did not have the odor of alcohol on his breath, that the color of his face was "normal," and that he was "neatly dressed." He also checked the corresponding boxes indicating that Respondent's balance and coordination were "steady," but that his speech was "slurred." He did, however, describe Respondent as "antagonistic" and "combative." (Dept. Ex. 1B) He testified that when determining if someone is intoxicated he looks for: "slurred speech, profanity, their demeanor, if they are hostile or not, odor of the breath. It's a totality of the circumstances." Based upon his vast experience interacting with intoxicated individuals in the past, Lieutenant Delgado concluded that Respondent was intoxicated and therefore unfit for duty. When asked to explain the basis for this conclusion, Lieutenant Delgado testified, "My determination was when he entered the substation, he was acting hostile, the bloodshot eyes, the talkative demeanor, those characteristics." (Tr. 73-74)

Finally, the Department called Sergeant Thomas Reeder of the Internal Affairs Bureau; Sergeant Reeder had been assigned to investigate Respondent's case approximately three days after the Yankee Stadium incident. According to Sergeant Reeder when Respondent was placed on modified duty following suspension, he went to retrieve his shield and ID. At that time, it came to light that the shield that Respondent had surrendered [REDACTED] was a duplicate shield and not an original Department-issued shield. Respondent also admitted to Sergeant Reeder that he lost his shield. (Tr. 86-87)

Respondent has denied being unfit for duty or even consuming any alcohol on the date of the incident. On September 11, 2022, his tour ended at 1150 hours and he had plans to meet his family members for a Yankee game. After meeting his family, they waited on line to enter the stadium, but because it was a long line, they went to the Hard Rock Café inside of Yankee Stadium. He recalled ordering a whiskey at the bar and subsequently went to the restroom. Upon exiting the bathroom, but before he could get his drink from the bar, he was approached by Deputy Inspector Orellana. (Tr. 104-07)

According to Respondent, when Deputy Inspector Orellana approached him, he asked if he was “on the job” and without further explanation told him that he needed to go with him. Respondent testified that he was confused about the nature of Deputy Inspector Orellana’s inquiry because nothing unusual happened while he was on-duty earlier and nothing out of the ordinary happened at the Hard Rock Café. Respondent further testified that despite not knowing why he was being asked to leave, he did leave with Deputy Inspector Orellana. (Tr. 107-08)

While walking to the substation, Respondent admitted that he was “very embarrassed,” upset and used profanities because he did not get answers from Deputy Inspector Orellana about what he allegedly did wrong. He also stated that he was embarrassed about being asked to leave the Hard Rock Café in the presence of his family. At the substation, he was placed in Deputy Inspector Orellana’s office with Officer Durgadeen, who was unable to provide Respondent with any explanation as to why he was being detained. As per Respondent, he was not informed of the nature of the allegations being made against him until hours later when he spoke with a PBA delegate. (Tr. 109-12, 125)

Respondent testified that at no point prior to his initial interaction with Deputy Inspector Orellana had he consumed an alcoholic beverage or ingested any mind-altering substance and

that he was, in fact, sober. He also testified that he was never asked by any officer or anyone else whether he had consumed alcohol that day nor was he administered a field sobriety test. (Tr. 113-14)

On cross-examination, Respondent testified that he met his family at approximately 1330 hours and he recalled entering the Hard Rock Café with his family at approximately 1400 hours. Respondent was then shown video footage from inside the Hard Rock Café that captured him and his family entering the Hard Rock Café at approximately 1641 hours. He acknowledged that his timelines on direct examination may have been incorrect. Respondent could not specifically account for what he was doing from 1330 until 1641 hours other than to state he was waiting on line. He denied consuming alcohol during that period of time. (Tr. 117-21)

Respondent did not deny using coarse language during his interactions with various members of service on the date in question. He also acknowledged that he had a duplicate shield that he bought in the police shop. Respondent testified, however, that he did not realize that the shield he turned in [REDACTED] was actually the duplicate as he usually kept the original and the duplicate together and would just “grab [one] and go.” He later realized that he had turned in the duplicate and lost his Department-issued shield when he checked his locker and it was not there. (Tr. 130)

Specification 1: Fitness for Duty

I find that the Department Advocate has met the burden of proof by a preponderance of the credible, relevant evidence that Respondent was unfit for duty on September 11, 2022.

Administrative Guide 304-04, Page 1, requires that officers be “fit for duty at all times, except when on sick report” and that they “not consume intoxicants to the extent that member becomes unfit for duty.” The Administrative Guide further dictates that:

All members of the service are required to remain fit for duty as specified above, and are reminded of their absolute responsibility to remain fit for duty while in possession of their firearms.

The Department's case relies primarily on Deputy Inspector Orellana and Lieutenant Delgado's testimony and written reports documenting their determination that Respondent was unfit for duty. Although there were subtle differences in their written reports, the collective testimonial observations of Deputy Inspector Orellana and Lieutenant Delgado that Respondent's speech was "slurred" and his attitude was "combative" and "talkative," that he exhibited "glassy/watery" or "bloodshot" and that he smelled of alcohol are consistent with common-law indicia of intoxication (*see People v. Peasley*, 184 A.D.3d 911, 912 [3d Dept. 2020])[belligerence, bloodshot eyes, odor of alcohol]; *People v. Neil*, 30 A.D.3d 901 [3d Dept. 2006][odor of alcohol; slurred speech; glassy, bloodshot eyes]; *People v. McClean*, 2 A.D.3d 903 [3d Dept. 2003][slurred speech, bloodshot eyes, strong odor of alcohol, poor motor skills]).

In a case such as this, where the Tribunal must assess the credibility of witnesses who testified to judgments they made based upon first-hand observations, their perceptions must be considered part of that assessment. Perception is influenced by many factors, including the circumstances under which an event is observed; the witness's state of mind; the prior experience and training of the witness in relevant circumstances; and the amount of time the witness has to process the event they have observed. Given their lengthy careers and experience, this Tribunal has no reason to doubt the veracity of the observations made by Deputy Inspector Orellana or Lieutenant Delgado or the conclusions drawn in their respective reports. The evidence adduced at trial supports a finding that, as expected of supervisors of their experience, position, and training, Deputy Inspector Orellana and Lieutenant Delgado were careful, deliberate, and thoughtful as they managed this incident. Their independent assessments of Respondent's fitness

for duty were reliable under the circumstances presented in this case and there was no evidence of any bias against Respondent. Additionally, their respective testimony was substantially corroborated by Officer Durgadeen's observations and, to an extent, Respondent's own testimony regarding his demeanor and attitude on the date in question.

Respondent testified that he was upset and using profanities in his communication with members of service, although he denied that it was due to the use of alcohol. While I have no doubt that was Respondent angry, confused, and embarrassed by the situation and allegations made against him, his use of profane and derogatory language was unacceptable and appeared, from the testimony presented by the Department on their case in chief, to be uninhibited. The witnesses who testified at trial about Respondent's demeanor agreed that he was argumentative, combative, and antagonistic from their initial interaction with him. According to them, Respondent's litany of profanities and derogatory language remained steadfast despite attempts by various members of service to deescalate the situation. This evidence further supports the theory that Respondent's erratic and unrestrained behavior was due to his intoxication, rather than his outrage at the situation and his embarrassment in front of his family members.

Respondent offered Sergeant Michael Cohn's Supervisor's Fitness for Duty Report (Resp. Ex. B), which noted the following: "odor of alcohol on [Respondent's] breath" as "none," his attitude was "cooperative" and his speech as "normal," in an attempt to illustrate significant discrepancies between his report and that of Deputy Inspector Orellana and Lieutenant Delgado's reports. However, it is also important to note that Sergeant Cohn's report was prepared more than three hours after Lieutenant Delgado's report, so it is entirely possible that some of the physical effects of Respondent's intoxication had dissipated, therefore accounting for the

differences in the reports. Moreover, Sergeant Cohn did not testify and was not present to explain his observations or to be cross-examined about them.

Based upon the foregoing, I find Respondent Guilty of Specification 1.

Specifications 2 & 3: Possession of Unauthorized Duplicate Shield & Failure to Safeguard Department Shield

Respondent is charged with engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department in that he possessed an unauthorized duplicate copy of a Department shield and failed to safeguard his Department-issued shield. Respondent admitted that [REDACTED] his Department shield was confiscated along with his ID and his firearm. He admitted that he possessed an unauthorized duplicate Department shield that he purchased at a police shop, but did not realize he had turned that one in instead of his Department-issued shield. It was not until later, after getting his modified ID and shield back so he could work again following his suspension, that Respondent was informed that this shield was a duplicate and realized the actual shield was not in locker as he previously believed.

Based upon Respondent's own admission, I find him Guilty of Specifications 2 and 3.

PENALTY

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

Respondent, who was appointed to the Department on January 9, 2013, has been found guilty of wrongfully consuming an intoxicant to the extent that he was unfit for duty, failing to safeguard his Department shield and possessing a duplicate shield. In connection with the incident at Yankee Stadium, he was suspended without pay from September 11, 2022 through October 10, 2022.

The Department requested that the Tribunal recommend a forfeiture of 30 penalty days; dismissal probation; ordered breath testing; and cooperation with counseling. I find no aggravating or mitigating evidence in the record. Therefore, under the circumstances and taking into consideration Respondent's otherwise unblemished record, I find this to be an appropriate penalty.

Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-1 15 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. I further recommend that Respondent forfeit 30 suspension days, previously served. While I am not specifically recommending ordered breath testing or cooperation with counseling, I find such additional conditions, if imposed by competent authority, to be reasonable in this case.

Respectfully submitted,



Vanessa Facio-Lince
Assistant Deputy Commissioner Trials

APPROVED

MAR 11 2024

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER JULIO ALCANTARA-SANTIAGO
TAX REGISTRY NO. 953625
DISCIPLINARY CASE NO. 2022-27078

Respondent was appointed to the Department on January 9, 2013. On his three most recent annual performance evaluations, he was rated “Exceeds Expectations” for 2020, 2021, and 2022. He has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history. In connection with the instant matter, he was suspended without pay from September 11, 2022 through October 10, 2022, and placed on Level 2 Discipline Monitoring in December 2022. Monitoring remains going.

For your consideration.

Vanessa Facio-Lince
Assistant Deputy Commissioner Trials